

Docket C-2225. Complaint, May 23, 1972—Decision, May 23, 1972

Consent order requiring a Jericho, New York, mail order firm to cease failing to make shipments within specified time limits, failing to disclose that **not all items advertised are kept in stock, but are drop-shipped by the**

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manufacturer, failing to make complete refunds within specified time limits, misrepresenting that all items shipped are insured, regardless of purchase price, failing to indicate fee for respondent's catalog, using comparative inflated prices, and keeping inadequate records of purchase orders. Corporate respondent is further required to maintain a business telephone and to list the number in the official telephone directory for its location and in all of its mail order catalogs.

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 U.S. General Supply Corporation, a corporation, and Harold Rashbaum as president and Murray Harrow as secretary and treasurer 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent U.S. General Supply Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Harold Rashbaum and Murray Harrow are president and secretary-treasurer respectively of said corporation and are members of the board of directors of said corporation. Harold Rashbaum owns 50 percent or more of the stock of said firm. Murray Harrow is also a major stockholder.

Respondents Harold Rashbaum and Murray Harrow formulate, direct and control the acts, practices and policies of said corporate respondent which has its principal place of business at 100 General Place, Jericho, Long Island, New York and which also uses the address 20 Jericho Turnpike, Jericho, Long Island, New York. The latter address is simply another entrance to the same building.

Respondent U.S. General Supply Corporation is a mail order business which offers tools, hardware, home appliances, office equipment and other products to the general public through a mail order catalog advertised throughout the United States by means of an advertising flyer which offers the catalog for sale to the public for \$1.

Individual respondents Harold Rashbaum and Murray Harrow also operate eight affiliated corporations in the form of retail outlets which are leased departments located on the premises of Billy Blake Discount Centers. These retail outlets offer for sale to the public the same products which are offered through U.S. General Supply Corporation's mail order catalog. These eight corporations were organized,

exist and are doing business under and by virtue of the laws of the State of New York. Respondents Harold Rashbaum and Murray Harrow are officers and members of the board of directors for all eight corporations which are as follows: U.S.G.S. Smithtown, Inc., U.S.G.S. Bethpage, Inc., U.S.G.S. Babylon, Inc., U.S.G.S. Sayville, Inc., U.S.G.S. Port Jefferson, Inc., U.S.G.S. Riverhead, Inc., U.S.G.C. Islip, Inc., U.S.G.S. Middle Island, Inc.

Atlas West Corporation is the sole source of supply of all merchandise purchased by U.S. General Supply Corporation and its eight affiliated retail outlets. The address for Atlas West Corporation is identical to that of U.S. General Supply Corporation. All ten corporations operate out of the same address. Harold Rashbaum and Murray Harrow are corporate officers of all ten corporations. Murray Harrow is president of Atlas West Corporation and Harold Rashbaum is the secretary-treasurer.

PAR. 2. Respondents in the course and conduct of their business have been, and are now, engaged in the sale, advertising and offering for sale in commerce of merchandise which they ship or cause to be shipped, when sold, from the State of New York to purchasers located in various other states and maintain and have maintained a course of trade in said merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in the mail order sale of general merchandise is and has been substantial. Among such merchandise so sold and shipped are hand and electric tools, hardware, home appliances and office equipment.

PAR. 3. Respondents are now, and at all times mentioned herein, have been in substantial competition in commerce with other corporations, firms and individuals engaged in the sale and distribution of tools, hardware, home appliances, office equipment and other merchandise.

PAR. 4. In the course and conduct of their business in commerce, and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations in the advertising and sale of said products through their advertising flyer and mail order catalogs with respect to the deliveries, prices, refunds, guarantees, and other policies related to said products.

Typical and illustrative of the statements and representations in said advertising material and mail order catalogs, are the following:

Our huge warehouse stock gives you an inventory no other source can offer to your customers. *All* orders are shipped within 24 hours. In those very rare cases where an item is short your money is returned at once. Nothing is left dangling to complicate matters.

