

mission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

ALASKA SLEEPING BAG COMPANY, ET AL.

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

Docket C-2194. Complaint, Apr. 17, 1972—Decision, Apr. 17, 1972

Consent order requiring a Beaverton, Oregon, mail-order seller of sporting goods to cease misrepresenting its relative size in the industry and its refund and shipment policies. Respondent is also required to prominently print in its catalogs, for a two year period, a disclosure notice and an address to which customers may apply for refunds.

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 Alaska Sleeping Bag Company, a corporation, and Frank R. Davis, individually and as an officer of said corporation, sometimes 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 in that respect as follows:

PARAGRAPH 1. Respondent Alaska Sleeping Bag Company is a corporation organized, existing and doing business under and by

Complaint

80 F.T.C.

virtue of the laws of the State of Oregon with its principal office and place of business located at 13150 S. W. Dawson Way, Beaverton, Oregon.

Respondent Frank R. Davis is an individual and is an officer, director and shareholder of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein described. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are engaged in the advertising, offering for sale, sale and distribution of outdoor sporting goods equipment and wearing apparel by mail order.

PAR. 3. In the course and conduct of their aforesaid business, respondents cause their products, when sold, to be shipped from their place of business in the State of Oregon to purchasers who are located in various other States of the United States and in the District of Columbia. Respondents maintain 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 aforesaid business, respondents are 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. 5. In the course and conduct of their business, and for the purpose of inducing prospective customers to order their articles of merchandise by mail and submit their money or credit card information therewith, respondents cause their mail order catalogs to be disseminated two or three times annually to approximately 400,000 individuals in the various States of the United States and in the District of Columbia. Said catalogs do not disclose that particular items are not in stock, that respondents must special order certain items from their suppliers after receiving customer orders, or that particular items are drop-shipped directly from respondents' suppliers to their customers.

PAR. 6. In the course and conduct of their business, and for the purpose of inducing prospective customers to order their products by mail and submit their money or credit card information therewith, respondents have caused numerous statements and representations to be disseminated in the aforesaid catalogs, with respect to respondents' relative size within the sporting goods industry, the availability of items of merchandise displayed in their catalogs, the promptness with which orders will be filled, and respondents' unconditional guarantee of satisfaction.

665

Complaint

Typical and illustrative of these statements and representations, but not all inclusive thereof, are the following:

1. AMERICA'S LARGEST SUPPLIER OF OUTDOOR EQUIPMENT

2. DELIVERY

Your order is processed promptly. Please allow adequate shipping time for Parcel Post Delivery.

Under some circumstances delivery may take three or four weeks. [Respondents do not disclose delivery times with respect to any of the individual items displayed in their catalogs.]

3. PLEASE ORDER EARLY TO AVOID DISAPPOINTMENT

* * * * *

Occasionally we cannot keep up with the demand for some items and sell our entire supply before year's end. If you see items in this catalog that you ordered and could not get last year, it is because we sold out the entire year's production before your order was received. These items are again in stock.

We maintain a large inventory of merchandise and make every effort to satisfy each customer, but to assure delivery please place your orders early.

4. * * * Each item in this catalog is unconditionally guaranteed. The purchases must be completely satisfactory and exactly as represented or return them for full refund, including your return postage.

UNCONDITIONAL GUARANTEE

All Alaska* products are of dependable expedition quality. We guarantee that every item we sell will give full satisfaction or we will refund your purchase price plus your return shipping cost at surface rates.

PAR. 7. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, directly and by implication:

1. That their gross annual sales are greater than any other retailer's gross annual sales of similar types of outdoor equipment;

2. That they will routinely ship orders within a few days after receiving them from their customers and that they will, without exception, ship so that their customers receive their merchandise within four weeks after placing their orders by mail or telephone with respondents;

3. That respondents have each and every item of merchandise displayed in their catalogs in stock at the time the catalogs are mailed *en masse*, that they have made or will make arrangements with their suppliers to obtain the additional quantities of said items necessary to meet reasonably anticipated customer demand, and that only under exceptional circumstances will their inventory of said items be insufficient to meet their customer demand;

4. That their customers may, for any reason whatsoever, return any items previously purchased from respondents and that re-

Complaint

80 F.T.C.

spondents will thereafter refund the specified amount within a reasonable period of time.

