

captioned proceedings 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 the order to cease and desist.

IN THE MATTER OF
SILENT MAID COMPANY, INC., ET AL.

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

Docket C-278. Complaint, Dec. 5, 1962—Decision, Dec. 5, 1962

Consent order requiring Flossmoor, Ill., sellers of garbage disposers, both to consumers and to dealers, to cease their practice of stating falsely in bold type in their sales contract and warranty certificate, used by them and their dealers, as well as by other misleading statements in the sales contract, that the disposers were unconditionally guaranteed, when the contract did not contain all the limitations of the guarantee and certain conditions were practically indiscernible due to a dark background and location; and to cease failing to comply with the terms of the guarantees.

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 Silent Maid Company, Inc., a corporation, and Frank A. Heakin, individually and as an officer of said corporation, hereinafter referred to as respondents, 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 as follows:

Complaint

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PARAGRAPH 1. Respondent Silent Maid Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 2545 Wallace Drive, Flossmoor, Ill. The individual respondent, Frank A. Heakin, is President of the corporate respondent and formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His business address, which is also his address of residence, is the same as that of the corporate respondent.

PAR 2. Respondents are now, and for a number of years last past, have been engaged in the offering for sale and sale of electric powered appliances for installation in kitchen sinks to dispose of garbage by grinding and flushing, hereinafter known as garbage disposers. Respondents have engaged in such activity both by direct sale to members of the public and by sale to dealers who, in turn, sell to the consuming public. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in other states of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of trade in said commerce has been and is substantial.

PAR. 3. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their garbage disposers in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents have prepared, printed and promulgated a form of sales contract and a form of warranty certificate, both for their own use in making sales to the public, and for the use of their dealers, in selling to the public garbage disposers purchased from the respondents. By statements appearing in bold type in both of the aforesaid documentary forms, respondents have represented, directly and indirectly, that their product is unconditionally guaranteed, which statements are false and misleading for the reason that the guarantee furnished by the respondent has numerous conditions and limitations. By other statements appearing in said sales contract, respondents represent that subject product is guaranteed; however, this representation is misleading because said sales contract does not contain all conditions and limitations included in the guarantee, and certain conditions and limitations that are stated thereon are so printed against a dark background in such a place upon the face of the contract as to be indiscernible without careful scrutiny.

PAR. 4. In a number of instances, neither the respondents nor the respondents' dealers have performed in accordance with the terms of guarantees thus furnished, delivered and given in commerce to members of the consuming public. By such practice, respondents, and respondents' dealers acting through the media of the above described documentary forms, have misled members of the public, who were induced to purchase garbage disposers in reliance upon such guarantees.

PAR. 5. By the aforesaid practices, respondents place in the hands of dealers means and instrumentalities by and through which they may mislead the public as to the nature and extent of their guarantees and the services provided thereunder.

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

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and that said guarantees are unconditional and will be fulfilled as given when such is not the case. As a result of respondents' aforesaid acts and practices, substantial quantities of respondents' products have been and are now being purchased by reason of said erroneous and mistaken beliefs. As a consequence thereof, substantial trade in commerce has been and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning 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 respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which,

if issued by the Commission, would charge the respondents with violation 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 said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent, Silent Maid Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 2545 Wallace Drive, Flossmoor, Ill.

Respondent Frank A. Heakin is an officer of said corporation and his address is the same as that of said corporation.

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 Silent Maid Company, Inc., a corporation, and Frank A. Heakin, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of garbage disposers or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. (a) Representing, directly or by implication, that their garbage disposers or other merchandise are guaranteed when there are any conditions or limitations in connection with such guarantee, unless such conditions and limitations are clearly and conspicuously set forth.

(b) Representing, directly or by implication, that their garbage disposers or other merchandise are unconditionally guaranteed when there are any conditions or limitations in connection with such guarantee.

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(c) Failing to comply with the terms of any guarantee given.

2. Furnishing any means or instrumentalities to others by and through which they may mislead the public as to any of the matters set forth in paragraph 1, above.

It is further ordered, That the respondents herein shall, within