

Complaint

94 F.T.C.

IN THE MATTER OF

**KARR PREVENTATIVE MEDICAL PRODUCTS, INC., ET  
AL.****CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT***Docket 9109. Complaint, April 26, 1978—Decision, Oct. 29, 1979*

This consent order, among other things, requires a Beverly Hills, Calif. firm and its controlling officer, engaged in the advertising and sale of "Acne-Statin," an acne "treatment," to cease disseminating, or causing the dissemination of advertisements that represent that Acne-Statin, or any other product of similar chemical composition, cures acne, eliminates or reduces the causes of acne blemishes, and is superior to all other acne preparations and soap for the antibacterial treatment of acne. They are required to have a reasonable basis at the time of dissemination for representations relating to product efficacy, performance, characteristics or properties, or the result of the use of any product; and prohibited from misrepresenting the extent to which a product has been tested or the results of such tests. Additionally, the firm and its controlling officer are required to establish an independent, irrevocable trust account containing \$175,000 to be used to pay half of all requests for restitution by Acne-Statin purchasers.

*Appearances*

For the Commission: *Mark A. Heller, Ira Nerken and Ross D. Petty.*

For the respondents: *George Miron, Wyman, Bautzer, Rothman & Kuchel, Washington, D.C.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Karr Preventative Medical Products, Inc. (hereinafter "KPMP"), and Atida H. Karr, M.D., as a corporate officer and an individual, hereinafter at times referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. "KPMP" is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 9615 Brighton Way, Beverly Hills, California.

PAR. 2. Atida H. Karr, M.D. is an individual and a corporate president, treasurer, director and shareholder of "KPMP". She

formulates, directs and controls the acts and practices of "KPMP," including the acts and practices described herein.

PAR. 3. Respondent "KPMP" is a privately held corporation which was organized and is maintained for the purpose of promoting and advancing the interests of its two shareholders, Dr. Atida H. Karr, M.D., the principal shareholder and beneficiary of the corporation's business, and Devora Silverman, Dr. Atida H. Karr's sister. "KPMP" and Dr. Atida H. Karr have been and now are engaged in the business of marketing and advertising health-related products, including but not limited to the product Acne-Statin, a product advertised for the treatment of acne. The above-named respondents, in connection with the manufacture and marketing of said products, have disseminated, published and distributed, and now disseminate, publish and distribute, advertisements and promotional material for the purpose of promoting the sale of Acne-Statin for human use. This product, as advertised, is a "drug" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. The respondent Atida H. Karr, M.D. and the respondent "KPMP" have joined by contract with Robert J. Marsh, Sr. through The National Media Group, Inc. to form a joint venture whose purpose was and is to profitably exploit the product Acne-Statin "through the mutual expertise and capability of the parties" (Joint Venture Agreement, as amended, September 3, 1976). The National Media Group, Inc. and Robert J. Marsh, Sr. for their part gained the sole rights and interests to the marketing and sale of the product, while the ownership of said product remained with "KPMP" and Atida H. Karr, M.D.

PAR. 5. The National Media Group, Inc. is a Delaware corporation located at 1150 First Ave., Suite 1060, Valley Forge Plaza, King of Prussia, Pennsylvania and is owned and controlled by Robert J. Marsh, Sr.

PAR. 6. In the course and conduct of their said businesses, the respondents have disseminated and caused the dissemination of certain advertisements concerning Acne-Statin through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, the insertion of advertisements in magazines and newspapers with national circulations and the placement of advertisements through television stations with sufficient power to broadcast across state lines and into the District of Columbia and advertisements in the form of a booklet, entitled "Acne: Its Cause and Its Treatment" which was, and is, sent through the United States mail, for the purpose of inducing and which was

likely to induce, directly or indirectly, the purchase of the product Acne-Statin; and have disseminated and caused the dissemination of advertisements concerning said products by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said products in commerce.

PAR. 7: Typical of the statements and representations in said advertisements, disseminated as previously described, but not necessarily inclusive thereof, are the following:

# "ACNE? Our girls got lasting help with Acne-Statín"



Pal Boone and his daughter Debbie.

"With four daughters, we've tried the leading acne medications at our house, and nothing ever seemed to work until our girls met a Beverly Hills doctor and got some real help through a product she developed called 'Acne-Statín'."

The doctor explained that a bacteria called "C.Acne" located deep in the pores of the skin breaks the oil in the pores into Fatty Acids. The pores become blocked and irritated, resulting in blemishes, blackheads, whiteheads and pimples.

**WHAT MAKES ACNE-STATIN SO DIFFERENT?**

The doctor went on to say that many medications only attack acne at the surface level by attempting to dry-up the oil. Usually this is ineffective against Acne, and only irritates, dries and peels the skin. ACNE-STATIN goes right to the root of the problem. It liquefies at body temperature and deposits an antibacterial agent that kills bacteria on contact, and keeps on killing bacteria hours after each washing. The photographs below dramatically demonstrate Acne-Statín's continual effectiveness compared to the ineffectiveness of soap.

**WHAT ABOUT SENSITIVE SKIN?**

Debbie said that even when she leaves it on overnight it doesn't irritate or dry her skin. Dr. Karr explained that it is hypo-allergenic and that it contains a moisturizer. So it leaves even sensitive skin moist and soft with NO PEELING. REGARDLESS OF AGE or sex, Acne-Statín helps control skin irritations from occasional blemishes to chronic acne.

DR. ATIDA KARR's genuine concern for skin care was as impressive to me as her credentials. In addition to being an M.D. she also

has an M.S. in Physiology and a Ph.D. in Cellular Physiology and Biochemistry. For five years she was involved in cancer research at the University of Pennsylvania under a federal grant.

Equally impressive were the letters she had received from youth and adults alike who had received significant help with Acne Statín. HERE ARE EXCERPTS from two of those letters. The first one is from an editor of one of the nation's leading fashion magazines.

"Thank you for recommending your fabulous product. I have literally tried everything on the market, plus some of my own home remedies and have spent hundreds, in fact probably thousands of dollars on treatments, facials and the like and nothing has ever really cleared up my skin, much less left it in good condition. That's why I can't believe that such a pleasant lotion-like cleanser and treatment like Acne-Statín could work as thoroughly as it did. It really is fantastic. It's the only thing that has ever worked."

"Being 25 and having had occasional acne for the past 10 years, I have tried almost every commercial and prescription product, and the results have varied. Since using your Acne-Statín for the first time I have a clear complexion. As an actress, it is necessary that I have my skin clear. My blemishes are completely gone. Not just on the surface, but all traces of infection have disappeared. My skin has reached a balanced condition."

**MONEY BACK IF NOT DELIGHTED**

If you are not pleased with the help you get you may return the empty container for a full refund.

**ACNE-STATIN IS NOT AVAILABLE IN STORES**

But you can order a 30-day four-ounce treatment without a prescription for only \$9.50. Order now and you'll receive FREE the booklet entitled "Acne, Its Cause and Its Treatment" by Atida Karr, M.D.

**HERE'S HOW TO ORDER**

1. Complete the coupon below. Be sure to mark the number of bottles you wish to order.
2. Make out a check or money order for the appropriate amount, or use Master Charge or BankAmericard. Be sure to add 50¢ for postage for each bottle.
3. Mail the coupon with payment to: ACNE-STATIN, P.O. BOX 100; BEVERLY HILLS, CALIFORNIA 90213.

**ORDER NOW AND RECEIVE FREE**  
This booklet, "Acne, Its Cause and Its Treatment" by Atida H. Karr, M.D.



**SEE THE DIFFERENCE**

In these microscopic photographs, each tiny "bubble" is a COLONY of millions of bacteria. Slide A is part of a facial culture taken eight hours after washing with soap. As you can see there are still countless bacterial colonies. Slide B shows a culture of the same facial area a full eight hours after washing with Acne Statín. Acne-Statín kills bacteria on contact, and keeps on killing bacteria hours after each washing.

After Soap  
A.

After Acne-Statín  
B.

Mail coupon with payment to: MD 5/77  
**ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90213**

Please Rush No. 30 day 4-oz bottles of Acne-Statín.

Enclosed is \$10.00 (\$9.50 + 50¢ postage & handling for each)

BankAmericard  Check or Money Order  Master Charge

PLEASE PRINT

CREDIT CARD # \_\_\_\_\_ EXP. DATE \_\_\_\_\_

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ APT. NO. \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

SIGNATURE \_\_\_\_\_

(IF USING CREDIT CARD)

KPMP Products 510 E. Commercial St. Los Angeles, Calif.

## Complaint

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## Radio TV Reports

41 East 42nd Street New York, N.Y. 10017  
(212) 697-5100

PRODUCT: ACNE STATIN  
PROGRAM: NEWS  
PAGE 1 WPIX-TV (NEW YORK)

771887  
120 SEC.  
10:19PM



1. PAT BOONE: Acne is painful, both physically and emotionally. I don't care if you're a teenager or an adult.



2. Acne causes embarrassment and anxiety.



3. I'm one of the lucky ones. I never had much of a skin problem.



4. but I do have four daughter We've tried a lot of skin cleansers and medications around our house.



5. And nothing ever really seemed to work, did it, Deb?



6. DEBBIE BOONE: No, not until my sisters and I met a Beverly



7. Hills doctor and got some real help through a product she developed called Acne Statin.



8. PAT: Right. The doctor explained that a bacteria called C-Acne



9. located deep in the pores of the skin, breaks the oil of the pores into fatty acids.



10. The pores become blocked and irritated.



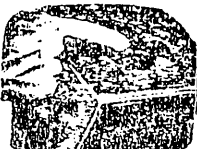
11. This results in blemishes, whiteheads, blackheads, and pimples.



12. DEBBIE: Many medications only attack acne at the surface level by trying to draw out the oil.



13. Usually this doesn't work against acne.



14. It only irritates, dries and peels the skin.



15. PAT: Let me show you a photograph.



16. Here are thousands of bacteria colonies still left on facial skin after washing with soap.

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Complaint

# Radio TV Reports

41 East 42nd Street New York N.Y. 10017  
(212) 697-5100

PRODUCT:	ACNE STATIN	771887
PROGRAM:	NEWS	2/15/77
PAGE 2	WPIX-TV	(NEW YORK)
		120 SEC.
		10:19PM



1. Now, here are the same areas eight hours after using Acne Statin.



2. See, Acne Statin goes right to the root of the problem.



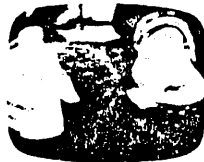
3. It liquifies at body temperature so that it can penetrate deep into the pores.



4. And there it deposits an anti-bacterial agent that kills the bacteria responsible for acne.



5. and keeps on killing the bacteria hours after each application.



6. DEBBIE: I like it because it's lotion-like, not greasy, and it goes on clear, leaving my skin moist and soft.



7. PAT: Acne Statin is not available in stores.



8. but you can order a full 30-day four ounce treatment without prescription.



9. And if you're not completely satisfied, you just return the empty container for a full refund.



10. Order right away, and you'll also receive a booklet entitled,



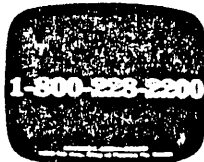
11. "Acne: It's Cause And Treatment"; by Tina Carr, M.D. Here's how to order.



12. ANNCR: Call toll free 1-800-228-2200.



13. When your package arrives, pay just \$9.50 plus C.O.D. Postage



14. That's 1-800-228-2200, 1-800-228-2200. This is a free call.

# "ACNE? Our girls got lasting help with Acne-Statin"

See why over  
700,000  
families have  
switched  
to ACNE-  
STATIN!



Pat Boone and his daughter Debby

"With four daughters, we've tried the leading acne medications at our house, and nothing ever seemed to work until our girls met a Beverly Hills doctor and got some real help through a product she developed called 'Acne-Statin'."

The doctor explained that a bacteria called "C-Acne" located deep in the pores of the skin breaks the oil in the pores into Fatty Acids. The pores become blocked and irritated, resulting in blemishes, blackheads, whiteheads and pimples.

**WHAT MAKES ACNE-STATIN SO DIFFERENT?**

The doctor went on to say that many medications only attack acne at the surface level by attempting to dry-up the oil. Usually this is ineffective against Acne, and only irritates, dries and peels the skin. ACNE-STATIN goes right to the root of the problem. It liquefies at body temperature and deposits an anti-bacterial agent that kills bacteria on contact, and keeps on killing bacteria hours after each washing. The photographs below dramatically demonstrate Acne-Statin's continual effectiveness compared to the ineffectiveness of soap.

**WHAT ABOUT SENSITIVE SKIN?**  
Debby said that even when she leaves it on overnight it doesn't irritate or dry her skin. Dr. Karr explained

that it is hypo-allergenic and that it contains a moisturizer. So it leaves even sensitive skin moist and soft with **NO PEELING, REGARDLESS OF AGE or sex.** Acne-Statin helps control skin irritations from occasional blemishes to chronic acne.

**DR. ATIDA KARR** a genuine concern for skin care was as impressive to me as her credentials. In addition to being an M.D. she also has an M.S. in Physiology and a Ph.D. in Cellular Physiology and Biochemistry. For five years she was involved in cancer research at the University of Pennsylvania under a federal grant. Equally impressive were the letters she had received from youth and adults alike who had received significant help with Acne-Statin. **HERE ARE EXCERPTS** from two of those letters. The first one is from an editor of one of the nation's leading fashion magazines.

"Thank you for recommending your fabulous product. I have literally tried everything on the market, plus some of my own home remedies and have spent hundreds. In fact probably

thousands of dollars on treatments, facials and the like and nothing has ever really cleared up my skin, much less left it in good condition. That's why I can't believe that such a pleasant lotion-like cleanser and treatment like Acne-Statin could work as thoroughly as it did. It really is fantastic. It's the only thing that has ever worked."

"Being 25 and having had occasional acne for the past 10 years, I have tried almost every commercial and prescription product, and the results have varied. Since using your Acne-Statin, for the first time I have a clear complexion. As an actress, it is necessary that I have my skin clear. My blemishes are completely gone. Not just on the surface, but all traces of infection have disappeared. My skin has reached a balanced condition."

**ACNE-STATIN IS NOT AVAILABLE IN STORES**

But you can order a 30-day four-bottle treatment without a prescription for only \$9.50. Order now and you'll receive **FREE** the booklet entitled "Acne, Its Cause and Its Treatment" by Atida Karr, M.D.

**HERE'S HOW TO ORDER**

1. Complete the coupon below. Be sure to mark the number of bottles you wish to order.
2. Make out a check or money order for the appropriate amount, or use Master Charge or BankAmericard. Be sure to add 80¢ for postage for each bottle.
3. Mail the coupon with payment to: ACNE-STATIN, P.O. BOX 100; BEVERLY HILLS, CALIFORNIA 90213.

**MONEY BACK IF NOT DELIGHTED**  
If you are not pleased with the help you get you may return the empty container for a full refund.

**ORDER NOW AND RECEIVE FREE**

This booklet, *Acne, Its Cause and Its Treatment* by Atida H. Karr, M.D.



**SEE THE DIFFERENCE**

In these microscopic photographs, each tiny "bubble" is a COLONY of millions of bacteria. Side A is part of a facial culture taken eight hours after washing with soap. As you can see there are still countless bacterial colonies. Side B shows a culture of the same facial area a full eight hours after washing with Acne-Statin. Acne-Statin kills bacteria on contact, and keeps on killing bacteria hours after each washing.

After Soap  
A

After Acne-Statin  
B

P-12-77

Mail coupon with payment to:  
ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90213

Please Rush \_\_\_\_\_ 30 day 4-oz. bottles of Acne-Statin.  
Enclosed is \$10.00 (\$9.50 + 50¢ postage & handling for each)

BankAmericard     Check or Money Order     Master Charge

PLEASE PRINT

CREDIT CARD # \_\_\_\_\_ EXP. DATE \_\_\_\_\_

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ APT. NO. \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

SIGNATURE \_\_\_\_\_

(IF USING CREDIT CARD)

KPMF Products 1510 E. Commercial St. Los Angeles, Calif.

PAR. 8. Through the use of said advertisements referred to in Paragraphs Six and Seven and others, respondents represented, and now represent, directly or by implication that:

- a. Use of Acne-Statin will cure acne regardless of the severity of the condition.
- b. Acne-Statin can penetrate the pores of the skin to eliminate the bacteria responsible for pimples, blackheads, whiteheads and other acne blemishes.
- c. Acne-Statin can penetrate the pores of the skin to eliminate the fatty acids responsible for pimples, blackheads, whiteheads and other acne blemishes.
- d. Acne-Statin is superior to all other acne preparations in the antibacterial treatment of acne.
- e. Acne-Statin is superior to soap in the anti-bacterial treatment of acne.
- f. Competent and reliable medical and scientific tests show that Acne-Statin is an efficacious treatment of acne.
- g. If a purchaser of Acne-Statin is not completely satisfied, a full refund is guaranteed without time or quantity limitations.

PAR. 9. In truth and in fact:

- a. Use of Acne-Statin will not cure acne.
- b. Acne-Statin cannot penetrate the pores of the skin to eliminate the bacteria contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.
- c. Acne-Statin cannot penetrate the pores of the skin to eliminate the fatty acids contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.
- d. Acne-Statin is not superior to prescription and over-the-counter drug preparations which are efficacious in the antibacterial treatment of acne.
- e. Neither Acne-Statin nor soap is an effective antibacterial treatment for acne.
- f. There exist no competent and reliable medical and scientific tests which demonstrate the efficacy of Acne-Statin as a treatment for acne.
- g. There are time and quantity limitations on the money-back guarantee for Acne-Statin.

Therefore, the advertisements referred to in Paragraphs Six and Seven, were and are misleading in material respects and constituted, and now constitute, false advertisements, and the statements and



representations set forth in Paragraph Eight were, and are false, misleading or deceptive.

PAR. 10. Furthermore, through the use of the advertisements referred to in Paragraphs Six and Seven and others, respondents represented, and now represent, directly or by implication that:

a. Use of Acne-Statin by persons with acne will result in skin free of pimples, blackheads, whiteheads and other acne blemishes.

b. Use of Acne-Statin by persons with acne will help control pimples, blackheads, whiteheads and other acne blemishes, regardless of the severity of the disease.

c. Acne-Statin can penetrate the pores of the skin to eliminate the cause of acne.

d. Acne-Statin is superior to all prescription acne preparations for the treatment of acne.

e. Acne-Statin is superior to all other over-the-counter acne preparations for the treatment of acne.

PAR. 11. There existed at the time of the first dissemination of the representations contained in Paragraphs Eight a, b, c, and f and Ten no reasonable basis for the making of these representations. Therefore, the making and dissemination of said representations as alleged, constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce.

