

helmets and other products, among other things to cease making unsubstantiated claims regarding the safety and/or superiority of its Grant polycarbonate helmets. Further, respondent is required to (1) recall and retrieve all promotional material containing such statements as "World's Finest Hel-

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met" and "World's Safest Helmet," (2) send gummed strips to all wholesalers and distributors to be placed on the helmet boxes over the statement "World's Finest Helmet" and (3) put warning notices on its helmets that their safety properties may be destroyed if paints, solvents or like substances are used on them.

Appearances

For the Commission: *William C. Erxleben* and *David A. Middaugh*.

For the respondent: *Charles W. Stoll*, of *Irsfeld, Irsfeld & Younger*, Los Angeles, California.

COMPLAINT

The Federal Trade Commission, having reason to believe that Royal Industries, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated and is now violating Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 980 South Arroyo Parkway, Pasadena, California.

PAR. 2. Respondent is now and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of safety helmets and other products.

PAR. 3. In the course and conduct of its business, respondent now causes and has caused its various products, including safety helmets, when sold, to be shipped from its plants and facilities in various States of the United States to distributors and retailers located in various other States of the United States and in Canada. Respondent maintains, and at all times mentioned herein has maintained, a substantial and continuous course of trade in such products, including safety helmets, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In said course and conduct of its business, respondent has made and caused to be made, and continues to make and to cause to be made, in advertising and on cartons in which safety helmets are sold and offered for sale to the general public, certain statements and representations with respect to the purported safety qualities and/or superiority of its helmets. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

Let's face it. Grant Helmets are the best safety helmets money can buy * * *. All helmets meet or exceed government, industry and independent testing laboratory safety standards.

The toughest of them all * * *. Inner liners with shock absorbant qualities to meet all safety standards.

Surpass Z-90 safety standards.

If you care enough to want the best, wear a Grant Helmet.

* * * makes our helmet the world's safest.

* * * Grant Helmets—the safest.

THE TEST OF SAFETY—our research and testing facilities are recognized *by the industry itself* as the best in the business. Helmets and helmet components are subjected to exhaustive penetration and shock absorbancy tests which far surpass the standards set by regulatory agencies. Many of the testing procedures were developed by our own engineers, simply because there were no other ways to test helmets as strong as ours are. Our “crusher,” for example, slams a steel dart into a helmet with the force of 250 pounds. Most fiberglass helmets cannot survive that shock. Our polycarbonate ones can. In fact, our experience shows that conventional testing is not a sufficient indicator of a helmet's safety (it's possible for a helmet to “pass” the test, even while it's being destroyed in the process!). The way we see it, our tests should be the toughest that we—or anyone—can devise. Only then can we say that we make the world's safest helmet.

PAR. 5. By and through the use of the aforesaid statements, and others of similar import and meaning but not expressly set out herein, respondent has represented and is now representing directly or by implication that:

1. Grant polycarbonate helmets are the safest, finest and best safety helmets.
2. Grant polycarbonate helmets have met or exceeded Z-90.1 safety standards and other more rigorous safety tests.
3. Grant polycarbonate helmets are superior to fiberglass helmets with respect to strength and safety.
4. Grant polycarbonate helmets have passed more rigorous tests than any other safety helmets.

PAR. 6. In truth and in fact:

1. Grant polycarbonate helmets are not the safest, or best safety helmets.
2. Scientific tests and other evidence are ambiguous as to whether Grant polycarbonate helmets have at all times in the past met or exceeded Z-90.1 safety standards.
3. Grant polycarbonate helmets are not superior to most fiberglass helmets with respect to strength and safety.
4. Grant polycarbonate helmets have not passed more rigorous tests than any other safety helmets. In fact, no safety helmet with a shell of polycarbonate construction has ever passed certain recognized safety tests which helmets with shells constructed of different materials have passed.

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

PAR. 7. In the further course and conduct of its business, respondent has placed and caused to be placed, and continues to place and cause to be placed, in the interior of each of its polycarbonate shell safety helmets, a notice which reads in substance as follows:

WARNING—unless recommended by the manufacturer, no chemicals, solvents, paints, adhesives, or other substances should be used on this helmet.

Clean only with mild soap and water.

No protective headgear can protect the wearer against all foreseeable impacts. However, for maximum protection under this standard, the helmet must be of good fit and all retention straps must be securely fastened.

This protective headgear is so constructed that the energy of a severe blow is absorbed through partial destruction of the headgear, though damage may not be visible to the naked eye. If it suffers such an impact, it should either be returned to the manufacturer for competent inspection or destroyed and replaced.

By failing to supply any other warning information or explanation in or on such helmets, respondent has failed to disclose, and continues to fail to disclose, the fact that contact with high test gasoline or with the other named substances may substantially reduce or nullify, or even entirely destroy, the impact resistance and other safety properties of said polycarbonate helmets. Respondent has also failed to disclose, and continues to fail to disclose, the fact that such diminution of safety properties is normally invisible and likely to be undetected by the owner and wearer of the helmet. Such facts would, if known, constitute a substantial drawback of said safety helmet to potential purchasers. Thus, respondent has failed to disclose material facts, which, if known by potential purchasers, would affect their decision whether or not to buy said helmet. Therefore, the aforesaid acts and practices were and are misleading, unfair and deceptive.

PAR. 8. The use by respondent of the aforesaid false, misleading, unfair and deceptive statements, representations, acts and practices has had, and now has, the tendency and capacity to mislead and deceive members of the public into the purchase of substantial quantities of the respondent's helmets in reliance upon said statements and representations.