PAR. 8. In truth and in fact:

1. Respondents' gross annual sales are not greater than any other retailer's gross annual sales of similar types of outdoor equipment.

2. Respondents do not routinely ship orders within a few days after receiving them from their customers and have failed in a substantial number of instances to ship so that their customers receive their merchandise within four weeks after placing their orders with respondents. In many thousands of instances, respondents have retained the use of their customers' money and failed to ship the merchandise within four weeks or any other period of time which could be deemed reasonable. A substantial portion of said customers have telephoned or written to respondents demanding an immediate refund, which demands respondents have ignored and refused to honor. Respondents had not less than 11,000 unshipped back orders on July 15, 1971; these orders were received by respondents from mid-1969 to February 15, 1971, and total to not less than \$315,000.

Many thousands of respondents' other customers not in back order status on July 15, 1971, have been required to wait much longer than four weeks for their merchandise or refund and have been subjected to the same type of frustration and disappointment in attempting to get the merchandise or a refund as have those in back order status on July 15, 1971.

Respondents do not in the course and conduct of their business issue refunds to customers who do not demand refunds.

3. Respondents have not had a substantial number of the items displayed in their catalogs in stock at the time the catalogs were mailed *en masse* and have failed to make arrangements with their suppliers to obtain the additional quantities necessary to meet reasonably anticipated customer demand; in a substantial number of instances, respondents' inventory of said items has been insufficient to meet customer demand.

4. In a substantial number of instances, respondents have failed to refund the specified amount within a reasonable period of time after their customers have returned merchandise previously purchased from them. Said customers found the merchandise unsatisfactory because it arrived too late for the occasion for which it was ordered, because it was the wrong size or color and because it was of no usefulness to them without the other items specified in their orders but not shipped by respondents. Rather than adhering to the terms of their guarantee, respondents have failed to honor the demands of

said customers for refunds and have procrastinated for several months in most instances where they did in fact refund their moneys.

Therefore, respondents' statements, representations, acts and practices, and their failure and refusal to refund moneys to customers whose orders they have failed to ship within a reasonable period of time after receipt of their moneys, as enumerated in Paragraphs Six, Seven and Eight herein, were, and are, unfair, false, misleading and deceptive acts and practices.

PAR. 9. In a substantial number of instances where respondents have failed to either ship the ordered merchandise or issue refunds within a reasonable period of time after receipt of the money, as enumerated in Paragraph Eight herein, respondents' customers have been unable or unwilling to purchase the desired merchandise from any of respondents' competitors until they have received a refund from respondents. Respondents' continuing retention of said customers' moneys for an indeterminate and unreasonable period of time and their failure to refund their moneys within a reasonable period of time has thereby had and now has the effect of depriving respondents' competitors of substantial amounts of business and, therefore, is an unfair method of competition and an unfair act or practice.

PAR. 10. The use by respondents of the aforesaid unfair acts and practices and false, misleading and deceptive statements and representations, and their failure to disclose material facts, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said acts, statements and representations were, and are, true and complete, and has had, and now has, the capacity and tendency to mislead members of the purchasing public into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief and unfairly into submitting their money or credit card information with their orders, all of which they might not otherwise have done.

PAR. 11. The aforesaid acts and practices of respondents, including their failure and refusal to refund moneys to customers whose orders they have failed to ship within a reasonable period of time after receipt of their moneys, as alleged herein, 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 commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Decision and Order

80 F.T.C.

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 the respondents of all jurisdictional facts set forth in the aforesaid draft of complaint, a stipulation that although the agreement is for settlement purposes, it may be used by a court in any subsequent proceeding under Section 5(1) of the Federal Trade Commission Act as a basis for such further relief against respondents as the court deems just and proper, 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Alaska Sleeping Bag Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon with its principal place of business located at 13150 S.W. Dawson, Beaverton, Oregon. Respondent Frank R. Davis is an individual and chief executive officer of Alaska Sleeping Bag Company. He formulates, directs and controls the policies, acts and practices of said corporation. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Alaska Sleeping Bag Company, a corporation, and its officers, and Frank R. Davis, individually and as chief executive officer of corporate respondent, and respondents'

agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of outdoor sporting goods equipment and wearing apparel or any other product by mail order, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting directly or by implication:

(a) Respondents' relative size within the sporting goods or mail order sporting goods industry;

(b) The conditions under which or period of time within which respondents will refund money to their customers pursuant to any guarantee or warranty;

(c) The period of time within which respondents will ship order or particular items of merchandise.