PAR. 12. Through the use of photographs of bacterial colonies, in both the print and television advertisements referred to in Paragraphs Six and Seven, respondents represented, and now represent, to consumers that Acne-Statin effectively kills "C-acne," the bacteria responsible for acne.

PAR. 13. In truth and in fact, the slides in the photographs did not contain "C-acne" (correctly *C. acnes*, now generally referred to as *P. acnes*). They contained staph and other resident bacteria on the facial surface, an environment in which "C-acne" (*P. acnes*) does not survive. Furthermore, these surface bacteria are neither involved nor in any manner related to the cause of acne.

Therefore, the use of the photographs of bacteria in the advertisements referred to above, constituted, and now constitute, false, misleading or deceptive acts or practices.

PAR. 14. In the course and conduct of its aforesaid business, and at all times mentioned herein, the respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals representing or engaged in the over-the-counter and prescription drug industries.

PAR. 15. The use by respondents of the aforesaid unfair or

deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days; and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Karr Preventative Medical Products is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 9615 Brighton Way, Beverly Hills, California.
2. Respondent Atida H. Karr, M.D. is an individual and corporate

officer of Karr Preventative Medical Products, Inc., and maintains an office at 9615 Brighton Way, Beverly Hills, California.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

#### ORDER

##### I

*It is ordered,* That respondents Karr Preventative Medical Products, Inc., a corporation, and Atida H. Karr, M.D., an individual, their successors and assigns, either jointly or individually, and the corporate respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of all products do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of Acne-Statin or any other product of similar chemical composition will cure acne or any skin condition associated with acne.

2. Represents that Acne-Statin or any other product of similar chemical composition will eliminate or reduce the bacteria responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.

3. Represents that Acne-Statin or any other product of similar chemical composition will eliminate or reduce the fatty acids responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.

4. Represents that Acne-Statin or any other product of similar chemical composition is superior to prescription or over-the-counter acne preparations in the antibacterial treatment of acne.

5. Represents that Acne-Statin or any other product of similar chemical composition is superior to soap in the antibacterial treatment of acne.

6. Represents that the money-back guarantee for Acne-Statin or any other product has no time and quantity limitations unless such statement is true.

7. Misrepresents the extent to which any product has been tested or the results of any such test(s).

8. Represents through a test(s) or demonstration(s) that a product is comparable or superior to another product or other products where the test(s) or demonstration(s) does not accurately depict or present the efficacy or the mode of performance of each product for the advertised use or purpose.

9. Misrepresents the efficacy, use or the mode of performance of any product where the use or misuse of the product may affect the health or safety of the user.

B. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of Acne-Statin or any other acne product by persons with acne will reduce, minimize or eliminate pimples, blackheads, whiteheads or any other blemishes associated with acne;

2. Represents that Acne-Statin or any other acne product can eliminate any factor contributing to acne or any skin condition associated with acne;

3. Represents that Acne-Statin or any other acne product is superior to prescription or over-the-counter acne preparations in the treatment of acne or any skin condition associated with acne;

4. Represents that Acne-Statin or any other product is efficacious for the treatment of acne,

unless, at the time of each dissemination of such representation(s), respondents possess and rely upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). Competent and reliable scientific or medical evidence shall be defined as evidence in the form of at least two well-controlled double-blind clinical studies which are conducted by different persons, independently of each other. Such persons shall be dermatologists who are qualified by scientific training and experience to treat acne and conduct the aforementioned studies.

*Provided, however,* that insofar as representations are covered by Parts IB2 and IA2-IA3, Parts IA2-IA3 shall govern. Additionally, insofar as representations are covered by Parts IB3 and IA4, Part IA4 shall govern.

C. Disseminating and causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly makes representations referring or relating to the performance or efficacy of any product or refers or relates to any characteristic, property or result of the use of

any product, unless, at the time of each dissemination of such representation(s) respondents possess and rely upon a reasonable basis for such representation(s).

## II

*It is further ordered, That:*

A. Within thirty (30) days of final acceptance of this order by the Federal Trade Commission (hereinafter the "Commission"), respondents shall establish an interest-bearing trust account for the purpose of paying restitution to Acne-Statin purchasers, which in all respects meets with the approval of the Commission or its designated staff. Said trust account shall provide for at least a six (6) percent annual interest rate, compounded quarterly, and shall be administered, maintained and terminated free of charge. Said account shall be entitled "Acne-Statin Restitution Account-I," and when established shall contain the sum of one hundred thousand dollars (\$100,000). Additionally, within sixty (60) days of the final acceptance of this order by the Commission, respondents shall augment said trust account with an additional seventy-five thousand dollars (\$75,000). Ten (10) days after each funding of said trust account, respondents shall provide the Commission or its designated staff a verified accounting of the funds within said account, and after the first funding, a copy of the trust agreement which establishes the trust account. The instrument creating said trust account shall expressly contain binding provisions to the following effect:

1. Neither Atida H. Karr, M.D., nor Karr Preventative Medical Products, Inc., shall have any power, either express or implied, to revoke said trust account or deplete the monies therein.

2. The trust account monies shall not be subject to the claims of any creditors of Atida H. Karr, M.D., or Karr Preventative Medical Products, Inc.

3. The beneficiaries of said trust account shall be Acne-Statin purchasers who request refunds and are identified by the Commission or its designated staff as beneficiaries of said trust and/or the respondents named herein. *Provided, however,* that purchasers who make their initial purchase of Acne-Statin after the first dissemination of the restitution notice required in Part III, *infra*, shall be ineligible to be designated as beneficiaries of said trust and, therefore, ineligible to receive restitution under this order.

4. The Commission or its designated staff shall have the exclusive power to determine when and which beneficiaries or other parties

necessary to the execution of the restitution program (which includes the notification of consumers) are to receive monies from said trust account and what amount each is to receive. This power of distribution shall include the power to have up to fifty thousand dollars (\$50,000) distributed to pay for the expenses of administering the restitution program.

5. Said trust account shall retain all interest accumulated thereto and such interest shall be available as funds for distribution to the beneficiaries of said trust account.

6. The trustee of said trust account shall be independent of Atida H. Karr, M.D., and Karr Preventative Medical Products, Inc. and shall meet with the approval of the Commission or its designated staff.

7. Upon the direction of the Commission or its designated staff to pay funds to a party identified pursuant to IIA4 *supra*, the trustee shall issue such payment to the said identified party within sixty (60) days of the direction of the Commission or its designated staff.

B. The Commission or its designated staff will determine the terms and conditions under which such purchasers shall receive restitution, provided that:

1. purchasers will be given a specific deadline not more than 120 days after the first publication of the notification before which they must request refunds in writing in order to receive restitution;

2. each purchaser who requests restitution shall receive the total amount paid for Acne-Statin unless there are insufficient funds to pay all such purchasers. If there are not sufficient funds to fully pay all such purchasers, each such purchaser will receive the proportion, equal to the ratio of the total monies available for restitution over the total amount of restitution requested by purchasers, of the amount which he or she spent for Acne-Statin;

3. no purchaser shall receive more in restitution than such purchaser paid for Acne-Statin less the amount of refunds, if any, already received; and

4. funds from the aforementioned trust account shall be used to pay fifty percent (50%) of each restitution payment. *Provided, however,* that if no funds are available from the National Media Group, Inc., and/or Robert J. Marsh, Sr. or if the funds from the trust account established by the National Media Group, Inc., entitled "Acne-Statin Restitution Account-II," are for any reason depleted prior to the depletion of the funds in the trust account established by this order, then monies from the trust account established herein shall alone be used to pay the remaining restitution requests.

C. Within six months after the completion of the restitution program, the Commission or its designated staff shall direct the trustee of the trust account established in IIA, *supra*, to pay all monies remaining in the trust account to Karr Preventative Medical Products, Inc., or Atida H. Karr, M.D., and terminate the trust account.

### III

After the final acceptance of this order by the Commission, the Commission or its designated staff shall provide notice to consumers of an opportunity to obtain refunds for purchases of Acne-Statin. Said notice shall not include the Commission's public announcements of this consent agreement or the publication of this agreement and order in the Federal Register.

Ten (10) days prior to reserving commercial space for the first dissemination of said notice, the Commission or its designated staff shall provide respondents with a copy of the restitution notice. Providing said notice to respondents does not in anyway suggest that respondents shall have any veto power over the content of said notice or any part thereof, and in fact, respondents shall have no such veto power.

Said notice may contain the following concepts and shall not substantively exceed the scope of such concepts:

1. No product cures acne.
2. Notice to Acne-Statin purchasers of the restitution program identified herein. Said notice may contain, among other things, information regarding the eligibility for refunds, means of obtaining refunds and any limitations of the restitution program.
3. The fact that a Federal Trade Commission complaint was issued in this matter, and that the consent agreement and order are the basis for said notice and the restitution program.
4. Any information pertinent to the consent agreement or the Commission's order; *provided, however*, that the disclosure of any such information shall not be inconsistent with paragraph seven of the consent agreement.
5. The total amount of money available for restitution including funds from this and other orders.
6. The picturing of the container or any other promotional material for the product Acne-Statin or the quoting or summarizing of the language contained either on the product container or appearing in any other promotional vehicle.

Upon the first publication of said notice to consumers, persons who desire refunds will have up to, and including, one hundred and twenty (120) days to request the return of monies they spent on the purchase of Acne-Statin.

Respondents shall provide the Commission or its designated staff all consumer letters requesting refunds for Acne-Statin not yet provided to the Commission. All such letters shall be provided to the Commission or its designated staff fifteen (15) days after this order becomes final. Further, any such letters received subsequent to the order becoming final and before the end of the 120 day notification period as described in IIB1, *supra*, shall be provided to the Commission within fifteen (15) days of their receipt by respondents.

Lastly, respondents shall provide complete and updated computer tapes which identify the purchasers of Acne-Statin to the party responsible for verifying refund requests from consumers and dispensing refund checks. Such tapes shall remain with said party until all refund requests have been fully processed (*i.e.*, paid or rejected) to the satisfaction of the Commission or its designated staff. At which time, said computer customer list shall be returned to respondents.

#### IV

*It is further ordered,* That the corporate respondent shall forthwith distribute a copy of this order to each of its operating divisions.

*It is further ordered,* That each respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

*It is further ordered,* That each respondent shall, within sixty (60) days after this order becomes final, and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this order.

*It is further ordered,* That each respondent shall maintain files and records of all substantiation related to the requirements of Parts IB and IC of this order for a period of three (3) years after the dissemination of any advertisement which relates to either of these portions of the order. Additionally, such material shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a demand for such material.



Complaint

94 F.T.C.

IN THE MATTER OF  
THE NATIONAL MEDIA GROUP, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-2995. Complaint, Oct. 29, 1979—Decision, Oct. 29, 1979*

This consent order, among other things, requires a King of Prussia, Pa. firm and a corporate officer, engaged in the advertising and sale of "Acne-Statin," an acne "treatment," to cease disseminating or causing the dissemination of advertisements that represent that Acne-Statin cures acne, eliminates or reduces the bacteria and fatty acids responsible for acne blemishes, and is superior to all other acne preparations and soap for the antibacterial treatment of acne. The firm and its corporate officer are required to have a reasonable basis at the time of dissemination for representations relating to the efficacy, performance, characteristics, properties or the use of any drug, cosmetic, device or food; and prohibited from misrepresenting the extent to which a product has been tested or the results of such tests. Additionally, they are required to establish an independent, irrevocable trust account, containing sixty thousand dollars (\$60,000) to be used to pay half of all requests for restitution by Acne-Statin purchasers; and obligated to conduct and be totally responsible for the administration of the restitution program.

*Appearances*

For the Commission: *Mark A. Heller.*

For the Respondents: *Clinton R. Batterton, Fulbright & Jaworski,*  
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that The National Media Group, Inc. (hereinafter "NMG"), a corporation, and Robert J. Marsh, Sr., as a corporate officer and an individual, hereinafter at times referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. "NMG" is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1150 First Ave., Suite 1060, Valley Forge Plaza, King of Prussia, Pennsylvania.

PAR. 2. Robert J. Marsh, Sr. is an individual and corporate

director, chief executive officer, president, treasurer and sole shareholder of "NMG." He formulates, directs and controls the acts and practices of "NMG," including the acts and practices described herein.

PAR. 3. Respondent "NMG" is a privately held corporation which was organized and is maintained for the purpose of promoting and advancing the interests of Robert J. Marsh, Sr., the sole shareholder of the corporation. "NMG" and Robert J. Marsh, Sr., have been and now are engaged in the business of marketing and preparing advertisements for consumer products, as well as purchasing television time for the placement of advertisements for consumer products. Among the products now marketed by "NMG" and Robert J. Marsh, Sr. is Acne-Statin. The above-named respondents have prepared, disseminated and published and now prepare, disseminate and publish advertisements and promotional material for the purpose of promoting the sale of Acne-Statin for human use. This product, as advertised, is a "drug" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. The respondent Robert J. Marsh, Sr., through the respondent "NMG" has joined by contract with Karr Preventative Medical Products, Inc., and Atida H. Karr, M.D., to form a joint venture whose purpose was and is to profitably exploit the product Acne-Statin "through the mutual expertise and capability of the parties" (Joint Venture Agreement as amended, September 3, 1976). "NMG" and Robert J. Marsh, Sr., for their part gained the sole rights and interests to the marketing and sale of Acne-Statin, while the ownership of said product remained with Karr Preventative Medical Products, Inc. and Atida H. Karr, M.D.

PAR. 5. Karr Preventative Medical Products, Inc. is a California corporation located at 9615 Brighton Way, Beverly Hills, California and directed and controlled by Atida H. Karr, M.D., a major shareholder.

PAR. 6. In the course and conduct of their said businesses, the respondents, along with joint venturers Karr Preventative Medical Products, Inc. and Atida H. Karr, M.D., have disseminated and caused the dissemination of certain advertisements concerning Acne-Statin through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, the insertion of advertisements in magazines and newspapers with national circulations and the placement of advertisements through television stations with sufficient power to broadcast across state lines and into the District of Columbia and advertisements in the form of a booklet,

entitled "Acne: Its Cause and Its Treatment" which was, and is, sent through the United States mail, for the purpose of inducing and which was likely to induce, directly or indirectly, the purchase of the product Acne-Statin; and have disseminated and caused the dissemination of advertisements concerning said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce.

PAR. 7. Typical of the statements and representations in said advertisements, disseminated as previously described, but not necessarily inclusive thereof, are the following:

# "ACNE? Our girls got lasting help with Acne-Statín®"

"With four daughters, we've tried the leading acne medications at our house, and nothing ever seemed to work until our girls met a Beverly Hills doctor and got some real help through a product she developed called 'Acne-Statín.'"



Pat Boone and his daughter Debbie.

The doctor explained that a bacteria called "C-Acne" located deep in the pores of the skin breaks the oil in the pores into Fatty Acids. The pores become blocked and irritated, resulting in blemishes, blackheads, whiteheads and pimples.

**WHAT MAKES ACNE-STATIN SO DIFFERENT?**

The doctor went on to say that many medications only attack acne at the surface level by attempting to dry-up the oil. Usually this is ineffective against Acne, and only irritates, dries and peels the skin. ACNE-STATIN goes right to the root of the problem. It liquifies at body temperature and deposits an anti-bacterial agent that kills bacteria on contact, and keeps on killing bacteria hours after each washing. The photographs below dramatically demonstrate Acne-Statín's continual effectiveness compared to the ineffectiveness of soap.

**WHAT ABOUT SENSITIVE SKIN?**

Debbie said that even when she leaves it on overnight it doesn't irritate or dry her skin. Dr. Karr explained that it is hypo-allergenic and that it contains a moisturizer. So it leaves even sensitive skin moist and soft with NO PEELING. REGARDLESS OF AGE or sex, Acne-Statín helps control skin irritations from occasional blemishes to chronic acne. DR. ATIDA KARR's genuine concern for skin care was as impressive to me as her credentials. In addition to being an M.D. she also

has an M.S. in Physiology and a Ph.D. in Cellular Physiology and Biochemistry. For five years she was involved in cancer research at the University of Pennsylvania under a federal grant.

Equally impressive were the letters she had received from youth and adults alike who had received significant help with Acne-Statín. HERE ARE EXCERPTS from two of those letters. The first one is from an editor of one of the nation's leading fashion magazines.

"Thank you for recommending your fabulous product. I have literally tried everything on the market, plus some of my own home remedies and have spent hundreds, in fact probably thousands of dollars on treatments, facials and the like and nothing has ever really cleared up my skin, much less left it in good condition. That's why I can't believe that such a pleasant lotion-like cleanser and treatment like Acne-Statín could work as thoroughly as it did. It really is fantastic. It's the only thing that has ever worked."

"Being 25 and having had occasional acne for the past 10 years, I have tried almost every commercial and prescription product, and the results have varied. Since using your Acne-Statín for the first time I have a clear complexion. As an actress, it is necessary that I have my skin clear. My blemishes are completely gone. Not just on the surface, but all traces of infection have disappeared. My skin has reached a balanced condition."

**MONEY BACK IF NOT DELIGHTED**

If you are not pleased with the help you get you may return the empty container for a full refund.

**ACNE-STATIN IS NOT AVAILABLE IN STORES**

But you can order a 30-day four-ounce treatment without a prescription for only \$9.50. Order now and you'll receive FREE the booklet entitled "Acne, Its Cause and Its Treatment" by Atida Karr, M.D.

**HERE'S HOW TO ORDER**

1. Complete the coupon below. Be sure to mark the number of bottles you wish to order.
2. Make out a check or money order for the appropriate amount, or use Master Charge or BankAmericard. Be sure to add 50¢ for postage for each bottle.
3. Mail the coupon with payment to: ACNE-STATIN, P.O. BOX 100, BEVERLY HILLS, CALIFORNIA 90213.

**ORDER NOW AND RECEIVE FREE**

This booklet, "Acne, Its Cause and Its Treatment" by Atida H. Karr, M.D.



**SEE THE DIFFERENCE**

In these microscopic photographs, each tiny "bubble" is a COLONY of millions of bacteria. Slide A is part of a facial culture taken eight hours after washing with soap. As you can see there are still countless bacterial colonies. Slide B shows a culture of the same facial area a full eight hours after washing with Acne-Statín. Acne-Statín kills bacteria on contact, and keeps on killing bacteria hours after each washing.