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Add 10% to your remittance to cover POSTAGE, HANDLING AND GUARANTEED DELIVERY.

We stock over 12,000 kinds of tools and accessories; ship from our huge warehouse the day your order arrives. Every item is unconditionally guaranteed: money back without question! A million dollar wholesale inventory at your fingertips—no stock to carry—just order as you need it.

When you order from this catalog, you get real value—NATIONALLY ADVERTISED BRAND NAME MERCHANDISE AT WHOLESALE PRICES.

Remember, this catalog does not offer you discounts, but rather *wholesale* prices that give you a real break on tools for your own use, and prices that give you a handsome profit when selling tools to your friends.

Buy at wholesale from our Million Dollar Inventory of NATIONALLY ADVERTISED BRANDS.

LOWEST PRICES ON AMERICA'S FINEST MERCHANDISE

TOOLS AT WHOLESALE

TOOLS AND HARDWARE WHOLESALE

You can save hundreds of dollars a year on all types of tools and hardware. Nationally known makes, finest quality at WHOLESALE prices. THIS CATALOG DOES NOT OFFER YOU DISCOUNTS BUT RATHER WHOLESALE PRICES THAT GIVE YOU A REAL BREAK ON TOOLS FOR YOUR OWN USE, AND PRICES THAT GIVE YOU A HANDSOME PROFIT WHEN SELLING TOOLS TO OTHERS.

GIANT NEW WHOLESALE TOOL AND HARDWARE CATALOG 180 PAGES OF HAND AND POWER TOOLS FOR THE SERIOUS MINDED CRAFTSMAN, MECHANIC OR HANDYMAN FOR HOME, FARM, WORKSHOP, BUSINESS.

BRAND NEW WHOLESALE TOOL & HARDWARE CATALOG

I ENCLOSE \$1—PLEASE SEND ME MY GIANT NEW FULLY ILLUSTRATED WHOLESALE TOOL CATALOG. I UNDERSTAND THAT WITH MY CATALOG I WILL RECEIVE A CERTIFICATE WORTH \$1 ON MY FIRST PURCHASE OR MY \$1 WILL BE REFUNDED IF I AM NOT 100% SATISFIED.

\$1.00 CREDIT CERTIFICATE—This credit certificate is worth \$1.00 to you. Simply sign your name below and attach to your order. It will be accepted as part payment on your first order. This certificate must be enclosed with your order to insure refund of your \$1.00 catalog deposit.

No need to write a letter to get your own Giant Wholesale Tool Catalog. Just enclose a Dollar Bill in this convenient postage paid envelope and mail right now. You'll get the biggest value a dollar ever bought. This wholesale catalog is guaranteed to make and save you money. You cannot lose! If you are not completely satisfied your dollar will be refunded—no questions asked!!!

NO RISK—MONEY BACK GUARANTEE

GUARANTEE—We guarantee all merchandise to be first quality and brand new. Everything is guaranteed by us and the manufacturer.

You can sell with confidence knowing that every item offered carries a double guarantee, ours and the manufacturers.

The prices listed in this catalog are competitive retail prices.

THIS OFFER IS LIMITED—While the supply of catalog lasts. ACT NOW!

WHOLESALE PRICES—UP TO 50% OFF AND MORE

GET UP TO 50% OFF ON NATIONALLY ADVERTISED NAME BRANDS

—START YOUR OWN BUSINESS—HUGE PROFITS! MORE MONEY!

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The retail prices are plainly shown, but your confidential low wholesale costs are concealed in a code known only to you. You save as much as 50% and more off the advertised retail prices of over 12,000 items of famous name merchandise!