2. Failing to make an immediate refund to a buyer, voluntarily and without the buyer's prior demand, of all moneys paid for an item of merchandise ordered by mail or telephone when the item has not been shipped;

(a) Within three weeks from receipt of payment, or

(b) Within such longer period of time from receipt of payment as is clearly and conspicuously disclosed in respondents' most recent catalog as the estimated time required for shipment of the item;

(c) Provided that this inhibition shall not apply to those situations where respondents have obtained the express written consent of the buyer, separately signed and dated, to a specified delay.

3. Failing to make an immediate refund to a buyer, voluntarily and without the buyer's prior demand, of all moneys paid for an item of merchandise ordered by mail or telephone when the item has not been shipped, within that time expressly agreed to by the buyer, as provided for in inhibition 2(c) herein.

4. For purposes of inhibitions 2 and 3 above, the following definitions shall apply: "Shipment" shall mean the act whereby respondents or their supplier-agent physically places the merchandise into the possession of the carrier. Where the buyer originally had the amount charged to his open-end credit account, "refund" shall be construed to mean crediting the buyer's account; where the buyer originally paid by cash, money order, draft, check or similar means, "refund" shall be construed to

Decision and Order

80 F.T.C.

mean refund by cash or check or by returning the buyer's original check where it was not previously negotiated.

5. Failing to publish the following statement in all catalogs mailed during the two year period immediately following the effective date of this order. The statement shall be prominently placed on the ordering information page and shall be in type not less than 10-point in size. The statement shall not be expanded or elaborated upon, nor used in any other context.

Customers who have not received the ordered merchandise or a refund within 30 days or any longer period of time designated in this catalog may write to:

P. O. Box 12302
Seattle, WA 98111.

It is further ordered, That within sixty (60) days from the effective date of this order respondents shall make refunds to all those customers whose orders for merchandise were received prior to the effective date of this order but not shipped prior to the effective date of this order; *Provided,* That this provision shall not apply to customer orders which respondents receive after the effective date of this order. "Shipment" shall mean the act whereby respondents or their supplier-agents physically place the merchandise into the possession of the carrier. "Refund" shall be construed to mean refund by cash or check, regardless of whether the buyer originally paid by cash, money order, draft or check or whether he had the amount charged to his open-end credit account.

It is further ordered, That respondents herein shall notify the Commission at least thirty (30) days prior to any proposed change in their organizational structure, such as dissolution, merger, assignment or sale resulting in the emergence of a successor, or any other change in the business organization of respondents which may affect compliance obligations arising out of this order.

It is further ordered, That respondents herein shall forthwith deliver a copy of this order to cease and desist to all present and future managers or other employees or representatives who engage in the preparation of respondents' catalogs, selection of suppliers or ordering of merchandise from suppliers and shall secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That 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.

Complaint

IN THE MATTER OF

JORDAN MOTOR COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
TRUTH IN LENDING AND THE FEDERAL TRADE COMMISSION ACTS

Docket C-2195. Complaint, Apr. 18, 1972—Decision, Apr. 18, 1972

Consent order requiring an Akron, Ohio, new and used car dealer to cease violating the Truth in Lending Act by failing to disclose to customers the annual percentage rate, the total number of payments, the cash price, the unpaid balance of the cash price, the deferred payment price, and other disclosures required by Regulation Z of the said Act. Respondent is also required to include on the face of its notes a notice that any subsequent holder takes the note with all conditions of the contract evidencing the debt.

COMPLAINT

Pursuant to the provisions of the Truth In Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jordan Motor Company, Inc., a corporation, and Jordan E. Alex, individually, and as an officer of said corporation, and also trading and doing business as American Acceptance Company, hereinafter referred to as respondents, have violated the provisions of said Acts and regulation, 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 Jordan Motor Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and only place of business located at 35 East Waterloo Road, Akron, Ohio.

Respondent Jordan E. Alex is the president and chief executive officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Jordan E. Alex, is an individual, and trades and does business as American Acceptance Company, a sole proprietorship with its office and principal place of business located at 35 East