Mail coupon with payment to: 40-577  
**ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90213**  
 Please Rush \_\_\_\_\_ 30 day 4-oz. bottles of Acne-Statín.  
 No. \_\_\_\_\_  
 Enclosed is \$10.00 (\$9.50 + 50¢ postage & handling for each)  
 BankAmericard     Check or Money Order     Master Charge  
 PLEASE PRINT  
 CREDIT CARD # \_\_\_\_\_ EXP. DATE \_\_\_\_\_  
 NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_ APT. NO. \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 SIGNATURE \_\_\_\_\_  
 (IF USING CREDIT CARD)  
 KPMP Products 510 E. Commercial St. Los Angeles, Calif.

Complaint

94 F.T.C.

Radio TV Reports

41 East 42nd Street New York N.Y. 10017  
(212) 697-5100

PRODUCT: ACNE STATIN  
PROGRAM: NEWS 2/15/77 771887  
PAGE 1 WPIX-TV (NEW YORK) 120 SEC.  
10:19PM



1. PAT BOONE: Acne is painful, both physically and emotionally. I don't care if you're a teenager or an adult.



2. Acne causes embarrassment and anxiety.



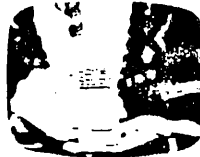
3. I'm one of the lucky ones. I never had much of a skin problem.



4. but I do have four daughters. We've tried a lot of skin cleansers and medications around our house.



5. And nothing ever really seemed to work, did it, Deb?



6. DEBBIE BOONE: No, not until my sisters and I met a Beverly



7. Hills doctor and got some real help through a product she developed called Acne Statin.



8. PAT: Right. The doctor explained that a bacteria called C-Acne



9. located deep in the pores of the skin, breaks the oil of the pores into fatty acids.



10. The pores become blocked and irritated.



11. This results in blemishes, whiteheads, blackheads, and pimples.



12. DEBBIE: Many medications only attack acne at the surface level by trying to draw out the oil.



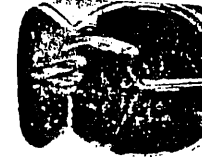
13. Usually this doesn't work against acne.



14. It only irritates, dries and peels the skin.



15. PAT: Let me show you a photograph.



16. Here are thousands of bacteria colonies still left on facial skin after washing with soap.

# Radio TV Reports

41 East 42nd Street New York N.Y. 10017  
(212) 697-5100

PRODUCT: ACNE STATIN  
PROGRAM: NEWS  
PAGE 2

2/15/77  
WPIX-TV  
(NEW YORK)

771887  
120 SEC.  
10:19PM



1. Now, here are the same areas eight hours after using Acne Statin.



2. See, Acne Statin goes right to the root of the problem.



3. It liquefies at body temperature so that it can penetrate deep into the pores.



4. And there it deposits an anti-bacterial agent that kills the bacteria responsible for acne.



5. and keeps on killing the bacteria hours after each application.



6. DEBBIE: I like it because it's lotion-like, not greasy, and it goes on clear, leaving my skin moist and soft.



7. PAT: Acne Statin is not available in stores.



8. but you can order a full 30-day four ounce treatment without prescription.



9. And if you're not completely satisfied, you just return the empty container for a full refund.



10. Order right away, and you'll also receive a booklet entitled,



11. "Acne: It's Cause And Treatment" by Tina Carr, M.D. Here's how to order.



12. ANNCR: Call toll free, 1-800-228-2200.



13. When your package arrives, pay just \$9.50 plus C.O.D. Postage



14. That's 1-800-228-2200. 1-800-228-2200. This is a free call.

# "ACNE? Our girls got lasting help with Acne-Statin"

"With four daughters, we've tried the leading acne medications at our house, and nothing ever seemed to work until our girls met a Beverly Hills doctor and got some real help through a product she developed called 'Acne-Statin'."

The doctor explained that a bacteria called "C-Acne" located deep in the pores of the skin breaks the oil in the pores into Fatty Acids. The pores become blocked and irritated, resulting in blemishes, blackheads, whiteheads and pimples.

**WHAT MAKES ACNE-STATIN SO DIFFERENT?**

The doctor went on to say that many medications only attack acne at the surface level by attempting to dry-up the oil. Usually this is ineffective against Acne, and only irritates, dries and peels the skin. ACNE-STATIN goes right to the root of the problem. It regulates at body temperature and deposits an anti-bacterial agent that kills bacteria on contact, and keeps on killing bacteria hours after each washing. The photographs below dramatically demonstrate Acne-Statin's continual effectiveness compared to the ineffectiveness of soap.

**WHAT ABOUT SENSITIVE SKIN?**

Debbie said that even when she leaves it on overnight it doesn't irritate or dry her skin. Dr. Karr explained

that it is hypo-allergenic and that it contains a moisturizer. So it leaves even sensitive skin moist and soft with NO PEELING. REGARDLESS OF AGE or sex, Acne-Statin helps control skin irritations from occasional blemishes to chronic acne.

DR. ATIDA KARR's genuine concern for skin care was as impressive to me as her credentials. In addition to being an M.D. she also has an M.S. in Physiology and a Ph.D. in Cellular Physiology and Biochemistry. For five years she was involved in cancer research at the University of Pennsylvania under a federal grant.

Equally impressive were the letters she had received from youth and adults alike who had received significant help with Acne-Statin. HERE ARE EXCERPTS from two of those letters. The first one is from an editor of one of the nation's leading fashion magazines.

"Thank you for recommending your fabulous product. I have literally tried everything on the market, plus some of my own home remedies and have spent hundreds, in fact probably

See why over 700,000 families have switched to ACNE-STATIN!



Pat Boone and his daughter Debbie

thousands of dollars on treatments, facials and the like and nothing has ever really cleared up my skin, much less left it in good condition. That's why I can't believe that such a pleasant lotion-like cleanser and treatment like Acne-Statin could work as thoroughly as it did. It really is fantastic. It's the only thing that has ever worked."

"Being 25 and having had occasional acne for the past 10 years, I have tried almost every commercial and prescription product, and the results have varied. Since using your Acne-Statin, for the first time I have a clear complexion. As an actress, it is necessary that I have my skin clear. My blemishes are completely gone. Not just on the surface, but all traces of infection have disappeared. My skin has reached a balanced condition."

**ACNE-STATIN IS NOT AVAILABLE IN STORES**

But you can order a 30-day four-ounce treatment without a prescription for only \$9.50. Order now and you'll receive FREE the booklet entitled "Acne, Its Cause and Its Treatment" by Alida Karr, M.D.

**HERE'S HOW TO ORDER**

1. Complete the coupon below. Be sure to mark the number of bottles you wish to order.
2. Make out a check or money order for the appropriate amount, or use Master Charge or BankAmericard. Be sure to add 50¢ for postage for each bottle.
3. Mail the coupon with payment to: ACNE-STATIN; P.O. BOX 100; BEVERLY HILLS, CALIFORNIA 90213.

**ORDER NOW AND RECEIVE FREE**

This booklet, *Acne, Its Cause and Its Treatment* by Alida H. Karr, M.D.



**MONEY BACK IF NOT DELIGHTED**

If you are not pleased with the help you get you may return the empty container for a full refund.

**SEE THE DIFFERENCE**

In these microscopic photographs, each tiny "bubble" is a COLONY of millions of bacteria. Slide A is part of a facial culture taken eight hours after washing with soap. As you can see there are still countless bacterial colonies. Slide B shows a culture of the same facial area a full eight hours after washing with Acne-Statin. Acne-Statin kills bacteria on contact, and keeps on killing bacteria hours after each washing.

After Soap  
-A-

After Acne-Statin  
-B-

P-12-77

Mail coupon with payment to:  
ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90213

Please Rush \_\_\_\_\_ 30 day 4-oz. bottles of Acne-Statin.  
Enclosed is \$10.00 (\$9.50 + 50¢ postage & handling for each)

BankAmericard     Check or Money Order     Master Charge

PLEASE PRINT \_\_\_\_\_ EXP. DATE \_\_\_\_\_

CREDIT CARD # \_\_\_\_\_

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ APT. NO. \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

SIGNATURE \_\_\_\_\_

(IF USING CREDIT CARD)

KP&P Products 810 E. Commercial St. Los Angeles, Calif.

PAR. 8. Through the use of said advertisements referred to in Paragraphs Six and Seven and others, respondents represented, and now represent, directly or by implication that:

- a. Use of Acne-Statin will cure acne regardless of the severity of the condition.
- b. Acne-Statin can penetrate the pores of the skin to eliminate the bacteria responsible for pimples, blackheads, whiteheads and other acne blemishes.
- c. Acne-Statin can penetrate the pores of the skin to eliminate the fatty acids responsible for pimples, blackheads, whiteheads and other acne blemishes.
- d. Acne-Statin is superior to all other acne preparations in the antibacterial treatment of acne.
- e. Acne-Statin is superior to soap in the antibacterial treatment of acne.
- f. Competent and reliable medical and scientific tests show that Acne-Statin is an efficacious treatment for acne.
- g. If a purchaser of Acne-Statin is not completely satisfied, a full refund is guaranteed without time or quantity limitations.

PAR. 9. In truth and in fact:

- a. Use of Acne-Statin will not cure acne.
- b. Acne-Statin cannot penetrate the pores of the skin to eliminate the bacteria contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.
- c. Acne-Statin cannot penetrate the pores of the skin to eliminate the fatty acids contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.
- d. Acne-Statin is not superior to prescription and over-the-counter drug preparations which are efficacious in the antibacterial treatment of acne.
- e. Neither Acne-Statin nor soap is an effective antibacterial treatment of acne.
- f. There exist no competent and reliable medical or scientific tests which demonstrate the efficacy of Acne-Statin as a treatment for acne.
- g. There are time and quantity limitations on the money-back guarantee for Acne-Statin.

Therefore, the advertisements referred to in Paragraphs Six and Seven were and are misleading in material respects and constituted, and now constitute, false advertisements, and the statements and



representations set forth in Paragraph Eight were, and are false, misleading or deceptive.

PAR. 10. Furthermore, through the use of the advertisements referred to in Paragraphs Six and Seven and others, respondents represented, and now represent, directly or by implication that:

a. Use of Acne-Statin by persons with acne will result in skin free of pimples, blackheads, whiteheads and other acne blemishes.

b. Use of Acne-Statin by persons with acne will help control pimples, blackheads, whiteheads and other acne blemishes, regardless of the severity of the disease.

c. Acne-Statin can penetrate the pores of the skin to eliminate the cause of acne.

d. Acne-Statin is superior to all prescription acne preparations for the treatment of acne.

e. Acne-Statin is superior to all other over-the-counter acne preparations for the treatment of acne.

PAR. 11. There existed at the time of the first dissemination of the representations contained in Paragraphs Eight a, b, c, and f and Ten no reasonable basis for the making of these representations. Therefore, the making and dissemination of said representations as alleged, constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce.

PAR. 12. Through the use of photographs of bacterial colonies, in both the print and television advertisements referred to in Paragraphs Six and Seven, respondents represented, and now represent, to consumers that Acne-Statin effectively kills "C-acne," the bacteria responsible for acne.

PAR. 13. In truth and in fact, the slides in the photographs did not contain "C-acne" (correctly *C. acnes*, now generally referred to as *P. acnes*). They contained staph and other resident bacteria on the facial surface, an environment in which "C-acne" (*P. acnes*) does not survive. Furthermore, these surface bacteria are neither involved nor in any manner related to the cause of acne.

Therefore, the use of the photographs of bacteria in the advertisements referred to above, constituted, and now constitute, false, misleading or deceptive acts or practices.

PAR. 14. In the course and conduct of their aforesaid businesses and at all times mentioned herein, the respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals representing or engaged in the over-the-counter and prescription drug industries.

In addition to the above, respondents are in substantial competi-

tion in or affecting commerce with corporations, firms and individuals representing or engaged in the direct mail order sales and advertising industries.

PAR. 15. The use by respondents of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The National Media Group, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 1060 Valley Forge Plaza, 1150 First Ave., King of Prussia, Pennsylvania

2. Respondent Robert J. Marsh, Sr. is an individual and corporate officer of The National Media Group, Inc., and maintains an office at 1060 Valley Forge Plaza, 1150 First Ave., King of Prussia, Pennsylvania.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

#### ORDER

##### I

*It is ordered.* That respondents, The National Media Group, Inc., a corporation, and Robert J. Marsh, Sr., an individual, their successors and assigns, either jointly or individually, and the corporate respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of all products do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of Acne-Statin will cure acne or any skin condition associated with acne.

2. Represents that Acne-Statin will eliminate or reduce the bacteria responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.

3. Represents that Acne-Statin will eliminate or reduce the fatty acids responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.

4. Represents that Acne-Statin is superior to prescription or over-the-counter antibacterial acne preparations in the treatment of acne.

5. Represents that Acne-Statin is superior to soap in the antibacterial treatment of acne.

6. Represents that the money-back guarantee for Acne-Statin or any other product has no time and quantity limitations unless such statement is true.

7. Misrepresents the extent to which any product has been tested or the results of any such test(s).

8. Represents through a test(s) or, demonstration(s) that a product is comparable or superior to another product or other products where the test(s) or demonstration(s) does not accurately depict or present the efficacy or the mode of performance of each product for the advertised use.

9. Misrepresents the efficacy, use or the mode of performance of any "drug," "cosmetic," "device" or "food" (as these terms are defined by Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55) where the use or reasonably foreseeable misuse of the product may adversely affect the health or safety of the user.

B. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. represents that use of Acne-Statin or any other acne product by persons with acne will reduce, minimize or eliminate pimples, blackheads, whiteheads or any other blemishes associated with acne;

2. represents that Acne-Statin or any other acne product can eliminate any factor contributing to acne or any skin condition associated with acne;

3. represents that Acne-Statin or any other acne product is superior to prescription or over-the-counter acne preparations in the treatment of acne or any skin condition associated with acne;

4. represents that Acne-Statin or any other product is efficacious for the treatment of acne, unless, at the time of each dissemination of such representation(s) respondent(s) possess and rely upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). Competent and reliable scientific or medical evidence shall be defined as evidence in the form of at least two well-controlled double-blind clinical studies conducted by different persons, independently of each other. Such persons shall be dermatologists who are qualified by scientific training and experience to treat acne and conduct the aforementioned studies.

C. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade

Commission Act, which directly or indirectly makes representations referring or relating to the performance or efficacy of any "drug," "cosmetic," "device" or "food," or refers or relates to any characteristic, property or result of the use of any "drug," "cosmetic," "device" or "food," unless, at the time of each dissemination of such representation(s) respondents possess and rely upon a reasonable basis for such representation(s). For purposes of this provision the terms "drug," "cosmetic," "device" or "food" shall be defined by Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55.

## II

With reference to IA 7-9, IB and IC of this order, the respondent(s) shall have an affirmative defense to a compliance suit for violation of these provisions where respondent(s): (1)(a) acted only as an advertising agency; that is only aided in the preparation of copy, marketing strategy and placement of advertisements which are the subject of a compliance suit and had no proprietary interest in the product(s) advertised nor financial interest in the sale thereof; or (b) functioned as a media buyer with a financial interest in the product(s) advertised; that is only purchased media space or time for advertising and had a proprietary interest in the product(s) advertised or a financial interest in the sale thereof; and (2) neither knew nor should have known that the advertisements violated the above-specified order provisions.

## III

Respondents shall be exempt from paragraphs IA 7-9, IB and IC of this order where they acted only as media buyer; that is they only purchased media space or time and were remunerated by the standard and traditional means of compensation for such acts. For the purposes of this part of the order, "standard and traditional means of compensation" shall be defined as a fee based on:

- A. a percent of the cost of media space or time;
- B. a fixed rate charged for resources expended by the media buyer to locate and/or purchase media space or time; or
- C. a combination of A and B, *supra*.

In no event shall a "standard and traditional means of compensation" for purposes of this part of the order include a method of payment based on a percentage of sales of the product(s) or service(s) for which media space or time is purchased.

## IV

*It is further ordered, That:*

A. Within thirty (30) days of final acceptance of this consent order by the Federal Trade Commission (hereinafter the "Commission"), respondent The National Media Group, Inc., shall establish an interest-bearing trust account containing the sum of sixty thousand dollars (\$60,000), for the purpose of paying restitution to Acne-Statin purchasers. The instrument creating the trust account shall not become binding until the Commission or its designated staff has reviewed said instrument and determined that it conforms to all obligations outlined in this order. In the event that said instrument does not so conform to the order, respondents shall make all changes identified by the Commission or its designated staff in a timely manner to insure that said trust account is established within the time constraints imposed by this order. Said trust account shall provide for at least a six (6) percent annual interest rate, compounded quarterly, if such rate and terms are reasonably available, and shall be administered, maintained and terminated for a reasonable fee, which fee shall not reduce the principal of the trust account. To the extent respondents pay administration costs of the trust account from funds other than the sixty thousand dollars (\$60,000) specified above, they shall be reimbursed from the trust account established by this order pursuant to the provisions in the instrument which creates the said trust account; *provided, however*, that all such payments shall be limited to the interest of said trust account and the principal of said trust account shall not be reduced. Said account shall be entitled "Acne-Statin Restitution Account - II." Furthermore, within forty (40) days of the final acceptance of this order by the Commission, respondents shall provide the Commission or its designated staff a copy of the trust agreement which establishes the trust account, and a verified accounting of the funds within said account. If, for any reason, respondent, The National Media Group, Inc., does not fulfill its obligation to establish the aforementioned trust account, respondent, Robert J. Marsh, Sr., shall then establish the trust account within the time constraints imposed by this order. The instrument creating said trust account shall expressly contain binding provisions to the following effect:

1. Neither Robert J. Marsh, Sr., nor The National Media Group, Inc., shall have any power, either express or implied, to revoke said trust account or deplete the monies therein.
2. The trust account monies shall not be subject to the claims of

any creditors of Robert J. Marsh, Sr., or The National Media Group, Inc.

3. The beneficiaries of said trust account shall be Acne-Statins purchasers who request refunds and are identified by the Commission or its designated staff as beneficiaries of said trust and/or The National Media Group, Inc. *Provided, however,* that purchasers who make their initial purchase of Acne-Statins after the first dissemination of the restitution notice shall be ineligible to be designated as beneficiaries of said trust, and, therefore, ineligible to receive restitution under this order.

4. The Commission or its designated staff shall have the exclusive power to determine when and which beneficiaries, or other parties necessary to the execution of the restitution program, which includes the notification of consumers, are to receive monies from said trust account and what amount each is to receive. This power of distribution shall include the power to have up to ten thousand dollars (\$10,000) distributed to pay for expenses of administering the restitution program.

5. Said trust account shall retain all interest accumulated thereto and such interest shall be available as funds for distribution to the beneficiaries of said trust account and may also be available as money for the administration costs of the trust account.