PAR. 5. Through the use of the aforesaid statements and representations, and others of similar import and meaning, respondents have represented that:

- (a) All merchandise is shipped to customers within 24 hours;
- (b) Delivery is guaranteed;
- (c) If dissatisfied, for any reason, the purchaser's money is returned at once and there is a no-risk money back guarantee;
- (d) Only in rare cases may an item be out of stock;
- (e) The products offered for sale in U.S. General Supply Corporation's mail order catalogs, published twice a year, are wholesale prices and that substantial money savings are made by purchasing merchandise through said mail order catalogs;
- (f) The \$1 cost of the catalog will be reimbursed by use of a \$1 credit certificate enclosed in the catalog which will be accepted as part payment on the purchaser's first order;
- (g) If the consumer is dissatisfied, the \$1 cost of the catalog will be refunded, without question;
- (h) All merchandise is guaranteed by both U.S. General Supply Corporation and the manufacturer;
- (i) The retail price comparatives listed in the catalog are competitive retail prices;
- (j) The supply of catalogs is limited;
- (k) Discounts of 50 percent and more off the retail prices of over 12,000 famous brand name items are being offered to those who purchase the mail order catalog and place an order for merchandise.

PAR. 6. In truth and in fact:

- (a) U.S. General Supply Corporation does not ship merchandise to purchasers within 24 hours and delays of from one month to one year have occurred;
- (b) There is no "guaranteed delivery" as parcels are lost in transit and there is a risk in ordering merchandise from respondents as parcels under the value of \$50 are not insured, and no record of any kind is kept by respondents of orders under the value of \$50;
- (c) Respondents do not promptly replace merchandise lost in transit or refund money at once, and will not replace the merchandise, refund the purchaser's money or make any other adjustments unless the original order blank is returned to respondents.

The customer whose order is lost in transit has no effective means of obtaining a refund, replacement or adjustment since the respon-

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dents ship the customers original order blank with the merchandise. If the parcel is lost in transit, the original order blank enclosed in such parcel is also lost and the purchaser is thereby unable to comply with respondents' requirement that the original order blank must be returned in order to obtain refunds, replacements or adjustments. Customers are not advised that they must bear the cost of postage and insurance when returning merchandise to respondent for any reason.

If merchandise is not available, money is not returned to customers "at once" but is deposited in respondents' checking account. Respondents have unduly delayed and hindered their customers from securing refunds or replacements and have granted such refunds or replacements only as a last resort;

(d) In numerous instances, items are often out of stock in respondents' warehouse and are back-ordered from manufacturers located in all parts of the country;

(e) The wholesale prices listed for items in the catalog, including prices for Panasonic television sets, clock radios, transistor radios, tape recorders and table radios, Smith Corona Merchant's manual and electric typewriters and adding machines, Arrow Fastener's stapling machines and staples, Great Neck Saw Manufacturer's saws, axes, hammers, screwdrivers and planes, Milwaukee Electric Tool Corporation's electric drills, electric hacksaws, sander-grinders, plumber's kits, electrician's kits and blade assortments, as well as the prices of other products appearing in U.S. General Supply Corporation's mail order catalogs, do not fall within the usual and customary wholesale selling prices of these products by bona fide wholesale distributors and jobbers located throughout the United States.

In numerous instances, the 10 percent additional charge for "postage, handling and guaranteed delivery" raises the "wholesale" selling prices appearing in respondents' mail order catalogs above the prices that a consumer might pay for the identical merchandise in a retail store;

(f) The \$1 credit certificate enclosed in respondent's mail order catalog is not available to customers unless a minimum initial order of \$20 is placed, and this fact is not revealed to consumers until after the catalog has been paid for and received by them;

(g) The \$1 refund for the cost of the catalog cannot be obtained by dissatisfied purchasers unless the catalog is returned by the purchaser who must pay the postage expense involved. This fact is not

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made known in respondents' advertising prior to the purchase of the catalog;

(h) Respondents' merchandise is not unconditionally guaranteed since certain undisclosed conditions must be met prior to the refund of the customer's money;

(i) The retail price comparatives appearing in U.S. General Supply Corporation's mail order catalogs are inflated, in numerous instances, above the usual and customary retail selling prices at which such products have been sold in retail stores throughout the country;

(j) The supply of mail order catalogs is not limited and additional catalogs are offered for sale by respondent for 50¢ each;

(k) Discounts of 50 percent and more off the usual and customary retail selling prices are not offered on many products and customers purchasing through respondents' mail order catalog may be paying prices above those which they might ordinarily pay in a retail store;

Therefore the statements and representations and acts and practices set forth in Paragraph Four hereof were, and are unfair, false, misleading and deceptive.

