

CARE-FREE SWIMMING POOL MANUFACTURING CORP.,
ET AL.

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

Docket C-2533. Complaint, Aug. 27, 1974—Decision, Aug. 27, 1974

Consent order requiring a Copiague, N. Y., manufacturer, seller, and installer of in-ground and above-ground swimming pools and two wholly-owned subsidiaries, among other things to cease misrepresenting its offers as limited, prices as special or reduced; its guarantees; and the qualifications and abilities of its personnel and staff.

Appearances

For the Commission: *John A. Crowley, Phyllis L. Kaye and Eileen Lerman.*

For the respondents: *Smith, Panish & Getlan, New York, N. Y.*

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 Care-Free Swimming Pool

Manufacturing Corp., Care-Free Swimming Pool of Copiague, Inc., and Monaco Mfg. Corp., corporations, and Lewis Goldstone and Michael Weiss, individually and as officers of said corporations, 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 Care-Free Swimming Pool Manufacturing Corp. 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 1270 Sunrise Highway, Copiague, N. Y.

Respondent Care-Free Swimming Pool of Copiague, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and is a wholly-owned subsidiary of Care-Free Swimming Pool Manufacturing Corp., with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondent Monaco Mfg. Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and is a wholly-owned subsidiary of Care-Free Swimming Pool Manufacturing Corp., with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondents Lewis Goldstone and Michael Weiss are individuals and officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now and have been, for some time last past, engaged in the manufacturing, advertising, offering for sale, sale, distribution and installation, at retail, of in-ground swimming pools. Also, respondents are now and have been, for some time last past, engaged in the advertising, offering for sale, sale, distribution and installation of above-ground swimming pools.

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 York 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 aforesaid business, and for the purpose of inducing the purchase and installation of their swimming pools, respondents and their salesmen or representatives have made,

Complaint

84 F.T.C.

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, and the quality of their product and workmanship.

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

HUGE PRE-SEASON SALE * * *
\$2695 COMPLETELY INSTALLED
* * * * MADE TO LAST A LIFETIME
* * * * REQUIRE NO PAINTING
* * * * ALMOST MAINTENANCE FREE
LIFETIME FILTRATION SYSTEM

PAR. 5. In the further course and conduct of their business as aforesaid, and for the purpose of inducing the purchase and installation of their products, respondents and their salesmen or representatives have made, and are now making oral statements and representations to potential purchasers that respondents' swimming pools are unconditionally guaranteed and that the installation of said swimming pools will be carried out by trained, competent personnel without damage to the purchaser's property or danger to said purchasers, their relatives or neighbors. Additionally, respondents and their salesmen or representatives are making and have made representations regarding the date on which installation will be completed and the customer will be able to use the pool.

PAR. 6. 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. The advertised offer of a pool for \$2695 completely installed is a special price available only for a limited period of time.
2. Their swimming pools will never require painting.
3. Their swimming pools will require almost no maintenance.
4. The filters supplied with respondents' swimming pools are lifetime filters.
5. Their swimming pools are unconditionally guaranteed.
6. Their swimming pools will be installed by competent, reliable and dependable personnel in a safe, workmanlike manner.
7. The pools will be installed, and usable, by a specified date.

PAR. 7. In truth and in fact:

1. Respondents' advertised offer of a swimming pool for \$2695 is not a special price nor is it available for only a limited period of time. Said product is advertised regularly at the represented price and on the terms and conditions therein stated.

2. Respondents' above-ground swimming pools will require painting.

3. Respondents' swimming pools require regular maintenance and upkeep.

4. The filters supplied with respondents' pools are not lifetime filters.

5. Respondents' swimming pools are not warranted or guaranteed in every respect without conditions or limitations. Such warranty or guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the warranty and fails to set forth the nature and extent of the warranty, the identity of the warrantor and the manner in which the warrantor will perform thereunder.

6. The installation of respondents' swimming pools is not, in many cases, performed by competent personnel in a safe, workmanlike manner.