6. The trustee of said trust account shall be independent of Robert J. Marsh, Sr., and The National Media Group, Inc.

7. Upon direction of the Commission or its designated staff to pay funds to a party identified in IIA4, *supra*, the trustee shall issue payment to the said identified party within sixty (60) days of the direction of the Commission or its designated staff.

B. The Commission or its designated staff will determine the means by which Acne-Statins purchasers will be notified and the terms and conditions under which such purchasers shall receive restitution, provided that:

1. no restitution shall be paid out of the aforementioned trust account to any Acne-Statins purchaser unless Karr Preventative Medical Products, Inc., and/or Atida H. Karr, M.D., is directed by a final order of the Commission or a final court decree pursuant to Section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b, to make restitution to such purchasers;

2. purchasers will be given a specific deadline not more than 120 days after their notification before which they must request restitution in writing in order to receive restitution;

3. each purchaser who requests restitution shall receive the total

amount paid for Acne-Statin unless there are insufficient funds to pay all such purchasers. If there are not sufficient funds to fully pay all such purchasers, each such purchaser shall receive the proportion, equal to the ratio of the total monies available for restitution over the total amount of restitution requested by purchasers, of the amount which he or she spent for Acne-Statin;

4. no purchaser shall receive more in restitution than such purchaser paid for Acne-Statin less the amount or refunds, if any, already received and

5. funds from the aforementioned trust account shall be used to pay fifty percent (50%) of each restitution payment. *Provided, however,* that if no funds are available from Karr Preventative Medical Products, Inc., and/or Atida H. Karr, M.D., or if the funds from the trust account established by these parties are for any reason depleted prior to the depletion of the funds in the trust account established by this order, then monies from the trust account established herein shall be used to pay the remaining restitution requests.

C. Within six months after the completion of the restitution program, the Commission or its designated staff shall direct the trustee of the trust account established in IV A, *supra*, to pay all monies remaining in the trust account to The National Media Group, Inc., and to terminate the trust account.

## V

*It is further ordered, That:*

Respondents shall be obligated to the extent set forth below, and as directed by the Commission or its designated staff generally, to take responsibility for the administration of the Acne-Statin restitution program.

Included in the said responsibilities of the respondents herein, are the following:

1. Verification of the fact of purchase and the amount of purchase for each Acne-Statin purchaser who requests his/her money back.

2. Totalling the refund requests and notifying the Commission or its designated staff of the identity of persons who should receive refunds and the amount of money each such person should receive.

3. For each person who requests a refund and said request cannot be verified or for some other reason the said person is allegedly ineligible for the total requested refund, the respondents shall identify each such person and provide an explanation why the



refund is inappropriate. The final determination of eligibility for, and amount of, refunds shall rest with the Commission or its designated staff.

4. The writing and mailing of refund checks to all persons who are eligible for restitution.

5. Certifying under oath that all eligible consumer requests for refunds have been satisfied by the act of mailing refund checks to said persons at the most recent address of such persons known to respondents.

6. Providing the Commission or its designated staff with a full accounting regarding how the respondents expended funds approved by the Commission or its designated staff in the discharge of their duties under Part V of this order.

*Provided, however,* in fulfilling these order obligations, respondents may enter into contracts for the performance of the said obligations. All such contracts shall be approved by the Commission or its designated staff before being made final, and shall be made with parties independent of the respondents, who are bonded to guarantee and insure the honest performance of each such contract. Notwithstanding the fact that certain order obligations may be accomplished through contracting, it shall be the respondents' obligation and responsibility to perform or have performed all order obligations in an expeditious and timely fashion and the responsibility to police all such contracts. Upon approval by the Commission or its designated staff, such contracts shall bind the trustees responsible for Acne-Statin Restitution Accounts I and II. The respondents shall not be financially liable for the aforementioned administrative expenses beyond said ten thousand dollars (\$10,000) specified in the account entitled "Acne-Statin Restitution Account - II."

The respondents shall be responsible for the cost of: finding suitable parties for the fulfillment of such contracts; negotiating such contracts; monitoring the compliance with such contracts; and any other similar administrative tasks which are necessary for the administration of the restitution program through its completion. These obligations shall be independent of and in addition to the monies which respondents shall have paid into the trust account to help defray the administrative expenses of the restitution program.

## VI

*It is further ordered,* That the corporate respondent shall forthwith distribute a copy of this order to each of its operating divisions.

*It is further ordered,* That each respondent notify the Commission

at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

*It is further ordered,* That each respondent, shall, within sixty (60) days after this order becomes final, and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by the respondent, setting forth in detail the manner and form of its compliance with this order.

*It is further ordered,* That each respondent shall maintain files and records of all substantiation related to the requirements of Parts IB and IC of this order for a period of three (3) years after the dissemination of any advertisement which relates to either of these portions of the order. Additionally, such material shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a written request for such material.

IN THE MATTER OF  
GANT, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-2996. Complaint, Nov. 6, 1979—Decision, Nov. 6, 1979*

This consent order, among other things, requires a New Haven, Conn. manufacturer of wearing apparel and related accessories, to cease fixing, maintaining or compelling adherence to suggested resale prices and sale periods for its products. Respondent is prohibited from soliciting the identity of dealers who fail to conform to such prices, and from taking any adverse action against them. Additionally, the firm is prohibited from restricting the use of product trademarks or other identification in the sale or advertising of its products; and barred from suggesting retail prices and sales periods for its products for a period of two years.

*Appearances*

For the Commission: *Jeffrey Klurfeld.*

For the respondent: *M. Topofsky and S. Bosme, Heller, Ehrman, White & McAulife, San Francisco, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Gant, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

For purposes of this complaint, the following definitions shall apply:

“Product” is defined as any item of wearing apparel or related accessory which is manufactured, offered for sale or sold by respondent.

“Dealer” is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

“Resale Price” is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any suggested, established or customary resale price as well as the retail price in effect at any dealer.

“Sale Period” is defined as any time during which any dealer

offers to sell any product at resale prices lower than those in effect during the usual and ordinary course of said dealer's business; or any suggested, authorized or customary time for selling or advertising any product at prices lower than the suggested, established or customary resale prices.

PARAGRAPH 1. Respondent Gant, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 40 Sargent Drive, New Haven, Connecticut.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of men's, women's and children's wearing apparel and related accessories. Sales by respondent for fiscal year 1978 exceeded \$50 million.

PAR. 3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent sells and distributes its products directly to more than 5,000 retail dealers located throughout the United States who in turn resell respondent's products to the general public.

PAR. 5. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the manufacture, advertising, offering for sale, sale and distribution of merchandise of the same general kind and nature as merchandise manufactured, advertised, offered for sale, sold and distributed by respondent.

PAR. 6. In the course and conduct of its business as above described, respondent has for some time last past effectuated and pursued a policy throughout the United States, the purpose or effect of which is and has been to fix, control, establish, manipulate and maintain the resale prices at which its dealers advertise, offer for sale and sell its products.

PAR. 7. By various means and methods, respondent has effectuated and enforced the aforesaid practice and policy by which it can and does fix, control, establish, manipulate and maintain the resale prices at which its products are advertised, offered for sale and sold by its dealers. To carry out said practice or policy, respondent adopted and employed, and still employs, the following means and methods among others:

(a) It requires prospective dealers as a condition of becoming dealers, and requires dealers as a condition of remaining dealers, to

enter into oral agreements or understandings with respondent, or to give oral assurances to respondent, that they will sell products at prices suggested by respondent.

(b) It requires prospective dealers as a condition of becoming dealers, and requires dealers as a condition of remaining dealers, to enter into oral agreements or understandings with respondent, or to give oral assurances to respondent, that, in the event they sell any product at less than respondent's suggested retail price, they will not identify such product in any advertisement as having been manufactured by respondent.

(c) It warns, harasses and uses various forms of coercion and discipline against dealers who sell, or are suspected of selling, products at prices other than those respondent has established or suggested.

(d) It prohibits any dealer from being reimbursed pursuant to respondent's cooperative advertising program for any advertisement offering any product at a price other than that which respondent has established or suggested.

PAR. 8. By means of the aforesaid acts and practices and more, respondent, in combination, agreement, understanding and conspiracy with certain of its dealers and with the acquiescence of other of its dealers, has established, maintained and pursued a planned course of action to fix and maintain certain specified uniform prices at which products will be resold.

PAR. 9. The aforesaid acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of respondent's products, and, thus, are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission

having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Gant, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 40 Sargent Drive, in the City of New Haven, State of Connecticut.
2. Gant Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 400 Pike St., in the City of Cincinnati, State of Ohio.
3. Gant Corporation has recently purchased the business and certain of the assets of respondent Gant, Inc.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, of respondent Gant, Inc., and of Gant Corporation, and the proceeding is in the public interest.

#### ORDER

For the purposes of this order, the following definitions shall apply:

"Product" is defined as any item of wearing apparel or related accessory which is manufactured, offered for sale or sold by respondent.

"Dealer" is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

"Resale Price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited

to, any suggested, established or customary resale price as well as the retail price in effect at any dealer.

"Sale Period" is defined as any time during which any dealer offers to sell any product at resale prices lower than those in effect during the usual and ordinary course of said dealer's business; or any suggested, authorized or customary time for selling or advertising any product at prices lower than the suggested, established or customary resale prices.

*It is ordered.* That respondent Gant, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Fixing, establishing, controlling or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product, or the sale period of any dealer.
2. Requesting, requiring or coercing, directly or indirectly, any dealer to maintain, adopt or adhere to any resale price or sale period.
3. Requesting or requiring, directly or indirectly, any dealer to report the identity of any other dealer who deviates from any resale price or sale period; or acting on any reports or information so obtained by threatening, intimidating, coercing or terminating said dealer.
4. Requesting or requiring that any dealer refrain from or discontinue selling or advertising any product at any resale price.
5. Hindering or precluding the lawful use by any dealer of any brand name, trade name or trademark of respondent in connection with the sale or advertising of any product at any resale price.
6. Making any payment or granting any consideration, service or benefit to any dealer because of the resale price at which any other dealer has advertised or sold any product.
7. Conducting any surveillance program to determine whether any dealer is advertising, offering for sale or selling any product at any resale price, where such surveillance program is conducted to fix, maintain, control or enforce the resale price at which any product is sold or advertised.
8. Terminating or taking any other action to restrict, prevent or

limit the sale of any product by any dealer because of the resale price at which said dealer has sold or advertised, is selling or advertising, or is suspected of selling or advertising any product.

9. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program for which it would otherwise qualify, because of the resale price at which said dealer advertises or sells any product, or proposes to sell or advertise any product.

## II

1. For a period of two (2) years from the date of service of this order, orally suggesting or recommending any resale price or sale period to any dealer.

2. For a period of two (2) years from the date of service of this order, communicating in writing any resale price or sale period to any dealer; *provided, however*, that after said two (2) year period, respondent shall not suggest any resale price or sale period on any list, or in any advertising, book, catalogue or promotional material, unless it is clearly and conspicuously stated on each page where any suggested resale price or sale period appears, the following:

THE [RESALE PRICES OR SALE PERIODS] QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN [RESALE PRICES OR SALE PERIODS].

## III

*It is further ordered*, That respondent shall:

1. Within thirty (30) days after service of this order, mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to each of its present accounts. An affidavit shall be sworn to by an official of the respondent verifying that the attached Exhibit A was so mailed.

2. Mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to any person, partnership, corporation or firm that becomes a new account within three (3) years after service of this order.

## IV

*It is further ordered*, That respondent shall forthwith distribute a copy of this order to all operating divisions of said corporation, and to present or future personnel, agents or representatives having sales, advertising or policy responsibilities with respect to the subject



matter of this order, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

## V

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

## VI

*It is further ordered,* That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

## VII

*It is further ordered,* That for purposes of this order, and for no other purpose, Gant Corporation:

- (1) Is a successor to respondent Gant, Inc.
- (2) Shall refrain from performing any act which respondent Gant, Inc., is prohibited from performing by said order; and shall perform all acts which respondent Gant, Inc. is required to perform by said order.
- (3) Will be required to file one or more compliance reports showing that it has fully complied with said order, and may be liable for civil penalties in the amount provided by law for each violation by it of said order.

## VIII

*It is further ordered,* That a copy of said Order served upon Gant, Inc. shall be mailed by the Federal Trade Commission to Gant Corporation at its above-stated address simultaneously with such service on Gant, Inc.

## EXHIBIT A

Dear Retailer:

Without admitting any violation of the law, Gant, Inc. has agreed to the entry of an Order by the Federal Trade Commission regulating certain distribution practices. In connection therewith, the Company is required to send you this letter describing the Order.

The Order provides, among other things, as follows:

1. You can advertise and sell Gant products at any price you choose.
2. Gant will not take any action against you, including termination, because of the price at which you advertise or sell Gant products.
3. Gant will not suggest retail prices for any product until [2 years from the date of service of the Order].
4. The price at which you sell or advertise Gant products will not affect your right to use Gant trademarks or other identification in your sale or advertising of products bearing Gant trademarks or identification.
5. You are free to participate in any cooperative advertising program sponsored by Gant for which you would otherwise qualify, and to receive any advertising credit or allowance allowed thereunder regardless of the price at which you advertise the Gant product.

If you have any questions regarding the Order or this letter, please call

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for Gant, Inc.

Decision and Order

94 F.T.C.

IN THE MATTER OF  
IRVING E. MILLER

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 9075. Complaint,\* Feb. 26, 1976—Decision, Nov. 7, 1979*

This consent order, among other things, requires an individual party to a complaint issued against Bankers Life and Casualty Company and others, to cease, in connection with the advertising, promotion and sale of land, misrepresenting that land purchase is a safe investment; involves little financial risk; and is a means of achieving financial security. The order requires that all advertising, promotional materials and sales contracts include specified disclosures regarding risks involved in undeveloped land investment; the advisability of consulting with a real estate specialist prior to contracting; the availability and cost of water, sewage disposal and utilities; and the identity of lots in flood plain areas. Respondent is required to provide customers with cooling-off periods and information regarding rights to cancellation and refund; and prohibiting from using certain contractual provisions including one by which defaulting purchasers forfeit all payments made. Additionally, the order requires respondent to release, in favor of consumers who have paid for their lots in full, any security interest he has or obtains in subdivisions.

*Appearances*

For the Commission: *Gerald H. Jagers* and *John T. Hankins*.

For the respondent: *Alan H. Bucholtz, Quiat, Bucholtz & Buer*,  
Denver, Colo.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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\* Complaint previously published at 94 F.T.C. 363.

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Irving E. Miller is an individual whose business address is 2601 Biscayne Boulevard, Miami, Florida.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

#### ORDER

For purposes of this order, unless otherwise provided, the following definitions shall be applicable:

“Purchaser” shall mean a person to whom one or more lots in a subdivision have been sold or offered for sale; *provided, however*, that a “purchaser” shall not include a person who purchases land in a single transaction for a sum in excess of \$25,000.

“Land” or “subdivision” shall mean any real property which is divided or proposed to be divided into 50 or more units, whether contiguous or not, for the purpose of sale or lease to purchasers as part of a common promotional plan.

“Contract” shall mean a written agreement for the sale of land to purchasers.

“Business day” shall mean any calendar day except Saturday, Sunday, or the following business holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day and Christmas Day.

“Property Report” includes documents sometimes referred to as an Offering Statement or Prospectus.

“Company which sold the lot” shall mean the title owner or its sales agent.

“Inconsistent” shall mean mutually repugnant or contradictory one to the other.

For purposes of this order, a requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting directly or indirectly. For purposes of this order, all

required disclosures shall be made in a clear and conspicuous manner.

Except as provided in Sections IV and IX of this order, this order shall not apply to a bulk transfer of land or subdivision. The term "bulk transfer" shall mean the transfer of all or a portion of land or subdivision conveyed in a single transaction for a sum in excess of \$25,000.

## I

*It is ordered.* That respondent Irving E. Miller and his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

### A. Representing:

1. That land or lots are a good or safe investment, or that the purchase of a lot is a good or safe investment.
2. That there is little or no financial risk involved in the purchase of lots.
3. That the resale of a purchased lot is not difficult.
4. That the value of, or demand for, any land, including lots being offered for sale or previously sold, has increased, or will increase, or that purchasers have made, or will in the future make, a profit by reason of having purchased such land.
5. That the prices of lots periodically rise or that prices of said lots are increasing, have increased or will increase, without disclosing at the same time, and by the same medium by which the price increases are communicated, that the price increases of lots do not in any way relate to the value of said lots.
6. That the purchase of a lot is a way to achieve financial security or prosperity, to deal with inflation or to become wealthy.
7. That the land in any subdivision will soon be unavailable or that prospective purchasers must purchase a lot in a subdivision immediately to ensure that such lot will be available.
8. That subdivision land and the area surrounding it are comparable, similar or analogous either to urban, metropolitan and industrial areas or to mountain resort areas or to recreation areas.
9. That the growth in land values or potential growth in land values at a subdivision corresponds to or will correspond to the growth in land values at any other locality. The word "locality"

includes, but is not limited to, cities, towns, counties, townships, boroughs, states and regions.

*Provided, however,* it shall be a defense that at the time a representation was made, it was true and the maker of the representation possessed data substantiating the representation. Such substantiating data shall be maintained for at least three years from the making of the representation it substantiates and shall be made available to the Commission upon request.

B. Including in any contract for the sale of subdivision land, or in the documents shown or provided to purchasers or prospective purchasers of subdivision land:

1. Language to the effect that no express or implied representations have been made in connection with the sale or offering for sale of such land, other than those set forth in the contract.

2. Language to the effect that upon a failure of the purchaser to pay any installment due under the contract or otherwise to perform any obligation under the contract, the company which sold the lot shall be entitled to retain sums previously paid thereunder by the purchaser.

3. Any waiver, limitation or condition on the right of a purchaser to cancel a transaction or receive a refund under any provision of this order, except as such waiver, limitation or condition is expressly allowed by this order.

C. Misrepresenting the right of a purchaser under any provision of this Order or any applicable statute or regulation to cancel a transaction or receive a refund.

D. Making any representation concerning the rights or obligations of a company or purchaser which differs in any respect from the rights or obligations of the parties as stated in the contract or Property Report.

E. Making any statement or representation concerning the proximity to any subdivision of any existing or future city, place, facility, body of water or road without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement of representation, the approximate distance to the nearest two (2) miles in road miles from the center of the subdivision to the downtown or geographical center of the city, place or facility referred to, or in the case of a body of water or a road, to the nearest point at which such body of water or road is accessible to entry and use by purchasers.

F. Making any statement or representation concerning any credit, refund or other monetary benefit or remuneration to purchasers or prospective purchasers from the company which sold the lot

unless such is a fact and unless any conditions or limitations attached to such credit, refund, benefit or remuneration are disclosed.