PAR. 7. In the further course and conduct of their mail order business, as aforesaid, respondents, on numerous occasions have either failed altogether to answer letters of inquiry or have made inadequate and uninformative responses and have thereby delayed, thwarted, frustrated, and prevented purchasers seeking deliveries of merchandise or refunds.

Respondents do not provide a business telephone listing in the official telephone directory for its location or in any published telephone directory and, in fact, maintain an unlisted business telephone number which is not available to purchasers.

Such practices have resulted in substantial inconvenience, hardship and irritation to purchasers. Therefore, the said practices are unfair, misleading and deceptive.

PAR. 8. The use by respondents of the aforesaid false, misleading, deceptive and unfair statements, representations, acts 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.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public, unfairly divert trade from respondent's competitors and constitute unfair

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methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning 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 the 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 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 Section 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. Respondents U.S. General Supply Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 100 General Place, Jericho, Long Island, New York.

Respondents Harold Rashbaum and Murray Harrow are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above-stated address.

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 respondent U.S. General Supply Corporation, a corporation, its subsidiary and affiliated corporations, its successors and assigns, and respondents Harold Rashbaum and Murray Harrow,

individually, and as officers of said corporate respondent, and respondents' agents, representatives, officers and employees, directly or through any corporate or other device or under any other name or names, in respondents' advertisements, catalogs, or in any other advertising material, in connection with the offering for sale, sale, and distribution of tools, hardware, home appliances, office equipment, auto supplies, garden equipment and any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Failing to make shipments of advertised merchandise within the time period specified in respondents' advertisements, catalogs or in any other advertising material when payment for such goods has been received, or if no time is specified, within a reasonable time not to exceed 21 days, and if shipment is not made within said period, to offer in writing to promptly refund the full purchase price therefor to the purchaser, except as hereinafter provided in Paragraphs (b), (c) and (d) for drop-shipped merchandise. Upon request for said refund, the return of the full purchase price shall be made within 15 days from the date of the receipt of said written request.

(b) Failing to clearly and conspicuously disclose in its catalog and in all other advertising materials, where specific items of merchandise are mentioned, all of those items which are not stocked in respondents' warehouse but are drop-shipped at respondents' request directly to their customers by any manufacturer or supplier.

(c) Failing, in its catalog and in all other advertising materials, to adequately inform all purchasers of drop-shipped merchandise, ordered and paid for, that refunds are available within 15 days from the date of receipt of any written request therefor, if the merchandise has not been received within the time specified in respondents' catalog or in any other advertising material, or within 21 days where no time period has been specified.

(d) Failing to make refunds of all monies paid by purchasers of drop-shipped merchandise within 15 days from the date of receipt of any written request therefor made in accordance with the conditions set forth in Paragraph (c) above.

(e) Failing to disclose in its mail order catalog, when representations are made that merchandise is insured, that only parcels of merchandise in excess of a given dollar amount are insured by respondents or that parcels below such dollar amount are not insured.

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(f) Representing, directly or by implication, that delivery of all merchandise is guaranteed or assured unless all the terms and conditions relating to respondents' replacement of any merchandise not received by purchasers is clearly and conspicuously stated.

(g) Failing when requested, pursuant to a guarantee of satisfaction money back guarantee, or a full refund guarantee, to refund either by cash or by check, the full purchase price of merchandise, together with all charges paid by the purchasers in connection with such purchase, voluntarily, and within the time specified in respondents' advertisements, or if no time is specified, within a reasonable time not to exceed 15 days, or failing to make any other refunds to which a purchaser is entitled within 15 days from the date of the receipt of the written request for such refund.