PAR. 9. In the course and conduct of its business and at all times mentioned herein, respondent has been and now is in substantial competition, in commerce, with corporations, firms, and individuals engaged in the sale and distribution of safety helmets of the same general kind and nature as those sold by respondent.

PAR. 10. The aforesaid acts and practices of respondent as herein

alleged were and are to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce and unfair methods of competition 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, 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 thereafter considered the matter and having determined that it had reason to believe that the respondent has 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. Royal Industries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 980 South Arroyo Parkway, Pasadena, California.

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, its successors and assigns, its officers, agents, representatives, and employees directly or through any cor-

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poration, subsidiary, division or other device, shall forthwith cease and desist from representing orally, in writing, visually or in any other manner, directly or by implication, unless such representations are fully substantiated by clear and convincing evidence of controlled scientific tests conducted by experts, the results and methodology of which are available for inspection by the general public, that:

1. Grant polycarbonate helmets are the safest, finest or best safety helmets;
2. Grant polycarbonate helmets are superior to most fiberglass helmets with respect to strength and safety;
3. Grant polycarbonate helmets have passed more rigorous tests than any other safety helmets; and
4. Any product presently manufactured or manufactured in the future by Grant Division of Royal Industries, for as long as such product is manufactured by Grant or any other division or subsidiary of Royal Industries, is comparable or superior to any other product with respect to safety or has met or passed any safety standard or test.

It is further ordered, That respondent shall forthwith cease and desist from representing orally, in writing, visually or in any other manner, directly or by implication, unless such representations are fully substantiated by clear and convincing evidence of controlled scientific tests conducted by experts, the results and methodology of which are available for inspection by the general public, that Grant polycarbonate helmets meet or exceed Z-90.1 safety tests or other more rigorous safety tests.

It is further ordered, That respondent shall clearly and conspicuously disclose *at least* the following warning information in the manner and in each of the places hereinafter specified:

WARNING: DO NOT USE PAINTS, SOLVENTS, CHEMICALS, ADHESIVES, HIGH TEST GASOLINE OR LIKE SUBSTANCES ON THIS SAFETY HELMET. IF SUCH SUBSTANCES ARE APPLIED TO OR COME IN CONTACT WITH THIS HELMET, THE IMPACT RESISTANCE AND OTHER SAFETY PROPERTIES OF THE HELMET MAY BE DESTROYED. THESE DANGEROUS CONDITIONS MAY NOT BE APPARENT OR READILY DETECTABLE BY THE USER.

The aforesaid warning information shall be permanently affixed to the interior of each polycarbonate helmet in such a way as to be easily noticed and read by a person glancing into the interior of the helmet. The same warning information shall also be set forth clearly and conspicuously on a card measuring at least two inches by four inches, affixed to the chin strap or retaining strap of each such helmet.

It is further ordered, That respondent shall forthwith recall and retrieve from distributors and retailers all promotional materials containing the statements "World's Finest Helmet," "World's Safest Helmet," or words of similar import and meaning, in reference to any polycarbonate shell safety helmet manufactured, sold, or distributed by respondent. Respondent shall recall and retrieve said materials from each person, partnership, corporation, or other entity which possesses them for the purpose of selling or offering for sale said helmets to the public or for the purpose of causing said helmets to be sold or offered for sale to the public.

It is further ordered, That respondent shall forthwith send by certified mail return receipt requested, gummed or adhesive strips to each of its wholesalers, distributors, or other persons who possess for purposes of sale, directly or indirectly, to the public, Grant polycarbonate helmets in packaging which bears the statement "World's Finest Helmet." Said gummed or adhesive strips are to be placed over each statement of "World's Finest Helmet" on the helmet packaging in such a manner as will completely cover and block out such statements.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and, along with a copy of the accompanying complaint, to each of the wholesale customers of Grant Division of Royal Industries.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in 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 respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

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IN THE MATTER OF

HELIX MARKETING CORPORATION, ET AL.

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

*Docket C-2076. Complaint Nov. 11, 1971—Modifying Order and Opinion,
Sept. 25, 1973*

Order reopening proceedings and modifying subparagraphs (c), (d), and (g) of Paragraph 3 of the original order to cease and desist, 79 F.T.C. 711, 36 F.R. 22821, which prohibit the threat of legal action or collection action, by expanding said paragraphs to permit such assertions to be made if respondents can establish certain affirmative defenses.

Appearances

For the Commission: *Joan Bernstein*, Deputy Director of Consumer Protection.

For the respondents: *Geist, Netter & Marks*, New York, New York.

OPINION OF THE COMMISSION

On May 14, 1973, respondent Helix Marketing Corporation filed a petition on behalf of captioned respondents to reopen the proceeding for the purpose of modifying subparagraphs 3(c), 3(d) and 3(g) of the order to cease and desist entered by the Commission on November 3, 1971. The Acting Director, Bureau of Consumer Protection filed an answer dated June 8, 1973, not opposing reopening, but proposing changes different from those advanced by respondents. Thereupon, the Commission issued, on June 19, 1973, an Order Proposing Modification of Order to Cease and Desist, ordering respondents to show cause why the modifications proposed therein should not be adopted. Respondents have replied by memorandum received August 9, 1973, and the Bureau of Consumer Protection has answered by memorandum received September 10, 1973.

Upon consideration of the papers before it, the Commission is of the view that the original order to cease and desist should be modified largely in accordance with the Commission's proposal of June 19, 1973, with one amendment [in subparagraph 3(c)] to reflect arguments raised by respondents in their petitions. (A few stylistic changes have also been made in the June 19, 1973, proposal to clarify the meaning of certain provisions.)