## II

*It is further ordered.* That respondent Irving E. Miller, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith:

A. Set forth in all sales and promotional material and advertising relating to the sale of land, except billboards, the following statement:

Risk Factor: Since land values are uncertain, you should consult a qualified professional before purchasing.

B. Set forth as the title on the first page of any contract for the sale of land in 12-point boldface type "CONTRACT FOR THE PURCHASE OF LAND."

C. Set forth on the first page of all contracts for the sale of land in 10-point boldface type the following statement:

THIS IS A CONTRACT BY WHICH YOU AGREE TO PURCHASE LAND.

THE FUTURE VALUE OF THIS LAND, AS WELL AS ALL UNDEVELOPED REAL ESTATE, IS UNCERTAIN. YOU SHOULD NOT ASSUME THAT THE VALUE OF LAND WILL INCREASE. DO NOT ASSUME THAT YOU WILL BE ABLE TO RESELL YOUR LAND WITHOUT SIGNIFICANT COMMUNITY DEVELOPMENT AND POPULATION GROWTH.

D. Set forth on the first page of all contracts for the sale of lots such of the following statements as are applicable:

1. For contracts for the sale of lots where the company which sold the lot is not obligated to provide electricity, water, and sewage disposal by central systems, but where all such utilities are available by other means, the following statement:

This undeveloped land has been planned for use as a vacation homesite. Electricity, water, and sewage disposal are available at the purchaser's expense. Electricity is obtainable by generator, water by well, and sewage disposal by septic tank. Access will be by unpaved roads.

*Provided that,* if a central system is provided instead of a generator or well or septic tank, then the above statement may be modified only to the extent necessary to so indicate.

*Provided further* that, if paved roads are provided, then the above statement may be modified only to the extent necessary to so indicate.

*Provided further* that, if roads are county accepted, then the above statement may be modified only to the extent necessary to so indicate.

2. For contracts for the sale of lots where the company which sold the lot is not obligated to provide any utilities and where utilities are not known to be available, the following statement in lieu of the above statement:

This completely undeveloped land is being sold "as is." No improvements are planned for this subdivision other than county-approved and maintained roads. No representation is made as to the availability of water or sewer.

*Provided* that, if the roads are not county-approved and maintained, this statement shall be modified to disclose the status of the roads if any.

E. Set forth the following statement in any contract for land requiring a Property Report; immediately below the statement required by paragraph D. above.

Note to Buyer: See page [insert page number] of the Property Report for statements relating to the additional expense for improvements.

F. Set forth in any contract for the sale of land which does not require a Property Report, immediately below the statements required by paragraph D. above, a statement providing the cost of improvements.

G. Whenever prospective buyers are provided with a contract for the sale of land by any means other than by mailing said contract directly to such purchasers:

1. Furnish each purchaser, at the time the purchaser signs a contract for the sale of land, with two copies of a form, captioned in boldface type "NOTICE OF CANCELLATION," which shall contain in boldface type the following information and statements:

NOTICE OF CANCELLATION

\_\_\_\_\_

Date of Transaction

\_\_\_\_\_

Contract Number

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE SHOWN ON THE CONTRACT.



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IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT ISSUED BY YOU WILL BE RETURNED WITHIN TWENTY BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [name of company which sold the lot], AT [address of said company's place of business] NOT LATER THAN MIDNIGHT OF [date].

I (WE) HEREBY CANCEL THIS TRANSACTION (EACH PURCHASER MUST SIGN THIS NOTICE.)

---

Signature of Purchaser Date

---

Signature of Purchaser Date

2. Before furnishing copies of the above "Notice of Cancellation" to the purchaser, complete both of the copies by entering the name of the company which sold the lot, the address of said company's place of business, the date of the transaction, the contract number and the date by which the purchaser may give notice of cancellation, but in no event may such date be earlier than the tenth business day following the date of the transaction.

3. Where a timely notice of cancellation is received and said notice is not properly signed and the company which sold the lot does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh business day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

4. Where the signature of a prospective purchaser is solicited during the course of a sales presentation, inform each person orally, at the time he signs the contract, of his right to cancel as stated in paragraph II.G.5. of this order.

5. Include clearly and conspicuously in each contract for the sale of land the following statement in boldface type:

**PURCHASER HAS THE RIGHT TO CANCEL THE CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT. SEE THE ATTACHED "NOTICE OF CANCELLATION" FOR AN EXPLANATION OF THIS RIGHT.**

6. Within twenty business days after the receipt of a timely notice of cancellation signed by a purchaser, refund all payments

made under the contract, and cancel and return any monies paid by the purchaser in connection with the contract.

H. Furnish any report required to be furnished to a purchaser at or before the signing of a contract by Federal or State law or by this order (i) with the first written materials furnished to a prospective purchaser in connection with the sale of a lot or (ii) during the first contact which the prospective purchaser has with any agent or employee of the company which is offering the lot for sale, in connection with the sale of a lot.

I. Inform all prospective purchasers that a bank or other lender located near the subdivision should be consulted prior to the purchase of land if the purchaser intends to finance the building of a house on that land.

J. If a refund is offered contingent upon the purchaser taking a company-guided inspection tour or making a registered inspection of the property in which the purchaser's lot is located:

1. Provide the purchaser three business days after taking said tour or making said inspection within which to request a refund.

2. Include in any contract with the original purchaser, in immediate proximity to the provision setting forth the availability of a refund upon the completion of a company-guided tour or registered inspection of the property, the following statements:

If you take a company-guided tour of the property within [designate time period] months of your purchase and you have not been declared in default, you will have three days after the tour to cancel your purchase and get your money back.

You, the purchaser, pay your own expenses for travel to the property in order to take the tour.

3. Furnish each purchaser at the completion of the tour or inspection a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall contain in boldface type the following statements:

**NOTICE OF CANCELLATION**

---

Date of Company-Guided Inspection  
Tour or Registered Inspection  
of Property

---

Contract Number

**YOU MAY CANCEL YOUR CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE ABOVE DATE.**

Decision and Order

94 F.T.C.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TWENTY BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL YOUR CONTRACT, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [name of company which sold the lot], AT [address of said company's place of business] NOT LATER THAN MIDNIGHT OF [date].

I (WE) HEREBY CANCEL THE CONTRACT. (EACH PURCHASER MUST SIGN THIS NOTICE.)

---

Signature of Purchaser Date

---

Signature of Purchaser Date

4. Before furnishing copies of the above "Notice of Cancellation" to purchaser, complete both copies by entering the name of the company which sold the lot and the address of said company's place of business, the date of the company-guided inspection tour or the registered inspection of the property, the contract number and the date by which the purchaser may give notice of cancellation, but in no event may such date be earlier than the third business day following the date of said tour or inspection.

5. Where a timely notice of cancellation is received but said notice is not properly signed and the company which sold the lot does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

K. Disclose in each instance where all or part of any printed article, publication, endorsement or testimonial is used, published or referred to, the date when such article, publication, endorsement or testimonial was originally published or made and the source of such article, publication, endorsement or testimonial.

L. Notify prospective purchasers of any lot offered for sale in a flood plain area that said lot is in a flood plain area.

### III

*It is further ordered.* That respondent Irving E. Miller and his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with

the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any land may be used now or in the future:

A. As a homesite, unless the contracts or Property Reports accurately set forth:

1. That water is available to the purchaser by drilling a well or by central water system.
2. That sewage disposal is available to purchasers by installation of a septic tank or by hook-up to a central sewage system.
3. That electricity will be available to the purchaser from a utility company.

B. As a vacation homesite, unless the contracts or Property Reports set forth:

1. That water is available to the purchaser by drilling a well.
2. That percolation on the property purchased is sufficient to support a septic tank.
3. That electricity is available to the purchaser by installing a generator.

#### IV

*It is further ordered,* That respondent Irving E. Miller, including his agents, representatives and employees, directly or through any corporation, subsidiary, division or other entity:

A. Regarding each subdivision in which respondent has or obtains a security interest, shall execute and record a covenant providing that, if a purchaser pays the total purchase price pursuant to the terms of a contract for the purchase of land, respondent shall grant to such purchaser a release of said security interest.

1. For each subdivision in which respondent has a security interest as of the effective date of this order, respondent shall execute and record such covenant within 90 days of the effective date of this order.

2. For each subdivision in which respondent obtains a security interest after the effective date of this order, respondent shall execute and record such covenant at the same time said security interest is recorded.

B. Regarding each subdivision in which respondent has or obtains title, for as long as respondent retains title, shall obtain for each purchaser who pays the total purchase price pursuant to the terms of a contract for the purchase of land, a release as to that purchaser of any security interest on such subdivision granted subsequent to the effective date of this order.

## V

*It is further ordered,* That if the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701-20 (1970), or any regulation that has been or may be promulgated pursuant thereto requires an act or practice that is prohibited by any provision of this order, or prohibits an act or practice that is required by any such provision, or is otherwise inconsistent with any such provision of this order, any such provision of this order shall be without legal force or effect.

## VI

*It is further ordered,* That in the event the Federal Trade Commission promulgates a valid Trade Regulation Rule applicable to respondents' sale of land, then to the extent there are any inconsistencies between this order and such Rule, the Trade Regulation Rule will govern.

## VII

*It is further ordered,* That respondent Irving E. Miller:

1. Deliver, by hand or by certified mail, a copy of Sections I, II, and III of this order to each of his present or future employees and salesmen, and independent brokers, who sell or promote the sale of land to purchasers.
2. Provide each person so described in Paragraph 1 above with a form, returnable to said respondent, clearly stating such person's intention to be bound by and to conform his sales practices to the requirements of this order.
3. Inform each person described in Paragraph 1 above that said respondent shall not use any such person, or the services of any such person, unless such person agrees to and does file notice with said respondent that such person will be bound by the provisions contained in this order.
4. That in the event such person will not agree to so file notice with said respondent and to be bound by the provisions of this order, said respondent shall not use such person, or the services of such person.
5. Inform the persons described in Paragraph 1 above that said respondent is obligated by this order to discontinue dealing with those persons who engage on their own in the acts and practices prohibited by this order.
6. Institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described

in Paragraph 1 above conform to the requirements of Sections I, II, and III of this order.

7. Discontinue dealing with any person described in Paragraph 1 above, revealed by the aforesaid program of surveillance, who repeatedly engages on his own in the acts or practices prohibited by Sections I, II, and III of this order; *provided, however*, that, in the event remedial action is taken, evidence of such dismissal or termination shall not be admissible against said respondent in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order.

#### VIII

*It is further ordered*, That respondent Irving E. Miller shall forthwith distribute a copy of this order to each entity which he owns or controls and which is engaged in the sale of land.

#### IX

*It is further ordered*, That in the event that respondent Irving E. Miller transfers to any other person or entity all or a substantial part of any subdivision owned by him or by an entity within his control, respondent shall notify the Commission in writing within sixty days of such transfer of the fact of the transfer, identifying the property transferred, the name and address of the transferee, and the date of the transfer.

#### X

*It is further ordered*, That respondent Irving E. Miller, for a period of 10 years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the advertising, offering for sale or sale of subdivision land to the consuming public. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

#### XI

*It is further ordered*, That respondent Irving E. Miller shall, within sixty (60) days after service upon him of this order, file with the

Commission a report in writing setting forth in detail the manner and form in which said respondent has complied with this order.

GEORGE'S RADIO AND TELEVISION CO., INC.

1135

Complaint

IN THE MATTER OF

GEORGE'S RADIO AND TELEVISION COMPANY, INC.

FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS  
WARRANTY ACTS

*Docket 9115. Complaint, July 25, 1978—Final Order, Nov. 7, 1979*

This order, among other things, requires a Washington, D.C. retailer of furniture and home appliances to cease failing to properly designate written warranties; clearly identify in written warranties the product, parts, components and properties covered or excluded; the items or services furnished by the warrantor; and a statement advising that the warranty provides purchasers with specific legal rights. Respondent must make the text of written warranties readily available to prospective purchasers prior to sale; and conspicuously post signs advising consumers that all warranties are not the same, and that written warranties are available for their review. Additionally, the firm is required to instruct its employees as to their obligations under the law, and to institute a surveillance program designed to detect violations of the order.

*Appearances*

For the Commission: *Michael E.K. Mpras* and *Bernard Fensterwald, III*.

For the respondent: *Arnold F. Shaw, Donohue, Kaufmann, Shaw & Kligman*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act ("Warranty Act") and the implementing Rules promulgated under the Warranty Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that George's Radio and Television Co., Inc., a corporation sometimes referred to in this complaint as respondent, has violated the provisions of said Acts and implementing Rules, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent George's Radio and Television Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office



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and place of business located at 2850 New York Ave., N.E., Washington, D.C.

PAR. 2. Respondent has been, and is now, engaged in the advertising, offering for sale and sale of appliances, furniture and other consumer products to the public.

PAR. 3. In the course and conduct of its business, respondent offers for sale and sells consumer products to consumers distributed in commerce as "consumer product", "consumer" and "commerce" are defined by Sections 101(1), 101(3) and 101(13) and (14), respectively, of the Warranty Act. In connection with the offering to sell and sale of consumer products manufactured after July 4, 1975, respondent grants a written warranty, as "written warranty" is defined by Section 101(6) of the Warranty Act, and is therefore a warrantor, as "warrantor" is defined [2] by Section 101(5) of the Warranty Act.

#### COUNT I

Alleging violations of the Warranty Act, and the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Three are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 4. In connection with respondent's offering and granting of written warranties upon consumer products costing the consumer in excess of \$10.00, respondent designates each such warranty as "George's extended limited warranty."

PAR. 5. Respondent's use of the phrase "George's extended limited warranty" violates Section 103 of the Warranty Act, by failing clearly and conspicuously to exclusively designate each such warranty as either a "full (statement of duration) warranty" or a "limited warranty" and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### COUNT II

Alleging violations of the Warranty Act and the implementing Rule promulgated under the Warranty Act, and the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Three are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 6. The Federal Trade Commission, pursuant to Title I, Section 109 of the Warranty Act, (15 U.S.C. 2309), duly promulgated the Rule Concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions on December 31, 1975 (16 CFR 701 (1977))

(effective January 1, 1977) ("Disclosure Rule"). A copy of the Disclosure Rule is marked and attached as Appendix A\* and is incorporated in Count II by reference as if fully set forth verbatim.

PAR. 7. Subsequent to January 1, 1977, in connection with its offering and granting of written warranties on consumer products costing the consumer in excess of \$15.00 which were manufactured subsequent to January 1, 1977, respondent failed to clearly and conspicuously disclose, in single documents, in simple and readily understood language:

a) a clear description and identification of the products, parts, characteristics, components [3] or properties covered by, and where necessary for clarification excluded from, each written warranty, as required by Section 701.3(a)(2) of the Disclosure Rule;

b) the point in time or event on which the warranty term commences, if different from the purchase date, and the period or other measurement of warranty duration, as required by Section 701.3(a)(4) of the Disclosure Rule; and

c) a statement in the following language: "This warranty gives you specific legal rights, and you may also have other rights which vary from state to state", as required by Section 701.3(a)(9) of the Disclosure Rule.

PAR. 8. Respondent's failure to comply with the Disclosure Rule as described in Paragraph Seven of this Complaint is a violation of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

### COUNT III

Alleging violations of the Warranty Act and the implementing Rule promulgated under the Warranty Act, and the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Three are incorporated by reference in Count III, as if fully set forth verbatim.

PAR. 9. The Federal Trade Commission, pursuant to Title I, Section 109 of the Warranty Act, (15 U.S.C. 2309) has duly promulgated the Rule Concerning the Pre-Sale Availability of Written Warranty Terms on December 31, 1975 (16 CFR 702 (1977)) (effective January 1, 1977) ("Pre-Sale Rule"). A copy of the Pre-Sale Rule is marked and attached as Appendix B\* and is incorporated in Count III by reference as if fully set forth verbatim.

PAR. 10. Subsequent to January 1, 1977, respondent has failed, in

\* For reasons of economy, not reproduced herein.

the ordinary course and conduct of its business, to make available for prospective buyers' review, prior to sale, the text of its written warranties offered or granted in connection with the offering for sale and sale of consumer products manufactured after January 1, 1977 and costing the consumer [4] in excess of \$15.00, as required by Section 702.3(a)(1) of the Pre-Sale Rule.

PAR. 11. Subsequent to January 1, 1977, respondent, in the course and conduct of its business, has offered for sale and sold consumer products costing the consumer in excess of \$15.00, many of which are warranted by the manufacturer. Respondent is therefore a seller as "seller" is defined in Section 702.1(e) of the Pre-Sale Rule.

As a seller, respondent elected, in accordance with Section 702.3(1)(ii) of the Pre-Sale Rule, to implement a binder system to make available for prospective buyers' review, prior to sale, the text of the manufacturer's written warranty terms.

In connection with the above-mentioned binder system, respondent failed, as required by Section 702.3(1)(ii) of the Pre-Sale Rule, to:

- a) provide the prospective buyers with ready access to such binder(s);
- b) (1) display such binder(s) in a manner reasonably calculated to elicit the prospective buyers' attention; or  
(2) (A) make the binder(s) available to the prospective buyers on request; and  
(B) place signs reasonably calculated to elicit the prospective buyers' attention in prominent locations within the store, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access;
- c) index such binder(s) according to product or warrantor; and
- d) clearly entitle such binder(s) as "Warranties" or other similar title.

PAR. 12. Respondent's failure to comply with the Pre-Sale Rule as described in Paragraphs Ten and Eleven of this complaint is a violation of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

1135

Initial Decision

INITIAL DECISION BY THOMAS F. HOWDER, ADMINISTRATIVE  
LAW JUDGE

JULY 16, 1979

## PRELIMINARY STATEMENT

On July 25, 1978, the Commission issued its complaint in this case, charging respondent George's Radio and Television Company, Inc., ("George's") with violating the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Warranty Act"), and two Rules promulgated thereunder: the Rule concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule"), and the Rule concerning the Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule"). Specifically, the complaint alleged that respondent failed to properly designate its warranty as required by Section 103 of the Warranty Act; failed to make certain written disclosures in its warranty in violation of Sections 701.3(a)(2), (4) and (9) of the Disclosure Rule; failed to make its own warranties available for prospective buyers' review, prior to sale, in violation of Section 702.3(a)(1) of the Pre-Sale Rule; and failed to properly [2] implement a binder system making available for prospective buyers' review, prior to sale, the texts of manufacturers' written warranty terms in violation of Section 702.3(1)(ii) of the Pre-Sale Rule. The complaint further alleged that the above conduct of respondent violated Section 5 of the Federal Trade Commission Act, pursuant to Section 110(b) of the Warranty Act.