(h) Misrepresenting, directly or by implication, the dollar amount or quantity of merchandise which is in stock in respondents' warehouse at any given time or that any specific item of merchandise is in stock in said warehouse when in fact said merchandise may be shipped directly to the purchaser by suppliers other than respondents.

(i) Representing, directly or by implication, that respondents are wholesalers unless they in fact (1) make a substantial and significant number of sales to retailers and (2) sell items which they offer at wholesale prices, at prices which do not exceed those usually and customarily paid by retailers for such merchandise to any source of supply.

(j) Representing, directly or by implication, that respondents offer merchandise for sale at wholesale prices, at the lowest wholesale prices, or at prices which do not exceed the prices usually and customarily paid by retailers for such merchandise to any source of supply unless they, in fact, sell items which they offer at wholesale prices, at prices which do not exceed those usually and customarily paid by retailers for such merchandise.

(k) Failing to disclose in all advertising offering its mail order catalog for sale that a fee of \$1, or any amount, is required on all orders under a certain dollar amount.

(l) Failing to disclose, clearly and conspicuously, that charges for postage, insurance, or any other fee or charge in connection with the return of merchandise, or of the catalog itself, shall be borne by the purchaser.

(m) Representing, directly or by implication, that any products are guaranteed, unless the nature and extent of the guar-

antee, the identity of the guarantor, the obligations, if any, of the consumer who purchases said guaranteed product, and the manner in which said guarantor will perform thereunder are clearly and conspicuously disclosed.

(n) Utilizing comparative retail prices which are inflated above the usual and customary current selling prices for such products in retail stores throughout the country.

(o) Misrepresenting, directly or by implication, that there is a limited supply of mail order catalogs available.

(p) Misrepresenting, directly or by implication, the amount of savings available to purchasers of respondents' merchandise.

(q) Failing to maintain adequate records which disclose the facts upon which all representations as to wholesale and retail prices of merchandise, claims of savings afforded to purchasers, and representations of similar import and meaning are based, and from which the validity of any such claims can be established.

It is further ordered, That the corporate respondent maintain a business telephone and list such number in the official telephone directory for its location and in all of its mail order catalogs.

It is further ordered, That respondents shall maintain full and adequate records of purchaser's orders and shipments of merchandise so that requests for refunds, claims or adjustments may be made for non-delivered merchandise or for any other reason.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed changes 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 changes in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all personnel of respondents responsible for the preparation, creation, production or publication of the advertising of all products covered by this 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 in which they have complied with this order, *Provided, however*, That with respect to those portions of the order which require changes to be made in respondents' mail order catalog which is published semi-annually in January and August, a second such report shall be filed within sixty (60) days after June 1, 1972, the date upon which all changes in respondents' catalog required by the terms of this order shall take effect.

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IN THE MATTER OF

KENREC SPORTS INC., ET AL.

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

Docket C-2226. Complaint, May 23, 1972—Decision, May 23, 1972

Consent order requiring a New York City seller of a swimming-aid device to cease misrepresenting the device as a Swim Teacher, that the device assures ideal body position, has been tested and approved by experts in the United States and abroad, misrepresenting the device as safe and secure and requiring on any future packaging and advertising, a statement that the device is not a life preserver.

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 Kenrec Sports, Inc., a corporation, Dennis Eichler and Ezra Waldman, individually and as officers and directors of said corporation, hereinafter referred to as the 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 Kenrec Sports Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 200 Fifth Avenue, New York, New York.

Respondents Dennis Eichler and Ezra Waldman are both individuals and also officers and directors of Kenrec Sports Inc. Their business address is 200 Fifth Avenue, New York, New York.

The individual respondents, Dennis Eichler and Ezra Waldman, formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time past have been engaged in the advertising, offering for sale, sale and distribution of a swimming-aid device designated "Bema Swim Teacher" to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said swimming-aid device and other products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof