

IN THE MATTER OF

BERNS AIR KING CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1580. Complaint, Aug. 8, 1969—Decision, Aug. 8, 1969*

Consent order requiring a Chicago, Ill., manufacturer of dehumidifiers to cease misrepresenting the moisture-removing capabilities of its products by using tests and standards other than those generally accepted and used by the industry.

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 Berns Air King Corporation, a corporation, hereinafter 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 in that respect as follows:

PARAGRAPH 1. Respondent Berns Air King Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 3050 North Rockwell Street, Chicago, Illinois, 60618.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of dehumidifiers and other merchandise to distributors and retailers for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent is in competition with not less than eight other manufacturers of dehumidifiers and a number of nationwide retailers who merchandise dehumidifiers under their own

brand names. The primary function of a dehumidifier is to remove moisture from the atmosphere. One representation made to prospective purchasers by respondent and its competitors respecting the performance characteristics of their dehumidifiers concerns its ability to remove moisture from the surrounding atmosphere. The dehumidifier is represented as being able to remove from room air in a 24 hour period a certain number of pints of water at a specified degree of temperature and a specified percentage of relative humidity. Within ordinary ranges, the higher the temperature and relative humidity used in testing a dehumidifier, the greater will be the amount of water removed. A dehumidifier rated by test conditions which employ a higher degree of temperature and greater relative humidity, therefore, will appear able to remove more moisture from room air than the same dehumidifier or comparable dehumidifier rated by test conditions which employ a lower degree of temperature and lower relative humidity.

Several years ago the industry voluntarily adopted uniform testing procedures for measuring the ability of a dehumidifier to remove moisture from its surrounding atmosphere under specified test conditions. Under the terms of the adopted program, each member agreed to advertise, promote or otherwise claim only the number of pints of water the dehumidifier can remove from room air in 24 hours at 80° F.—60 percent relative humidity. At the present time all of respondent's known competitors, who sell and distribute a substantial majority of all dehumidifiers sold in this country, test, rate and advertise the moisture removal capability of their dehumidifiers at 80° F.—60 percent relative humidity test conditions.

Respondent, in the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its dehumidifiers has made, and is now making, numerous statements and representations in promotional material and catalogs with respect to the moisture removal capability of its dehumidifiers at the specific test conditions of 80° F.—70 percent relative humidity, test conditions which differ substantially from the aforesaid test conditions used by other members of the industry.

Typical and illustrative, but not all inclusive of the said statements and representations made in respondent's promotional material and catalogs, are the following:

319

Complaint

NEW Air King *** Dehumidifier *** Catalog Number DH 25-N ***
 Water Removal Capacity 18 pints per day ***.

Performance ratings of all dehumidifiers are determined under specific test conditions of 80° F., 70% relative humidity, which closely approximate average home conditions. Actual performance will vary with changes in temperature and humidity.

* * * * *

Budget Model DH-10 Water Removal Capacity 16 pints per day ***

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Deluxe Model DH-15 Water Removal Capacity 16 pints per day ***.

PAR. 5. The aforesaid acts, practices, statements and representations, and others of similar import and meaning but not expressly set out herein, by respondent are unfair practices and are misleading and deceptive.

Respondent's failure clearly and conspicuously to reveal to prospective purchasers and purchasers the fact that the test conditions it employs to measure the moisture removal capability of its dehumidifiers differ from the test conditions employed by other industry members and result in higher moisture removal capability ratings makes it extremely difficult for such purchasers to make meaningful comparisons between respondent's and competing dehumidifiers. Furthermore, the failure to reveal said differences in test conditions and the resultant apparent higher moisture removal capabilities of respondent's dehumidifiers has the tendency and capacity to induce such purchasers incorrectly to conclude that respondent's dehumidifiers have a greater moisture removal capability than comparable competing dehumidifiers of its competitors.

Therefore, the aforesaid acts, practices, statements and representations were, and are, unfair practices and are misleading and deceptive.

PAR. 6. By the aforesaid acts and practices, respondent places in the hands of distributors, jobbers and retailers the means and instrumentalities by and through which they may mislead and deceive the public as to the capability of said products.

PAR. 7. In the course and conduct of its aforesaid business and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the manufacture and sale of products of the same general kind and nature as those sold by respondent.

PAR. 8. The use by the respondent of the aforesaid unfair practices and misleading and deceptive statements, representations

Complaint

76 F.T.C.

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 into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's 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 respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent 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 respondent 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 to issue herein, 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Berns Air King Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3050 North Rockwell Street, in the city of Chicago, State of Illinois, 60618.

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

It is ordered, That respondent Berns Air King Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of dehumidifiers or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making any statement or representation, directly or by implication, respecting the moisture removal capabilities of dehumidifiers which is not based on tests conforming in all respects to the testing standards and procedures generally accepted and used by industry members, without clearly and conspicuously setting forth in immediate connection therewith the following statement:

"Not rated by uniform industry testing methods. If industry tests were used, this dehumidifier would remove _____ pints less water per day or a daily total of _____ pints."

[Fill in correct number of pints.]

2. Failing to attach to each dehumidifier, with such security as to remain affixed thereto until sold and delivered to the ultimate purchaser, a tag or label conforming to the requirements of paragraph 1 hereof in connection with any statement or representation respecting the moisture removal capabilities of dehumidifiers which is not based on tests conforming in all respects to the testing standards and procedures generally accepted and used by industry members.

3. Misrepresenting, in any manner, the performance capabilities of any of respondent's products.

4. Furnishing to or otherwise placing in the hands of others any means or instrumentalities whereby prospective purchasers or purchasers may be misled or deceived in the manner or as to the things prohibited by this order.

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

It is further ordered, That the respondent herein 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.