Respondent answered on September 26, 1978, denying the violations alleged. It admitted, however, its corporate identity and business as described in the complaint (Answer, pars. 1, 2). It further admitted the validity and application of the Warranty Act and the implementing Rules to its business operation (Answer, pars. 3, 6, 9, 11).

A prehearing conference was held in Washington, D. C., on October 30, 1978. Following the completion of discovery, trial of this matter was held in Washington, D. C., in February 1979. The record was closed for the reception of evidence on April 2, 1979, and respondent's motion to dismiss was denied on April 11, 1979. Proposed findings of fact and conclusions of law were filed by the parties on April 20, 1979, and replies thereto on April 30, 1979.

This proceeding is before me upon the complaint, answer, testimony and other evidence, and proposed findings of the parties. These findings have been carefully considered, and those not adopted either in the form proposed or in substance are rejected as not

supported by the evidence or as involving immaterial matters not necessary for this decision.

Having heard and observed the witnesses and after having carefully reviewed the entire record in this proceeding, together with the proposed findings of the parties, I make the following findings:

#### FINDINGS OF FACT

1. Respondent George's is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 2850 New York Ave., N.W., Washington, D.C. (Answer, par. 1).

2. George's is in the business of advertising and selling televisions and other major and small appliances, furniture and other products to the consuming public (Answer, par. 2). [3]

3. At the time of trial, George's maintained thirteen retail sales branches at various locations throughout the Washington, D. C., metropolitan area (CX 1).<sup>1</sup>

4. George's advertises its products regularly in local newspapers, primarily The Washington Post (Filderman 25; CX 5, 6, 7). It also advertises from time-to-time on local television stations (Filderman 27).

5. Respondent purchases its products from approximately 50 manufacturers and suppliers located in numerous states of the United States (CX 2A-B).

6. The warranties associated with retail sales of products by respondent arise from two sources: In addition to the manufacturer's warranty which normally comes with the product, George's often offers its own "extended" warranty (Filderman 84, 39-51; CX 4A-B, 18-87).

7. Accordingly, in view of the above findings and of the admissions contained in respondent's answer, it is found that (in the language of paragraph three of the complaint): In the course and

<sup>1</sup> As of August 3, 1977, George's maintained 13 retail outlets located at the following places:

1. 2135 Queens Chapel Rd., N.E., Washington, D.C.
2. 816 F St., N.W., Washington, D.C.
3. 6192 Greenbelt Rd., Greenbelt, MD
4. 7700 Richmond Highway, Hybla Valley, VA
5. 3807 Branch Ave., Hillcrest Heights, MD
6. 12125 Rockville Pike, Rockville, MD
7. 3036 Annandale Rd., Falls Church, VA
8. 8837 Leesburg Pike, Tyson's Corner, VA
9. 3509 Connecticut Ave., N.W., Washington, D.C.
10. 8239 Georgia Ave., Silver Spring, MD
11. 6200 Branch Ave., Camp Springs, MD
12. 6400 Commerce St., Springfield, VA
13. 13534 Occoquan Rd., Woodbridge, VA

conduct of its business, respondent offers for sale and sells consumer products to consumers distributed in commerce as "consumer product," "consumer" and "commerce" are defined by Section 101(1), 101(3) and 101(13) and (14), respectively, of the Warranty Act. It is further found that in connection with the offering to sell and sale of consumer products manufactured after July 4, 1975, respondent grants a written warranty, as "written warranty" is defined by Section 101(6) of the Warranty Act, and is therefore a warrantor, as "warrantor" is defined by Section 101(5) of the Warranty Act. [4]

#### COUNT I

8. Respondent entitles its warranty "George's Extended Limited Warranty." This is printed on the reverse side of respondent's retail sales tickets, along with definitions or explanations of what is meant by various terms such as "Carry-In (Shop Service)," "Home Service," "Cost of Parts." Certain disclaimers as to George's warranty undertakings are also set forth (CX 4B).

9. According to the testimony of George's president and chief executive official, Mr. Filderman, the printed warranty information on the reverse of the retail sales invoice is to be taken in conjunction with the information handwritten on the face of the ticket by a salesman at the time of a customer's purchase (Filderman 39-48). This written information indicates the type of warranty service given and the extent of its duration. Examples of this would include language such as "15 Months Free Shop Service, Parts and Labor," "2 Year Free Home Service," "3 Year Picture Tube," "3 Year Free Home Service," etc. (See CX 18-87).

10. Mr. Filderman testified that George's warranty is but an extension of duration of the warranty already given on the product by the manufacturer; that except for extending the time, respondent undertakes no additional obligation (Filderman 53-55). George's employs its warranty as a merchandizing aid, to assist in moving products where there is an excess of inventory. Whether or not to offer a George's warranty on any given product for any given time period is a matter of discretion on the part of respondent's managing officials. The terms of George's warranties can and do vary both as to different products and as to the same product (Filderman 338-43). Sometimes respondent does not offer a George's warranty on a product; in such cases salesmen are instructed to write "Manufacturer's Warranty" on the face of the sales ticket (Filderman 48).

11. It is charged in the complaint that the phrase "George's Extended Limited Warranty" violates Section 103 of the Warranty Act, because such terminology is impermissible when used in

connection with consumer products costing the consumer in excess of \$10.00 (Complaint, pars. 4, 5).<sup>2</sup>

12. According to complaint counsel, the only warranty designations allowed under the statute are either "full (statement of duration) warranty" or "limited warranty." [5]

13. Respondent denies that the use of its warranty designation is unlawful (Answer, par. 5). And it does appear to be factually accurate that "George's Extended Limited Warranty" is what it purports to be: an extension of a manufacturer's warranty by respondent (Filderman 53).

14. Nevertheless, the Commission, in interpreting the applicable provision of the Warranty Act, has stated (16 C.F.R. 700.6):

(a) Section 103 of the Act provides that written warranties on consumer products manufactured after July 4, 1975, and actually costing the consumer more than \$10, excluding tax, must be designated either "Full (statement of duration) Warranty" or "Limited Warranty." Warrantors may include a statement of duration in a limited warranty designation. The designation or designations should appear clearly and conspicuously as a caption, or prominent title, clearly separated from the text of the warranty. The full (statement of duration) warranty and limited warranty are the exclusive designations permitted under the Act, unless a specific exception is created by rule.

15. Since no specific exception has been made in this case, the finding must be, and hereby is, made that George's warranty terminology does not comply with the statute.

16. Complaint counsel further argue that the record contains instances where respondent's use of the word "extended" is misleading and deceptive in that George's warranty did not in fact extend the manufacturer's warranty. Compare CX 88A-28 with CX 51, where on a General Electric dryer the manufacturer offered a full one-year warranty while respondent gave its limited one-year warranty. Compare CX 88A-40 with CX 78, where General Electric air conditioners carried a full one-year warranty on the entire unit, a full four-year warranty on the sealed refrigerating system and a full nine-year warranty on the moulded outdoor case, whereas George's limited warranty on a sale to a consumer was "2 yr. Home Service" and "5-year Sealed System." Other instances include a Brothers Stereo purchase where George's extended limited warranty was a one-year parts and shop service (CX 94A; tr. 154), whereas the manufacturer offered a limited five-year warranty on the transistors, a one-year limited warranty on parts and 90 days free labor (CX 94; tr. 160). Another consumer purchased a Tappan microwave [6]

<sup>2</sup> Average retail prices at George's range anywhere from \$25 to over \$1,000 (Filderman 24; See CX 18-87).

oven from respondent and received a one-year limited warranty on parts and service (CX 92; tr. 177), whereas the manufacturer offered a full one-year warranty, an additional one-year limited warranty on parts and an additional four-year limited warranty on the magnetron (CX 88A-135; tr. 181-93).

17. However, in view of my above finding of noncompliance it is unnecessary to determine how the terminology "George's Extended Limited Warranty" might otherwise be misleading. In this connection, it should be noted that respondent's president, Mr. Filderman, testified that George's employed from 110 to 120 salesmen, and that from January, 1977, up until the time of trial approximately one-quarter million sales tickets had been written—approximately 1,000 tickets per year per salesman. Mr. Filderman readily acknowledged that mistakes do occur (Filderman 305). Whatever the case, the few instances cited by complaint counsel do not permit the finding that such discrepancies occurred on a systematic basis in respondent's operations.

## COUNT II

18. Paragraph seven of the Commission's complaint charges respondent with three specific violations of the Disclosure Rule, 16 C.F.R. 701, effective January 1, 1977, promulgated under the Warranty Act.

19. It is charged that subsequent to January 1, 1977, in connection with its offering and granting of written warranties on consumer products costing the consumer in excess of \$15, which were manufactured subsequent to January 1, 1977, respondent failed to clearly and conspicuously disclose, in single documents, in simple and readily understood language:

(a) a clear description and identification of the products, parts, characteristics, components or properties covered by, and where necessary for clarification excluded from, each written warranty, as required by Section 701.3(a)(2) of the Disclosure Rule.

(b) the point in time or event on which the warranty term commences, if different from the purchase date, and the period or other measurement of warranty duration, as required by Section 701.3(a)(4) of the Disclosure Rule; and

(c) a statement in the following language: "This warranty gives you specific legal rights, and you may also have other rights which vary from state to state," as required by Section 701.3(a)(9) of the Disclosure Rule. [7]

20. Respondent has admitted that it offered for sale and sold, on and after April 1, 1977, consumer products which were manufac-



tured after January 1, 1977, as evidenced by CX 10A-B, 13A-C, 15A-D and 18-86.<sup>3</sup> As noted previously, Mr. Filderman testified that George's retail prices charged to consumers generally ranged from \$25 to \$1000.

21. It cannot be determined from an examination of George's warranties in evidence whether any particular parts of products are excluded from coverage (See CX 18-87, 91-94).

22. However, Mr. Filderman made it clear that it was George's warranty policy not to include "[a]ll items such as glass, knobs, etc., normally excluded by the manufacturer \* \* \*" (tr. 50; CX 8), and that this fact is not disclosed on George's extended limited warranty (tr. 97-98; see also tr. 51-52).

23. The record provides examples of the exclusion from manufacturers' warranties and consequently from George's warranties, of such items as glass, knobs, antennas, light bulbs, accessories and appearance items (CX 88A-97, 88A-115).

24. Notwithstanding the foregoing, Mr. Filderman testified that in actual practice he had instructed George's service department not to charge customers for the replacement of knobs, glass, etc., unless "willful neglect" were involved, and in the case of knobs "we have replaced thousands of them" (tr. 91-92).

25. Certain consumer testimony was presented by complaint counsel concerning their understanding of what items were or were not covered under a George's warranty. These witnesses were too sparse in view of respondent's many thousands of transactions to permit a finding of violation based on their testimony. And I find reliance upon their testimony unnecessary in view of the documents in evidence and the testimony of Mr. Filderman concerning George's policy and practice in this area.

26. Accordingly, based upon the above findings, I find that, as a technical matter, George's warranties are not in compliance with 701.3(a)(2) of the Disclosure Rule in that there was failure to specify certain excluded items. [8]

27. An examination of respondent's warranties in evidence reveals that they do not disclose the point in time or event on which the warranty term commences. They are simply silent on this matter (See CX 18-87).

28. In this connection Mr. Filderman testified that respondent's warranties take effect on the date of delivery (tr. 68).

29. Although the date of sale may coincide with the date the consumer actually takes possession of the product, this is not

<sup>3</sup> See the third request in complaint counsel's request for admissions, dated November 14, 1978, and respondent's answer thereto, dated November 27, 1978 (p. 1).

necessarily the case at George's. Mr. Filderman testified that date of delivery may sometimes be months following the date of purchase (tr. 68).

30. In view of the above, it must be found that respondent's practice is technically not in compliance with Section 701.3(a)(4) of the Disclosure Rule.

31. An examination of respondent's warranties reveals that they do not contain the necessary statement informing consumers concerning specific rights and additional rights which vary by state, as required by Section 701.3(a)(9) of the Disclosure Rule (CX 18-87).

32. Mr. Filderman acknowledged that this language was lacking in George's warranties, explaining that it was contained on the manufacturers' warranties accompanying the products George's sold to consumers (tr. 52-53, 90).

33. Nevertheless, the finding must be made that the mandatory language does not appear in conjunction with the warranties of respondent. Hence there is violation of Section 701.3(a)(9) of the Disclosure Rule.

### COUNT III

34. Paragraph ten of the complaint charges that subsequent to January 1, 1977, respondent failed, in the ordinary course and conduct of its business, to make available for prospective buyers' review, prior to sale, the text of its written warranties offered or granted in connection with the offering for sale and sale of consumer products manufactured after January 1, 1977 and costing the consumer in excess of \$15, as required by Section 702.3(a)(1) of the Pre-Sale Rule.<sup>4</sup> [9]

35. As earlier indicated, respondent's warranty is contained on the front and back of the retail sales invoice. This ticket is not given to the customer prior to the sale of a product. It is given to the customer upon consummation of a sale, where the customer takes the item with him from the store. Where delivery is to be later made, the customer is given only the perforated top of the form as a receipt, with the balance of the ticket, containing George's warranty, being furnished to the customer upon delivery (respondent's answer to complaint counsel's request for admissions, p. 2, par. 2). Thus, the practice with respect to George's warranties is not in compliance with the Rule.

36. The record contains testimony given by Mr. Irvin E. Abrams,

<sup>4</sup> There is no dispute, and it is hereby found with respect to the Pre-Sale Rule charges that respondent sold after April 1, 1977, consumer products which were manufactured after January 1, 1977. Consumer products sold by respondent generally range from \$25 to \$1,000 (Filderman tr. 24-25).

a Commission investigative employee. Mr. Abrams testified that he had had the occasion to visit George's F Street store in June, 1977, acting solely in his private capacity as a consumer in search of a washer and dryer for his new home (tr. 102-03).

37. As Mr. Abrams relates the event, he was met at the entrance by one of respondent's salesmen, and was directed to the area where the washers and dryers were located. After examining several machines, Mr. Abrams attempted to open a plastic package in one of the washers which contained the manufacturer's warranty information. He was prevented from doing so by the salesman, who expressed concern that the written materials could become "mixed up", causing "problems" at time of delivery (tr. 104). In response to Mr. Abrams' query as to how he could read the warranty, the salesman responded that they are all the same, and that their duration is for one-year. Mr. Abrams testified that the salesman went on to state that in addition to the manufacturer's warranty, George's offered a separate warranty, which is written on the sales slip at time of purchase (tr. 104). Upon Mr. Abram's persistence in attempting to read a warranty, the salesman procured an assistant manager. This gentleman likewise informed Mr. Abrams that all warranties (on washers) were the same, and that, in the words of the witness, "if I would give him a down payment and tell him when I wanted the machine delivered, he would write the warranty out for me, just like they did for everyone else" (tr. 106).

38. Following this experience in George's F Street Store, and after consultation with a superior in the Commission's Washington, D. C. regional office, Mr. Abrams visited in his official capacity four other retail outlets of respondent, viz., Branch Avenue, Landover Mall, Greenbelt Road and Silver Spring. In each of these stores, the response of respondent's sales personnel was substantially similar; the plastic bag containing [10] the manufacturer's warranty was not to be tampered with; and George's warranty was to be written on the sales slip at the time of sale (tr. 111-14, 117-18, 121-22, 124, 128, 143).

39. The testimony of certain consumer witnesses concerning the Pre-Sale availability of written warranties is not inconsistent with the testimony of Mr. Abrams. However, in view of the factors outlined in the legal discussion, *infra*, p. 17, I do not consider it sufficiently indicative or reliable enough upon which to base findings concerning respondent's warranty practices.

40. For the above reasons it must be found that respondent's practices, with respect to its own warranties at least, are not in compliance with the Pre-Sale Availability Rule.

41. Respondent is admittedly a "seller" within the definition of

that term in Section 702.1(e) of the Pre-Sale Rule (Answer, par. 11). As a seller, respondent elected, in accordance with Section 702.3(1)(ii) of the Pre-Sale Rule, to implement a binder system to make available for prospective buyers' review, prior to sale, the text of the manufacturers' written warranty terms (Answer, par. 11).

42. The warranty binder identified as Commission's Exhibit 88A-88A-203 was used by respondent for this purpose following the effective date of the Rule. This binder was superseded in 1978 by new warranty binders identified as Respondent's Physical Exhibits 1-3 (Filderman tr. 57-58, 78-79, 282-85, 295-99).

43. The complaint charges that, in connection with the above-mentioned binder system, respondent failed, as required by Section 702.3(1)(ii) of the Pre-Sale Rule, to:

(a) provide the prospective buyers with ready access to such binder(s);

(b)(1) display such binder(s) in a manner reasonable calculated to elicit the prospective buyers attention; or

(2)(A) make the binder(s) available to the prospective buyers on request, and

(B) place signs reasonably calculated to elicit the prospective buyers' attention in prominent locations within the store, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access. [11]

44. In support of this charge, complaint counsel rely upon the testimony of Mr. Abrams and the consumer witnesses who testified in this proceeding. Mr. Abrams related that in his June 1977 visit to F Street he looked around but did not notice any type of warranty information about, nor any signs relating to warranty information, except for an "umbrella" over the TV's promoting George's own warranty (tr. 107-08). He did not remember seeing CX 88, the warranty binder Mr. Filderman identified as then in use in the stores (tr. 109).

45. At Branch Avenue, Mr. Abrams was shown a filled-in sales slip containing George's warranty and a supposedly representative manufacturer's warranty taken from a plastic package previously opened (tr. 113). He saw no other warranty, and no signs pertaining to manufacturers' warranties, nor any binder such as CX 88 or similar thereto (tr. 115-16).<sup>5</sup>

46. At Landover Mall, Mr. Abrams looked around but saw no

<sup>5</sup> Mr. Abrams did notice, however, a sign advertising George's warranty, but not the terms thereof, in the TV section of the store (tr. 115-16).

signs pertaining to manufacturers' warranties, nor any binder or similar book (tr. 119-20).<sup>6</sup> Upon asking whether there was any one place or book where he could read and compare all warranties, he was told that there was no need (tr. 120).

47. At Greenbelt, Mr. Abrams again inquired whether there was any one place where he could read manufacturers' warranties. In response, the salesman, after going from machine to machine, finally found a washing machine which had an open package, whereupon he read certain warranty terms to Mr. Abrams from a sheet (tr. 121). Other than signs in the TV department pertaining to George's warranty, Mr. Abrams was unsuccessful in discovering information concerning manufacturers' warranties or any book or binder such as CX 88 (tr. 122-23).

