

Complaint

IN THE MATTER OF

JEROME G. PILE ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-256. Complaint, Oct. 17, 1962—Decision, Oct. 17, 1962*

Consent order requiring two individuals in Harwood Heights, Ill., manufacturers of fibercrete panels for swimming pools which they distributed along with other swimming pool accessories, to cease misrepresenting, in advertising for franchise distributors, the annual profits to be expected, their advertising and installation assistance and value thereof, permanence and maintenance-free qualities of the pools, guarantees and a display pool as given free.

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 Jerome G. Pile and Clifford C. Trudeau have 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 in that respect as follows.

PARAGRAPH 1. Respondents are individuals and the former officers of Swim Queen Pool Company, a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Illinois, with its principal place of business and office located at 2301 East Oakton Street, Arlington Heights, Ill. Respondents, prior to the filing by the corporation of a Voluntary Petition in Bankruptcy on June 5, 1962, formulated, directed and controlled the acts and practices of Swim Queen Pool Company including the acts and practices hereinafter set forth. The address of Jerome G. Pile is 2301 East Oakton Street, Arlington Heights, Ill. The address of Clifford C. Trudeau is 5048 North Octavia Street, Harwood Heights, Ill.

PAR. 2. Swim Queen Pool Company and respondents, for some time last past, have been engaged in the manufacture, offering for sale, sale and distribution of fibercrete panels for swimming pools. Respondents also participated in the sale of terrazzocrete and fiberglass panels, concrete and other swimming pool accessories. Respondents effected the sale of said materials to franchise dealers and/or distributors (hereinafter referred to as franchise dealers) who retailed and installed the swimming pools.

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PAR. 3. Respondents, in the course and conduct of their business, for some time last past have caused the aforesaid products, when sold, to be transported from Swim Queen Pool Company's place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have caused persons to be solicited to enter into franchise agreements for the distribution of Swim Queen Pool Company's products by disseminating certain advertisements concerning their products and the profit making opportunities available in the dealing and distribution of said products. In addition to said advertising in the form of newspapers, magazines, circulars, brochures and letters and other advertising media, respondents have caused salesmen or representatives to be employed to secure franchise dealers for the sale and distribution of their products. In the course of solicitation, by both advertisements and salesmen or representatives respondents have caused many statements or representations to be made directly or by implication, to prospective franchise dealers. Typical, but not all inclusive, of said statements or representations, were the following:

1. That there was a \$35,000 yearly profit potential to franchise dealers of Swim Queen Pool Company's products.
2. That franchise dealers would be supported by Swim Queen Pool Company's national advertising campaign.
3. That Swim Queen Pool Company would give a free display pool to distributors.
4. That Swim Queen Pool Company's pools will not crack, peel, chip, fade or require repainting and are maintenance free.
5. That Swim Queen Pool Company's pools were covered by a five year guarantee, thereby representing that said pools are guaranteed by them in every respect.
6. That the cost of installing Swim Queen Pool Company's pools was in accord with cost estimates supplied by respondents.
7. That sales aids and promotional material supplied to dealers had a value equivalent to those listed in materials furnished by Swim Queen Pool Company.
8. That Swim Queen Pool Company would supply installation assistance to dealers upon request.

PAR. 5. In truth and in fact:

1. The yearly profit potential, if any, of franchise dealers of Swim Queen Pool Company's products was substantially less than \$35,000.

2. Swim Queen Pool Company did not support franchise dealers with a program of national advertising.

3. The display pool provided by Swim Queen Pool Company was not "free" or an unconditional gift. Only the construction materials for a pool were supplied and only after a substantial deposit was made in connection with the execution of the franchise agreement.

4. The panels which Swim Queen Pool Company supplied to franchise dealers, contrary to representations, cracked, peeled, chipped, faded, required repainting and were not maintenance free.

5. Swim Queen Pool Company guaranteed their pools only to a limited extent, and did not make repairs or adjustments in accordance with the guarantee.

6. The cost of installing Swim Queen Pool Company's pools was substantially greater than the amount represented.

7. The value of sales aids and promotional materials supplied by Swim Queen Pool Company was substantially less than the amount represented.

8. Swim Queen Pool Company did not provide installation assistance to franchise dealers upon request.

Therefore, the statements and representations set forth in paragraph 4 above were false, misleading and deceptive.

PAR. 6. In the conduct of its business and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had the capacity and tendency to mislead and deceive a substantial number of said franchise dealers into the erroneous and mistaken belief that said statements and representations were true and into the execution of franchise agreements and purchases of Swim Queen Pool Company's products by reason of said erroneous and mistaken belief.

PAR. 8. The acts and practices of the respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents

having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Jerome G. Pile and Clifford C. Trudeau are individuals and former officers of Swim Queen Pool Company. The address of Jerome G. Pile is 2301 East Oakton Street, Arlington Heights, Ill., and the address of Clifford C. Trudeau is 5048 North Octavia Street, Harwood Heights, Ill.

2. 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

It is ordered, That respondents Jerome G. Pile and Clifford C. Trudeau, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of swimming pool panels, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That dealers can make any amount of earnings or profits within a specified period of time from the sale or installation of respondents' products when such amount is in excess of earnings or profits which dealers have consistently made in like periods of time from the sale or installation of such products; or otherwise misrepresenting the earnings or profits which dealers have derived, or may derive, from the sale or installation of respondents' products.

2. That dealers in respondents' products are supported by a national advertising campaign when respondents do not, in fact, advertise such products nationally.

3. That a free display pool will be provided to their dealers; or otherwise representing to their dealers that respondents will furnish any construction materials or other products free unless such materials or products are in fact furnished free or without charge therefor and, if the receipt or retention of such materials or products is conditioned in any manner, unless all the conditions and prerequisites to obtaining or retaining such material or products are clearly and conspicuously set forth or explained at the outset.

4. That respondents' pools will not crack, peel, chip, fade; require no repainting; or are free from maintenance problems.

5. That any products sold or offered for sale are guaranteed, unless the nature and extent of the guarantee and the manner in which the respondents will perform thereunder are clearly and conspicuously disclosed, and unless respondents do in fact fulfill all the requirements under the terms of the guarantee.

6. That the cost of installing respondents' pools is any amount which is less than the actual cost of such installation under ordinary circumstances and conditions.

7. That the value of the sales aids and promotional materials supplied to prospective dealers is any amount which is greater than their actual value.

8. That installation assistance will be supplied to dealers, unless such assistance is, in fact, provided.

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

IN THE MATTER OF

HARRY USWALD TRADING AS
M. McNAUGHTON, ETC.