

Complaint

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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

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located in various other States of the United States and maintain and at all times mentioned herein have maintained, a substantial course of trade in said swimming-aid devices and other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of said devices, respondents have made certain statements and representations and furnished illustrations with respect thereto in advertising flyers distributed at trade shows, in trade catalogues and on the product packaging itself. Among and typical of said statements, representations and illustrations are the following:

1. Bema Swim Teacher
2. Teaches Swimming in Three Easy Steps
3. Ideal body positioning in the water assures swift development of correct swimming motions.
4. Approved and Endorsed by Don Schollander
5. Tested and Approved by European and U.S. swimming experts
6. Completely Safe and Dependable
7. Designed and Made with Your Safety in Mind
8. An Approved Circle of Safety Sports Product
9. Bema Safety Swim Teacher can be used with confidence on infants, children and adults to overcome their fear of water and to teach them to swim (Depiction of a young 9-11 year old boy in a bathing suit)

PAR. 5. By and through the use of the aforesaid statements, representations and illustrations and others of similar import not specifically set out herein the respondents represented that:

1. Persons using said device, including infants and children, are likely to learn how to swim in three easy steps.
2. Such device assures ideal body positioning in the water for the swift development of correct swimming motions.
3. Such device has been subjected to practical tests conducted under controlled conditions and approved as to all aspects, including safety, by European and U.S. swimming experts, including Don Schollander.
4. Such device is completely safe and dependable, was designed with safety in mind and, therefore, can be used with confidence on infants and other children to overcome their fear of the water and to teach them to swim.

PAR. 6. In truth and in fact:

1. Persons using said device by itself are not likely to learn how to swim in three easy steps. To the contrary its use is limited to the aid of flotation and it will not enable the user to swim in three easy steps. Additional training and instruction would be required.

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2. Such device does not assure ideal or even proper body positioning for the swift development of correct swimming motions; furthermore, such device tends to make a person float vertically with his head in the air instead of horizontally, which is the proper position for swimming.

3. Such device has not been tested and approved. In fact no formal tests of any sort have ever been conducted.

4. Such device is not completely safe and dependable and cannot be used with confidence on infants and other children to overcome their fear of the water and to teach them to swim. Furthermore there are situations and circumstances where the unsupervised use of said device by infants and children could lead to hazardous or dangerous results.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of swimming-aid devices and other products of the same general kind and nature as those sold by respondents.

PAR. 8. 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 into the purchase of substantial quantities of respondents product by reason of said erroneous and mistaken belief.

PAR. 9. 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 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office

proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge 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 afore-said draft of complaint, 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 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 hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

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 officers and directors 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 respondents Kenrec Sports Inc., a corporation, and its officers, and Dennis Eichler and Ezra Waldman, individually and as officers and directors of said corporation, 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 a swimming-aid device designated "Bema Swim Teacher" or any other device of similar design, construction or intended use, in commerce, as "commerce" is

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defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Such device is a Swim Teacher and can teach swimming in three easy steps or any number of steps.

2. Such device assures ideal body positioning in the water for the swift development of correct swimming motions.

3. Such device has been tested and approved as to any and all aspects, including safety, by European and United States swimming experts, including Don Schollander, unless said device has been subjected to practical and effective tests under controlled conditions.

4. Such device is safe and secure by the use of such phrases as "Completely Safe and Dependable," "Designed and Made with Your Safety in Mind," "An Approved Circle of Safety Sports Product" or any other language of similar import.

5. Such device can be used with confidence on infants and children to overcome their fear of the water and teach them to swim unless respondents shall state clearly and conspicuously and in immediate conjunction with any such representation that such device is not a life preserver, should not be used by non-swimmers without proper supervision and should be used only in shallow water.

It is further ordered, That on all future packages, brochures, flyers or other pieces of advertising material describing said device or any other device of similar design, construction or intended use, respondents affirmatively disclose in clear and conspicuous language that said device is not a life preserver, should not be used by non-swimmers without proper supervision and in all cases should be used only in shallow water.

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

It is further ordered, That respondents distribute a copy of this order to all operating divisions and subsidiaries of said corporation and also distribute a copy of this order to all of respondents' personnel involved in the formulation and implementation of respondents' business policies and all other personnel engaged in the advertising, marketing and sale of respondents' products.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Com-

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

IN THE MATTER OF

NATIONWIDE SAFTI-BRAKE DISTRIBUTORS, INC.,
ET AL.

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

Docket C-2227. Complaint, May 23, 1972—Decision, May 23, 1972

Consent order requiring a Rockville, Maryland, seller and distributor of automobile parts, including brake parts, and its parent company to cease misrepresenting prices of particular automotive repair services, representing that any merchandise or service is for sale when in fact it is not, using deceptive representations in order to obtain prospective customers, misrepresenting respondent's size and extent, and using the word "Safti" or any other similar misrepresentation in respondent's trade name or service mark within one year.

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 Nationwide Safti-Brake Distributors, Inc., a corporation, Globe Advertising Co., Inc., a corporation, Market Tire Company of Maryland, Inc., a corporation, and Allan Bratman and David Lawson, individually and as officers of Market Tire Company of Maryland, Inc., 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 Market Tire Company of Maryland, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5481 Randolph Road, Rockville, Maryland.

Said respondent controls and dominates the acts and practices of respondent Nationwide Safti-Brake Distributors, Inc., a wholly-owned subsidiary, which is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5481 Randolph Road, Rockville, Maryland.