48. At Silver Spring, Mr. Abrams had a similar experience, with a salesman searching for and reading to Mr. Abrams from a supposedly representative manufacturer's warranty (tr. 124-26). Other than George's TV warranty signs, Mr. Abrams saw no signs regarding manufacturer's warranties nor any book or binder, although he looked carefully (tr. 126-27).

49. As for consumer testimony on this point, I do not believe it is sufficiently reliable, upon which to base a finding concerning respondent's business practices. See legal discussion, *infra*, p. 17. [12]

50. Turning to respondent's defense, Mr. Filderman testified that he prepared to comply with the provisions of the Rule by compiling pertinent manufacturers' warranty information and instituting a binder system (tr. 203). A meeting was held on December 31, 1976, to advise store managers about the new legal requirements and to distribute the warranty book (CX 88). The store managers were instructed to make the binder available to inquiring customers (tr. 282-84).

51. Mr. Filderman's testimony is supported by a contemporaneous document, dated January 5, 1977, sent by respondent's stores supervisor, Morris Kottler (known in George's operations as Moe Kay) to all store managers (RX 13):

By this time your warranty books should be in your stores and all sales personnel should be aware of its function.

You are being sent out warranties from different manufacturers as they come into my office. Make sure that they are being put into your book.

At the Managers meeting held on December 31st, 1976, you were told to have your

<sup>6</sup> Again, Mr. Abrams observed a sign in the TV Section advertising George's warranty (tr. 1A).

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## Initial Decision

cashier put this book in alphabetical order in a loose leaf book, and label it Manufacturers Warranties.

I hope this has been done.

52. Subsequently, in July, 1977, Mr. Filderman received a visit from two staff employees of the Federal Trade Commission, Mr. Abrams and Mr. Fensterwald (the latter being one of the complaint counsel in the instant case) (tr. 286-87). The subject of discussion was the degree of George's compliance with the Warranty Act and Rules promulgated thereunder. One of the areas touched upon was the posting of signs in George's stores (although the visitors declined to specify any exact wording (tr. 287-88)).

53. On July 29, 1977, Mr. Kottler (Moe Kay) sent the following bulletin to the store managers (RX 14):

EACH STORE WILL IMMEDIATELY RECEIVE WARRANTY INFORMATION SIGNS.

THESE SIGNS MUST BE PROMINENTLY DISPLAYED.

IT IS AN ABSOLUTE NECESSITY TO KEEP YOUR WARRANTY INFORMATION BOOKS UP TO DATE.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ME. [13]

54. Mr. Filderman further testified that by August 1, 1977 signs containing the following language had been posted in every store (16):

## WRITTEN WARRANTY INFORMATION

Available On Request

*Ask Your Salesman*

At least one of these signs, which measure 14" x 22", were placed in each department in respondent's stores (major appliance, small appliance and furniture). Each store received from three to eight signs. The signs were posted permanently and have been there ever since (tr. 289-90). Mr. Filderman has personally observed their presence (tr. 359).

55. The testimony of Mr. Kottler (Moe Kay) confirms these facts. He personally distributed the signs to the stores and directed that they be posted. In his capacity as stores supervisor Mr. Kottler visits each of the thirteen stores in the chain at least twice a month. He stated categorically that the signs, numbering from five to nine per store, have remained in each George's store continuously since August, 1977 (tr. 406-08).

56. As proof that the signs were in place as of the time of trial, certain photographs taken by Mr. Kottler were received in evidence (RX 23A-E, 24A-G, 25A-F, 26A-E, 27A-E, 28A-E, 29A-E, 30A-C, 31A-D, 32A-E). These photographs show the signs in ten of George's 13 branches.

57. Moreover, the store managers of George's three remaining locations were called as witnesses. Each identified posted sign photographs taken in their respective stores (RX 20A-H, 21A-D, 22A-D). Each testified as to the accuracy of, Mr. Filderman's and Mr. Kottler's testimony concerning the furnishing and continuous posting of the warranty signs (Ogilvie tr. 365-71; Mangum tr. 371-81; Kennedy tr. 390-96).

58. Respondent is also charged with violating the Pre-Sale Rule by failing to index its binder according to product or warrantor as required by Section 702.3(1)(ii). In this connection, Mr. Filderman conceded that George's earlier book of warranties, CX 88, in use during 1977, did not contain an index. This was called to his attention during the July 1977, visit of Messrs. Abrams and Fensterwald (tr. 315-16). [14]

59. In addition, the earlier warranty book was admittedly deficient under the Rule in that it was not labeled with the word "Warranties," or other similar title. This, too, was duly noted by the visiting Commission employees (tr. 130).

60. Following further consultation with the Commission's staff and upon advice of counsel, Mr. Filderman initiated changes in Georges's method of maintaining warranty information. CX 88 was replaced with the three binders (RX 1, 2, 3), entitled "Small Appliance Warranty Book," "Major Appliance Warranty Book," and "Furniture Warranty Book." These new binders were distributed to the store managers at a meeting on December 30, 1977, with the instruction to place them in the appropriate departments (RX 15; Filderman tr. 334).

61. An examination of the new warranty binders discloses that each is indexed separately by each letter of the alphabet. George's own warranties which were not contained in the prior warranty binder (CX 88), are contained in the new binders immediately following the manufacturers' warranties. This appears to be a logical procedure, even though complaint counsel contend that their placement is not in strict alphabetical order (Complaint counsel's proposed findings, p. 28).

62. While violations of the Rule appear to have occurred with respect to respondent's earlier attempts to implement a binder

system, respondent's present practices are in substantial accord with Section 702.3(1)(ii).

#### LEGAL DISCUSSION

George's contends throughout its proposed findings that the complaint in this case should never have brought; that it has made a greater effort to comply with the Warranty Act and the Rules than most of the retailers in the United States; that it had been dealing with the Commission staff on a voluntary compliance basis for several years; that it had every reason to expect the same treatment following its contacts with Commission staff a few months after the new regulations became effective; that it proceeded earnestly to implement the staff's suggestions regarding compliance; and then, suddenly that it was hit with a formal complaint alleging numerous violations of the sort it was seeking guidance in correcting. Using terms such as "singled out," "scapegoat," "harsh" and "punitive,"<sup>7</sup> George's argues for dismissal of the case, "[e]ven assuming, *arguendo*, that there were violations" of the Act and Rules (respondent's proposed findings, p. 8). "To enforce the strict [15] letter of the law against this respondent would amount to arbitrary and capricious conduct, condemned by 5 U.S.C. Section 706, and by the 'due process' clause contained in the Fifth Amendment of the United States Constitution" (*ibid.*).

Complaint counsel respond in their answering findings, *inter alia*, that respondent's voluntary compliance contacts over the years were with the Commission's staff, not the Commission itself, which issued this complaint; that the Commission has in the past issued formal complaints against George's, resulting in the issuance of cease-and-desist orders;<sup>8</sup> that this is evidence of respondent's proclivity to violate the laws administered by the Commission; that respondent appears to be unable to comply with such laws without prodding, formal or informal, on the part of the Commission or its staff; that the Commission's formal assurance of voluntary compliance procedures (AVC) were rescinded prior to the completion of the investigation in this case; and that respondent was afforded the chance to have this matter voluntarily disposed of through a consent order, but chose not to exercise that option. Complaint counsel further point to the legal principle that it is the Commission alone which is empowered to develop an enforcement policy best calculated to

<sup>7</sup> Mr. Filderman testified that the issuance of the complaint left him feeling "shocked," "betrayed," "duped" (tr. 304-05).

<sup>8</sup> 60 F.T.C. 179 (1962); 52 F.T.C. 599 (1955); 50 F.T.C. 580 (1943). There was also a civil penalty action, 1962 Trade Cases ¶ 70,281. I have given no weight to any of these prior cases in making my decision on the merits of the present case.



achieve the ends contemplated by Congress, and to allocate its available funds and personnel in such a way to execute its policy efficiently and economically, citing *Moog Industries, Inc., v. FTC*, 355 U.S. 411 (1958); *FTC v. Universal-Rundle Corp.*, 387 U.S. 244 (1960).

I believe that respondent is entitled to argue the points which it raises, and I therefore permitted respondent to make a record concerning them (See, e.g., RX 4-11; tr. 272-82).<sup>9</sup> However, it is clear that I am not the proper party to decide such matters. As noted above, it is the Commission alone who is empowered to make the determination as to how and when to proceed in administering the laws it is charged with enforcing. As an [16] administrative law judge of this Commission, I am not entitled to second guess as to whether the agency has properly exercised its prosecutorial discretion, or as to whether this proceeding was improvidently brought. Respondent, of course, is free to bring its contentions to the Commission's attention on appeal or, if necessary, to the attention of a federal court.

As to whether the law was violated in the present case, it must be observed that the Warranty Act and the applicable Rules are very specific and admit of little or no leeway. Although the company was not required to offer consumers a written warranty, having elected to do so, it was bound by the law's requirements. According to the Commission's interpretation of Section 103 of the Warranty Act, the title "George's Extended Limited Warranty" is not permitted. Thus the Act was violated, even though George's was doing exactly what its title said: extending the duration of the manufacturer's warranty.<sup>10</sup>

As to the Disclosure Rule, there is no question that the George's Warranty failed to set forth a disclosure concerning coverage of ancillary items, even though Mr. Filderman testified that George's policy was to replace them free of charge (except for "willful" damage). Consumers were likewise not informed by George's warranty that commencement of coverage occurs upon delivery, not date of purchase, even though the former affords a longer coverage

<sup>9</sup> During the trial, respondent's counsel raised some question as to whether the proximity of George's operations to the Commission's headquarters in Washington, D.C. had any bearing upon the bringing of this action (tr. 138, 292). On this point it can be said that, historically, George's certainly has not gone unnoticed by this agency (see previous footnote). However, George's has never been alone among local firms in receiving the Commission's scrutiny. See *FTC v. Army and Navy Trading Co.*, 88 F.2d 776, 777 (D.C. Cir. 1937); *In the Matter of Leon A. Tashof, trading as New York Jewelry Company*, 74 F.T.C. 1361, 1366, *aff'd*, 437 F.2d 707 (D.C. Cir. 1970), located a short distance north of the Commission on Seventh St., N.W., and *In the Matter of S. Kann Sons Co.*, 56 F.T.C. 212, 213 (1959), located virtually on the Commission's doorstep. Many other examples of Commission proceedings involving local businesses can be cited.

<sup>10</sup> Although this point is not in issue in this case, and not heretofore mentioned, Mr. Filderman testified that for the duration of the manufacturer's warranty George's acts as the manufacturer's agent in rendering performance thereunder. Under the arrangement, George's has recourse to the manufacturer for reimbursement for parts and services utilized in redressing consumer problems (tr. 328-29).

period. And there is no question that George's Warranties failed to carry the mandatory language concerning consumers' specific legal and other rights. Thus the Rule was violated.

As to the Pre-Sale Rule, the record is clear that it was George's regular business practice to make its written warranties available to consumers at the time of sale (or delivery), not prior to sale, as the Rule requires. Hence a violation. As for George's efforts to implement a binder system under the Rule, the record discloses — especially in the testimony of Mr. Abrams — that this was imperfectly done in the first few months following the effective date of the Rule. Since that time, however, respondent has moved impressively and efficiently to bring its pre-sale availability practices in compliance with the Rule, albeit not to complaint counsel's total satisfaction. While I am mindful of the case law respecting "abandonment," I believe, that an exception should be made in this instance. I simply do not see how the public interest would be served by the issuance of an order in that respect. [17]

I have indicated earlier in the findings that I have chosen not to place reliance upon the consumer testimony in this case (findings 17, 25, 39, 49). My reasons for this are as follows: only eight consumers appeared in this proceeding, attesting to respondent's practices in but four of its 13 branches.<sup>11</sup> Mr. Filderman testified that, since the effective date of the Rules (January 1, 1977), George's has engaged in an estimated one-quarter million consumer transactions (tr. 305). While not attempting to determine how many consumer witnesses need be called to establish a pattern of business conduct at George's, I believe that the number called in this case is far too few. In addition, the majority of the consumer witnesses testified that they saw no warranty information signs in the George's stores they visited at a date which the record shows was subsequent to the placement of these signs (tr. 157, 167, 171, 179, 212, 236, 253, 263; CX 97). In view of findings 53-57, I must conclude that the signs were definitely in the store, and that the witnesses simply did not observe them. Thus, I am left in doubt as to the reliability of their reporting. And since I do not believe that their testimony is critical to any material point in this case, I believe it is appropriate not to place reliance upon it.

#### CONCLUSIONS OF LAW

##### 1. The Federal Trade Commission has jurisdiction over the

<sup>11</sup> F Street (Magruder and Easton); Greenbelt (Hoffman); Branch Avenue (Moore, Houston and the two Edsels); and Rockville (Butler).

subject matter of this proceeding and over respondent George's Radio and Television Company, Inc.

2. This proceeding is in the public interest.
3. The aforesaid acts and practices of the respondent, as herein found, constitute violations of the indicated Sections of the Warranty Act and the Disclosure and Pre-Sale Rules duly promulgated thereunder. Accordingly, pursuant to Section 110(b) of the Warranty Act, they constitute violations of Section 5 of the Federal Trade Commission Act.
4. The order entered in this proceeding is responsive to the violations found. [18]

#### ORDER

##### I.

##### *Definitions*

For the purposes of this order the definitions of the terms "consumer product" and "written warranty" as defined in Section 101 of the Warranty Act shall apply.

##### II.

*It is ordered,* That respondent George's Radio and Television Co., Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly, through any corporation, subsidiary, division or any other device in connection with the advertising, offering for sale and sale of appliances, furniture and any other merchandise and services, do forthwith cease and desist from:

1. Offering or granting a written warranty upon consumer products actually costing the consumer in excess of \$10.00 which is not clearly and conspicuously designated exclusively as either a "full (statement of duration) warranty" or a "limited warranty."
2. Offering or granting a written warranty upon consumer products actually costing the consumer in excess of \$15.00, which fails to clearly and conspicuously disclose, in a single document, in simple and readily understood language, the following items of information: [19]
  - (a) A clear description and identification of products, parts, characteristics, components or properties covered by, and where necessary for clarification excluded from, the warranty;
  - (b) A statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with the written warranty,

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Initial Decision

including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;

(c) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;

(d) A statement in the following language:

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

3. Failing to make available for prospective buyers' review, prior to sale, the text of any written warranty offered or granted by the respondent.

### III.

*It is further ordered,* That respondent:

1. Deliver a copy of this order to cease and desist to all present and future employees, salesmen, agents, independent [20] contractors and other representatives engaged in the sale of consumer products on behalf of respondent and secure a signed statement acknowledging receipt of the order from each such person.

2. Instruct all present and future employees, salesmen, agents, independent contractors and other representatives engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act (15 U.S.C. 2301, *et seq.*), all present and future implementing Rules promulgated under the Act and the order.

3. Institute a program of continuing surveillance to reveal whether respondent's employees, salesmen, agents, independent contractors and other representatives are engaged in practices which violate this order.

4. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

5. Shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

## FINAL ORDER

This matter has been heard by the Commission upon the appeal of complaint counsel from the initial decision and upon complaint counsel's brief in support of its appeal. The parties submitted a joint motion to waive oral argument, which was granted. Complaint counsel have argued only for certain modifications in the order recommended by the administrative law judge, and respondent's counsel has stated in writing that respondent agrees to the proposed order and does not oppose complaint counsel's appeal.

The Commission has granted complaint counsel's appeal, because we believe the violations established in the record warrant the modifications in the order that complaint counsel have proposed. These include specific requirements for the manner of implementing a binder system and affirmative disclosures about warranties, both on signs to be posted in the stores and in the warranties themselves. These requirements, and the others hereby imposed, are necessary to ensure compliance with the Magnuson-Moss Warranty Act ("Warranty Act") (15 U.S.C. 2301, *et seq.*), as implemented by the Commission's Rule on the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule") (16 C.F.R. 701), and the Commission's Rule on Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule") (16 C.F.R. 702), and with Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45). Therefore,

*It is ordered*, That the initial decision of the administrative law judge be adopted as Findings of Fact and Conclusions of Law of the Commission, except for the last two sentences on page 16, the first paragraph on page 17, and the last sentence of each of the following findings: 39, 49. [2]

*It is further ordered*, That the following order to cease and desist be entered:

## ORDER

## I.

*Definitions*

For the purpose of this order the definitions of the terms "consumer product" and "written warranty" as defined in Section 101 of the Warranty Act shall apply. The definition of the term "binder" as defined in Section 702.1(g) of the Pre-Sale Rule shall apply.

## II.

*It is ordered,* That respondent George's Radio and Television Co., Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly, through any corporation, subsidiary, division or any other device in connection with the advertising, offering for sale and sale of appliances, furniture and any other merchandise and services, do forthwith cease and desist from:

1. Offering or granting a written warranty upon consumer products actually costing the consumer in excess of \$10.00 which is not clearly and conspicuously designated exclusively as either a "full (statement of duration) warranty" or a "limited warranty."

2. Offering or granting a written warranty upon consumer products actually costing the consumer in excess of \$15.00, which fails to clearly and conspicuously disclose, in a single document, in simple and readily understood language, the following items of information:

(a) A clear description and identification of products, parts, characteristics, components or properties covered by, and where necessary for clarification excluded from, the warranty. For purposes of this paragraph, identification of products shall be by brand name, except, if respondent offers the identical warranty on all brands of a particular product it sells, then a statement to that effect will be sufficient identification of the products covered;

(b) A statement of what the warrantor will do in the event of a defect, malfunction or failure to comply with the written warranty, including the items or services the warrantor will pay for or provide, and where necessary for clarification, those which the warrantor will not pay for or provide; [3]

(c) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration. If the warranty runs concurrently with the warranty offered by the manufacturer, then that fact shall be disclosed in simple and readily understood language on the face of the warranty document;

(d) A statement in the following language:

This warranty is offered by [name of respondent]. Compare this with the warranty offered by the manufacturer.

This statement shall be the first paragraph of any warranty offered by respondent and shall be printed in boldface type;

(e) A statement in the following language:

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

3. Failing to make available for the prospective buyer's review, prior to sale, the text of any written warranty offered or granted by the respondent.

4. Failing to make available for the prospective buyer's review, prior to sale, the text of any written warranties offered or granted by the manufacturers of consumer products sold by respondent.

5. Choosing to implement a binder system to satisfy the requirements of Paragraphs 3 and 4 above unless the binder system includes, at a minimum, one binder located in each department of the retail outlet, and such binder includes at least one copy of each written warranty applicable to consumer products sold in that particular department.

