

FEDERAL TRADE COMMISSION ACT

Docket C-2472. Complaint, Oct. 30, 1973—Decision, Oct. 30, 1973.

Consent order requiring a Fairfield, N.J., seller and distributor of swimming pools and other merchandise, among other things to cease representing its filters, furnished with their pools, as being "Lifetime" filters; representing themselves as the exclusive source for "Lifetime" filters; misrepresenting the price of their pools as complete; representing prices as special or reduced; failing to maintain adequate records.

Appearances

For the Commission: *John A. Crowley* and *Kathryn E. McDonnell*.

For the respondents: *pro se*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission

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Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Bermuda Pool Co., Inc., a corporation, and Malcolm A. White and Herbert Smith, individually and as officers of said corporation, hereinafter sometimes 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 Bermuda Pool Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 665 Route 46, Fairfield, N.J.

Respondents Malcolm A. White and Herbert Smith are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution to the public of swimming pools and other merchandise.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase and installation of their swimming pools and other products, respondents and their salesmen or representatives have made, and are now making, numerous statements and representations in advertising and promotional material and through oral statements and representations with respect to the nature and limitations of their offers, their prices, their purchasers' savings, their warranty and the durability of their products.

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

Prices include * * * * * Installation, Walls, Liner, Filter, Ladder, Skimmer, etc.

A Bermuda Exclusive—The Lifetime Filter

Replace your old filter with a Lifetime Filter

Save up to \$800

Save up to 50%

End of Season Sale—\$700

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, separately and in connection with oral statements and representations of their salesmen or representatives, respondents have represented, and are now representing, directly or by implication, that:

1. Their advertised prices include all items usually and customarily purchased as part of a complete pool installation.

2. The "Lifetime Filter" is available exclusively with the purchase of a swimming pool from respondents.

3. The filter provided with their pools is a "Lifetime Filter" without qualification as to the time period covered by the term lifetime.

4. Their swimming pools are being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of reductions from respondents' regular selling price.

PAR. 6. In truth and in fact:

1. The prices advertised do not include all items usually and customarily purchased as a part of a complete pool installation. The advertised price does not include coping.

2. The "Lifetime" filter is not sold exclusively to respondents nor is it available only from respondents. The said filter is sold by the manufacturer to other swimming pool companies which are in direct competition with respondent Bermuda.

3. The "Lifetime" filter provided with respondents' swimming pools is not guaranteed for a period denominated as a lifetime. The filter is guaranteed by the filter manufacturer for a five-year period with a pro-rata share of the repair or replacement cost being borne by the purchaser after the first year.

4. Respondents' swimming pools are not being offered for sale at special or reduced prices, and savings are not thereby afforded to their purchasers because of reductions from respondents' regular selling prices. In fact, the prices advertised do not represent reductions from the prices at which said pools were sold or of-

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ferred for sale for a reasonably substantial period of time in the recent, regular course of their business.

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 aforesaid business, and at all times mentioned herein, respondents have been, and are now in substantial competition, in commerce, with corporations, firms and individuals in the sale of swimming pools and other merchandise of the same general kind and nature sold by respondents.

PAR. 8. The use by the 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' swimming pools and other merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged 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(a) (1) 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 aforesaid 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 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 Bermuda Pool Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 665 Route 46, Fairfield, N.J.

Respondents Malcolm A. White and Herbert Smith 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 respondents Bermuda Pool Co., Inc., a corporation, its successors and assigns, and Malcolm White and Herbert Smith, individually and as officers of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of swimming pools or other products or merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the filter furnished with respondents' swimming pools is a "Lifetime" filter.

2. Representing, directly or by implication, that the respondents are the exclusive source for filters manufactured by the Lifetime Filter Equipment Corp.

3. Representing, directly or by implication, that any price for respondents' products is a complete price for all items usually purchased for use with a swimming pool without

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clearly and conspicuously listing those items not included in said price which are usually purchased by respondents' customers.

4. Representing, directly or by implication, that any price for respondents' products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent, regular course of their business; or misrepresenting in any manner, their prices or the savings available to their purchasers.

5. Failing to maintain adequate records, (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims of the type discussed in Paragraph 1 of this order are based; and (b) from which the validity of any savings claim, including former pricing claims and similar representations of the type described in Paragraph 1 of this order can be determined.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the advertising, offering for sale or sale of respondents' products and that respondents secure and retain a signed statement acknowledging the receipt of said order from each such person.

It is further ordered, That respondents shall 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 the 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.

It is further ordered, That the individual respondents named herein shall promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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IN THE MATTER OF
WATCHUNG POOL SUPPLIES, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2473. Complaint, Oct. 30, 1973—Decision, Oct. 30, 1973.

Consent order requiring a North Plainfield, N.J., retailer and distributor of swimming pools, related accessories, and other products and merchandise, among other things to cease misrepresenting products or services as free or at a discount; misrepresenting prices as reduced or usual and customary; misrepresenting savings that purchasers may realize.

Appearances

For the Commission: *John A. Crowley and Kathryn E. McDonnell.*

For the respondents: *Hughes, McElroy, Connell, Foley & Geiser, Newark, N.J.*

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 Watchung Pool Supplies, Inc., a corporation, and Frank Jannuzzi and Frank C. Jannuzzi, individually and as officers of said corporation, hereinafter sometimes 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 Watchung Pool Supplies, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at Route 22 and Maple Avenue, North Plainfield, N.J.

Respondents Frank Jannuzzi and Frank C. Jannuzzi are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of swimming pools, swimming pool accessories and other