7. Respondents, in a substantial number of instances, have failed to complete installation of individual pools by the promised due date.

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

PAR. 8. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of their swimming pools by the general public, respondents directly or indirectly have engaged in the additional act and practice of promising prompt and continuous installations and after having delivered materials to a customer and begun excavation, have abruptly and arbitrarily ceased work, leaving the customer's property littered with dirt, sand, tools and equipment. In addition to the inconvenience and danger resulting from this condition, purchasers are prevented from contracting with other firms which are competitors of respondents for the sale and installation of swimming pools. Therefore respondents' statements, representations, acts and practices as set forth herein were, and are, false, misleading and deceptive acts and practices and unfair methods of competition in commerce.

PAR. 9. The acts and practices of respondents, as herein alleged in Paragraph Eight, are unethical, exploitative and cause substantial injury to consumers and have enabled respondents unfairly to receive remuneration and financial gain in connection with respondents' other

deceptive and unfair sales practices in commerce as set forth in Paragraphs Four, Five and Six. All of respondents' practices are intertwined and mutually supportive so as to comprise a totality of unfair and deceptive practices in commerce.

PAR. 10. 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, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals in the sale and installation of swimming pools of the same general kind and nature as those sold by respondents.

PAR. 11. 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 installations by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto 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 provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty

(60) 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. Respondent Care-Free Swimming Pool Manufacturing Corp. 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 1270 Sunrise Highway, Copiague, N. Y.

Respondent Care-Free Swimming Pool of Copiague, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and is a wholly owned subsidiary of Care-Free Swimming Pool Manufacturing Corp., with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondent Monaco Mfg. Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and is a wholly owned subsidiary of Care-Free Swimming Pool Manufacturing Corp., with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondents Lewis Goldstone and Michael Weiss are individuals and officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

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 Care-Free Swimming Pool Manufacturing Corp., its successors and assigns, Care-Free Swimming Pool of Copiague, Inc., its successors and assigns, and Monaco Mfg. Corp., its successors and assigns, and Lewis Goldstone and Michael Weiss, individually and as officers of said corporations, 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 or installation of in-ground and/or above-ground swimming pools, or any other products, 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 any of respon-

dents' offers to sell products, installations or services are limited as to time or restricted or limited in any other manner, unless such represented limitations or restrictions are actually in force or in good faith adhered to.

2. Representing, directly or by implication, that any price for respondents' products, installations or services is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products, installations or services 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.

3. Representing, directly or by implication, that any of respondents' products, installations or services are warranted or guaranteed unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such warranty or guarantee.

4. Making representations that installation of respondents' swimming pools will be handled by workmen who are skilled, reliable and dependable unless respondents can demonstrate to the Federal Trade Commission that their workmen have actually performed in the past for respondents or others in such manner.

5. Promising to complete pool installations by a given date, as an inducement to the customer or for any other reason, unless respondents have a reasonable basis for believing such promised completion date is realistic and can be met in the normal course of their business operations.

6. Failing, after work has commenced on the installation of any pool, to provide continuous installation until completion except where such is impossible due to circumstances beyond the control of respondents. Contract commitments to other purchasers either prior to or subsequent to the commencement of the installation shall not be considered circumstances beyond the control of respondents.

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 offering for sale or sale of respondents'

products, installations or services, in the consummation of any extensions of consumer credit or in any aspect of preparation, creation or placing of advertising and that respondents secure a signed statement acknowledging receipt of such order from each such person.

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

It is further ordered, That the individual respondents named herein 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.

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.

IN THE MATTER OF

MR. HAIRMAKER, INC., TRADING AS TRANSWORLD
HAIRMAKERS, ETC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTIONS 5 & 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2534. Complaint, Aug. 28, 1974—Decision, Aug. 28, 1974

Consent order requiring a Philadelphia, Pa., operator of salons for and promoter of an implant hair replacement system, among other things to cease deceptively advertising its implant hair replacement system.