6. Choosing to implement a binder system to satisfy the requirements of Paragraphs 3 and 4 above unless, in implementing a binder system, respondent:

(a) provides the prospective buyer with ready access to such binder system;

(b) (1) displays the binders in a manner reasonably calculated to elicit the prospective buyer's attention or [4]

(2) (A) makes such binder available to prospective buyers upon request, and

(B) places signs reasonably calculated to elicit the prospective buyer's attention in prominent locations within each store, advising such prospective buyers of the availability of binders, including instructions for obtaining access;

(c) indexes such binders according to product; and

(d) clearly entitles such binders as "Warranties" or other similar title.

*It is further ordered, That respondent:*

A. Post a sign, with approximate minimum dimensions of two feet (length) by two feet (width), with the following information printed in black against a solid white background:

**IMPORTANT!**

Not all warranties are the same. You can see manufacturers' warranties and store warranties before you buy. Please ask.

B. Post the sign described in Paragraph A. above:

- (1) In a manner reasonably calculated to elicit the prospective buyer's attention;
- (2) For a period of not less than two years from the effective date of the order;
- (3) In each department of its retail outlets that sells consumer products costing over \$15.00 and carrying a written warranty;
- (4) In a uniform manner; and
- (5) Printed as follows:
  - (i) The word "Important" shall serve as the title of the notice and shall be printed in capital letters in 42 point boldface type followed by an exclamation mark. [5]
  - (ii) The next phrase shall be printed on a separate line in capital letters and in 42 point boldface type.
  - (iii) The next two phrases shall be printed on a separate line and in 24 point medium face type.

C. Deliver a copy of this order to cease and desist to all present and future salesperson, store managers and other representatives engaged in the direct sale of consumer products to consumers on behalf of respondent and secure a signed statement acknowledging receipt of this order from each such person.

D. Instruct, in writing, all present and future salesperson, store managers and other representatives engaged in the direct sale of consumer products to consumers on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act (15 U.S.C. 2301, *et seq.*), all present and future implementing Rules promulgated under the Act and the order, and secure a signed statement acknowledging receipt of the written instructions from each such person.

E. Institute a program of continuing surveillance to reveal whether respondent's salesmen, store managers, and other representatives engaged in the direct sale of consumer products to consumers are engaged in practices which violate this order.

F. Maintain, for a period of not less than three (3) years from the effective date of the order, complete business records, including but not limited to, records described in Paragraphs C. and D. above, to be furnished upon request to the staff of the Federal Trade Commission, relating to the manner and form of its continuing compliance with the terms and provisions of this order.

G. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other



change in the corporation which may affect compliance obligations arising out of the order.

H. File with the Commission, within sixty (60) days after service upon it of this order, a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Bailey did not participate.

SYNOPSIS OF DETERMINATIONS FOR 15 U.S.C. 45 (m)(1)(B),  
GEORGE'S RADIO AND TELEVISION COMPANY, INC., DOCKET NO.  
9115

1. It is an unfair or deceptive act or practice and a violation of Section 103 of the Magnuson-Moss Warranty Act (15 U.S.C. 2303), and Section 5 of the Federal Trade Commission Act (15 USC 45) to offer or grant a written warranty on consumer products which cost the consumer more than \$10.00, if such warranty is not clearly and conspicuously designated exclusively as either a "full (statement of duration) warranty" or a "limited warranty".

2. It is an unfair or deceptive act or practice and a violation of the Rule on Disclosure of Written Consumer Product Warranty Terms and Conditions ("Warranty Disclosure Rule") (16 CFR 701) and Section 5 of the Federal Trade Commission Act to offer or grant a written warranty on consumer products which cost the consumer more than \$15.00 if such warranty fails to disclose, in a single document, in simple and readily understood language, the following items of information:

(a) A clear description and identification of products, parts, characteristics, components or properties covered by, and, where necessary for clarification, those excluded from, the warranty, as set forth in Section 701.3(a)(2) of the Warranty Disclosure Rule;

(b) A statement of what the warrantor will do in the event of a defect, malfunction or failure to comply with the written warranty, including the items or services the warrantor will pay for or provide, and where necessary for clarification, those which the warrantor will not pay for or provide, as set forth in Section 701.3(a)(3) of the Warranty Disclosure Rule;

(c) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration, as set forth in Section 701.3(a)(4) of the Warranty Disclosure Rule;

(d) A statement in the following language:

"This warranty gives you specific legal rights, and you may also have other rights which vary from state to state," as set forth in Section 701.3(a)(9) of the Warranty Disclosure Rule.

3. It is an unfair or deceptive act or practice and a violation of Section 702.3(a)(1) of the Rule on Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule") (16 CFR 702.3(a)(1)) and Section 5 of the Federal Trade Commission Act to fail to make available for the prospective buyer's review, prior to sale, the text of any written warranty offered on consumer products which cost the consumer more than \$15.00.

4. It is an unfair or deceptive act or practice and a violation of Section 702.3(a)(1)(ii) of the Pre-Sale Rule (16 CFR 702.3(a)(1)(ii)) and Section 5 of the FTC Act to implement a binder system, in satisfying the obligation to make available for the prospective buyer's review, prior to sale, the text of the manufacturer's written warranty terms, unless the binder system includes, at a minimum, one binder located in each department of the retail outlet, and such binder includes at least one copy of

each written warranty applicable to consumer products sold in that particular department.

5. It is an unfair or deceptive act or practice and a violation of Section 702.3(a)(1)(ii) of the Pre-Sale Rule (16 CFR 702.3(a)(1)(ii)) and section 5 of the FTC Act to implement a binder system, in satisfying the obligation to make available for the prospective buyer's review, prior to sale, the text of the manufacturer's written warranty terms, unless the seller:

- (a) provides prospective buyers with ready access to such binder(s);
- (b) (1) displays such binder(s) in a manner reasonably calculated to elicit the prospective buyer's attention; or
- (2) (A) makes the binder(s) available to the prospective buyers on request; and
- (B) places signs reasonably calculated to elicit the prospective buyer's attention in prominent locations within the store, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access;
- (c) indexes such binder(s) according to product or warrantor; and
- (d) clearly entitles such binder(s) as "Warranties" or other similar title.

Complaint

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IN THE MATTER OF  
JAYMAR-RUBY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-2997. Complaint, Nov. 8, 1979—Decision, Nov. 8, 1979*

This consent order, among other things, requires a Michigan City, Ind. manufacturer of wearing apparel and related accessories, to cease fixing, maintaining or compelling adherence to suggested resale prices and sale periods for its products. Respondent is prohibited from soliciting the identity of dealers who fail to conform to suggested prices; and from taking any adverse action against them. Additionally, respondent is prohibited from restricting the use of product trademarks or other identification in the advertising and sale of its products; and barred from suggesting retail prices and sales periods for its products for a period of two years.

*Appearances*

For the Commission: *Jeffrey Klurfeld and Karen E. Chandler.*

For the respondent: *Lee N. Abrams, Mayer, Brown & Platt,*  
Chicago, Ill.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Jaymar-Ruby, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

For purposes of this complaint, the following definitions shall apply:

“Product” is defined as any item of wearing apparel or related accessory which is manufactured, offered for sale or sold by respondent.

“Dealer” is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

“Resale Price” is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any retail price suggested or established by respondent, any customary resale price or the retail price in effect at any dealer.

“Sale Period” is defined as any time during which any dealer

offers to sell any product at resale prices lower than those in effect during the usual and ordinary course of said dealer's business; or any suggested, authorized or customary time for selling or advertising any product at prices lower than the suggested, established or customary resale prices.

PARAGRAPH 1. Respondent Jaymar-Ruby, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 5000 South Ohio St., Michigan City, Indiana.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of wearing apparel and related accessories. Sales by respondent for fiscal year 1978 exceeded \$63 million.

PAR. 3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent sells and distributes its products directly to more than 5,600 retail dealers located throughout the United States who in turn resell respondent's products to the general public.

PAR. 5. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the manufacture, advertising, offering for sale, sale and distribution of merchandise of the same general kind and nature as merchandise manufactured, advertised, offered for sale, sold and distributed by respondent.

PAR. 6. In the course and conduct of its business as above described, respondent has for some time last past effectuated and pursued a policy throughout the United States, the purpose or effect of which is and has been to fix, control, establish, manipulate and maintain the resale prices at which its dealers advertise, offer for sale and sell its products.

PAR. 7. By various means and methods, respondent has effectuated and enforced the aforesaid practice and policy by which it can and does fix, control, establish, manipulate and maintain the resale prices at which its products are advertised, offered for sale and sold by its dealers.

PAR. 8. By means of the aforesaid acts and practices and more, respondent, in combination, agreement, understanding and conspiracy with certain of its dealers and with the acquiescence of other of its dealers, has established, maintained and pursued a planned

course of action to fix and maintain certain specified uniform prices at which products will be resold.

PAR. 9. The aforesaid acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of respondent's products, and, thus, are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent as herein alleged, are continuing and will continue in the absence of the relief herein requested.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Jaymar-Ruby, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 5000 South Ohio St., in the City of Michigan City, State of Indiana.
2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding, of respondent Jaymar-Ruby, Inc., and the proceeding is in the public interest.

#### ORDER

For the purposes of this Order, the following definitions shall apply:

“Product” is defined as any item of wearing apparel or related accessory which is manufactured, offered for sale or sold by respondent Jaymar-Ruby, Inc.

“Dealer” is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

“Resale Price” is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any retail price suggested or established by respondent, any customary resale price or the retail price in effect at any dealer.

“Sale Period” is defined as any time during which any dealer offers to sell any product at resale prices lower than those in effect during the usual and ordinary course of said dealer’s business; or any suggested, authorized or customary time for selling or advertising any product at prices lower than the suggested, established or customary resale prices.

*It is ordered*, That respondent Jaymar-Ruby, Inc., a corporation, its successors and assigns, and respondent’s officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any product in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

#### I

1. Fixing, establishing, controlling or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product, or the sale period of any dealer.
2. Requesting, requiring or coercing, directly or indirectly, any dealer to maintain, adopt or adhere to any resale price or sale period.
3. Requesting or requiring, directly or indirectly, any dealer to report the identity of any other dealer who deviates from any resale price or sale period; or acting on any reports or information so

obtained by threatening, intimidating, coercing or terminating said dealer.

4. Requesting or requiring that any dealer refrain from or discontinue selling or advertising any product at any resale price.

5. Hindering or precluding the lawful use by any dealer of any brand name, trade name or trademark of respondent in connection with the sale or advertising of any product at any resale price.

6. Conducting any surveillance program to determine whether any dealer is advertising, offering for sale or selling any product at any resale price, where such surveillance program is conducted to fix, maintain, control or enforce the resale price at which any product is sold or advertised.

7. Terminating or taking any other action to restrict, prevent or limit the sale of any product by any dealer because of the resale price at which said dealer has sold or advertised, is selling or advertising, or is suspected of selling or advertising any product.

8. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program for which it would otherwise qualify, because of the resale price at which said dealer advertises or sells any product, or proposes to sell or advertise any product.

9. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program for which it would otherwise qualify, because said dealer has advertised or sold, or proposes to advertise or sell, any product using or featuring any resale price comparison.

## II

1. For a period of three (3) years from the date of service of this order, orally suggesting or recommending any resale price or sale period to any dealer.

2. For a period of three (3) years from the date of service of this order, communicating in writing any resale price or sale period to any dealer; *provided, however*, that after said three (3) year period, respondent shall not suggest any resale price or sale period on any list, or in any advertising, book, catalogue or promotional material, unless it is clearly and conspicuously stated on each page where any suggested resale price or sale period appears, the following:

THE [RESALE PRICES OR SALE PERIODS] QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN [RESALE PRICES OR SALE PERIODS].

## III

*It is further ordered,* That respondent shall:

1. Within thirty (30) days after service of this order, mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to each of its present accounts. An affidavit shall be sworn to by an official of the respondent verifying that the attached Exhibit A was so mailed.

2. Mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to any person, partnership, corporation or firm that becomes a new account within three (3) years after service of this order.

## IV

*It is further ordered,* That respondent shall forthwith distribute a copy of this order to all operating divisions of said corporation, and to present or future personnel, agents or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this order, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

## V

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

## VI

*It is further ordered,* That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

## EXHIBIT A

Dear Customer:

Jaymar-Ruby, Inc. has agreed with the Federal Trade Commission to the entry of an order concerning certain distribution practices. Our agreement was solely for the purpose of settling a dispute with the Commission, and does not constitute any admission on our part that we have violated any law. The agreed-to order provides, among other things, as follows:

1. You are free to charge whatever retail prices you deem appropriate for Jaymar-Ruby products, including Sansabelt, and you may advertise those prices as you see fit.



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2. You can be assured that Jaymar-Ruby will not take any action against you for any prices which you may charge or advertise.

3. Jaymar-Ruby will continue not to suggest retail prices for any product until [3 years from the date of service of the Order].

4. You may continue to use our trademarks or tradenames in any legal and lawful manner in your sale or advertising of our products.

5. You continue to be free to participate in our cooperative advertising programs regardless of the prices at which you advertise Jaymar-Ruby products.

If you wish a copy of the full text of the agreed-to order, or if you have any questions concerning it, please call \_\_\_\_\_. As always, we appreciate your business and we will continue providing you with the finest merchandise available.

---

for Jaymar-Ruby, Inc.

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Complaint

IN THE MATTER OF  
ROOFING CONTRACTORS ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-2998. Complaint, Nov. 8, 1979—Decision, Nov. 8, 1979*

This consent order, among other things, requires a Seattle, Wash. roofing association to cease entering into agreements with others to establish and maintain terms of guarantees, prices, or other conditions of sale in connection with the sale of roofs and related services; suggesting or urging adherence to particular prices, guarantees, or other conditions of sale; or restricting by any means a member's right to give any guarantee, price or other condition of sale to its customers. The order additionally bars the association from investigating and/or policing its members with regard to prices charged or guarantees imposed in the sale of their products and services.

*Appearances*

For the Commission: *Stevan D. Phillips.*

For the respondent: *James M. Martin, Seattle, Washington.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Roofing Contractors Association, a non-profit corporation hereinafter sometimes referred to as proposed respondent, has violated the provisions of the Federal Trade Commission Act, as amended, as more particularly set forth herein, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Roofing Contractors Association is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1000 Aurora Ave. North, Seattle, Washington. It consisted of approximately sixteen (16) roofing contractors at the time the events referred to herein occurred.

PAR. 2. The respondent is a trade association established for the benefit of its members. It acts as the bargaining agent for and negotiates labor contracts on behalf of its members with certain labor unions. The Association handles grievances and other administrative problems under the terms and conditions of any collective

bargaining contract entered into on behalf of its members. The Association has gathered and disseminated information to its respective members concerning the guarantees which are available in the roofing contracting business for new and replacement roofs and which are available and used in regard to waterproofing and dampproofing contracts. As a result of the conduct and activities of respondent and its members as described above, the acts and practices herein complained of are in or affect "commerce" within the meaning of the Federal Trade Commission Act, as amended, and respondent is subject to the jurisdiction of the Federal Trade Commission.

PAR. 3. On or about December 17, 1970 the members of the respondent, at respondent's regularly scheduled meeting, decided to limit the length of guarantees offered by said members to two (2) years. At various times thereafter, said members, at regularly scheduled meetings of respondent, discussed and reemphasized the two (2) year limitation on the length of guarantees to be offered by said members for new and replacement roofs. At certain regularly scheduled meetings of respondent, specific members were reprimanded by the membership for offering guarantees which were longer than two (2) years in length. On or about June 14, 1973 members of respondent, at respondent's regularly scheduled meetings discussed the maximum guarantee to be offered in regard to wind velocity and determined that 60 miles per hour would be appropriate. On or about April 11, 1974 members of respondent, at respondent's regularly scheduled meeting of its Board of Directors, discussed the terms of guarantees offered by respondent's members with representatives of the Inland Empire Roofing Contractors Association. Respondent agreed to provide a copy of its guarantee form to the Inland Empire Roofing Contractors Association.

PAR. 4. The effects, among others, of the acts and practices alleged in Paragraph Three are as follows:

A. Terms of guarantees for new and replacement roofs have been fixed, stabilized or otherwise interfered with;

B. Competition among member roofing contractors in the providing of roofing services has been restrained, hindered, frustrated and/or foreclosed;

C. Customers of roofing services have been deprived of information, options and services pertinent to the selection of a roofer and the benefits of competition; and

D. Member roofers have been restrained in their ability to compete and to make alternative guarantee terms available to customers.

PAR. 5. The aforesaid acts, practices, and methods of competition of respondent constitute unfair methods of competition and unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Chairman Pertschuk did not participate.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Roofing Contractors Association is a nonprofit corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1000 Aurora Ave. North, in the City of Seattle, State of Washington.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

## I

A. Definitions established for the purpose of the following order provisions are:

1. "Other related services" includes but is not limited to, repairing of roofs, inspecting of roofs, waterproofing and dampproofing of roofs, and estimating costs of repair or installation of roofs.
2. "Others not party hereto" means any individual, individual proprietorship, partnership, firm, corporation, association or any other form of legal or business entity.

## II

A. *It is ordered.* That respondent Roofing Contractors Association, a non-profit corporation, its successors and assigns, and its agents, representatives, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale and installation of new or replacement roofs or other related services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Entering into any contract, agreement, course of conduct, or understanding between itself and others not party hereto to fix, establish, stabilize, or maintain, the length or other term of any guarantee;
2. Entering into any contract, agreement, course of conduct, or understanding between itself and others not party hereto to fix, establish, stabilize or maintain any price or other term or condition of sale in connection with the sale and installation of new or replacement roofs or for performing other related services.

## III

A. *It is further ordered.* That respondent Roofing Contractors Association, a non-profit corporation, its successors and assigns, and its agents, representatives, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale and installation of new or replacement roofs or other related services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Urging, recommending, or suggesting that any of its members

or any other person adopt or adhere to any particular guarantee or to any price or other term or condition of sale in connection with the sale and installation of new or replacement roofs or for performing other related services;

2. Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which limits in any way a member's right to give or offer, a guarantee or any price or other term or condition of sale to any customer or prospective customer in connection with the sale or installation of a new or replacement roof or for performing other related services;

3. Investigating and/or policing a price or guarantee term charged or imposed by any member of the association or any other person in connection with the installation of new or replacement roofs.

#### IV

A. *It is further ordered*, That respondent Roofing Contractors Association shall within sixty (60) days after the date of service of this order, mail a copy to each of its existing members and to each person who was a member at any time from June 30, 1973 to date of service of this order, and furnish a copy of this order to each prospective member for a period of five (5) years after the date of service of this order.

B. *It is further ordered*, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries or any other change in the association which may affect compliance obligations arising out of the order.

C. *It is further ordered*, That the respondent herein shall within sixty (60) days after service on it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Chairman Pertschuk did not participate.