

FEDERAL TRADE COMMISSION ACT

Docket C-2571. Complaint, Oct. 8, 1974—Decision, Oct. 8, 1974

Consent order requiring a Seattle, Wash., trade association promoting the interests of member firms in the marine industry, including manufacturers and distributors of boats, marine engines, marine accessories, etc., among other things to cease misrepresenting the availability of fuel for recreational boating without substantiating material providing a reasonable basis for such claims.

Appearances

For the Commission: *Arnold E. Howard.*

For the respondent: *Jon M. Johnson, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Northwest Marine Industries, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission

that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Northwest Marine Industries, Inc. is a trade association organized, existing and doing business as a non-profit corporation under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1910 Fairview East, Seattle, Wash.

PAR. 2. Respondent was organized and is maintained for the purpose of promoting, fostering and advancing the interests of its members who consist of firms engaged in businesses relating to the marine industry, including but not limited to manufacturers, distributors, and retailers of boats, marine engines, marine accessories, etc. Respondent has been and is now engaged in a wide range of activities of mutual interest to its members, including but not limited to the dissemination, publishing, and distribution of advertisements designed to promote the sale of aforesaid marine products.

PAR. 3. In the course and conduct of its business, respondent causes various documents, communications and promotional materials to be transmitted by the United States mail and other interstate mechanisms, to and from respondent's office and respondent's members located in six states of the United States. Respondent also causes promotional advertisements to be published in media of interstate circulation.

Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent has made representations concerning the availability of fuel for recreational boating in newspapers of interstate circulation. Typical and illustrative of the representations in said advertisements, but not all inclusive thereof, are the following which appeared on December 17, 1973:

While no one can deny that the fuel shortage will have an effect on recreational boating, current estimates are that there will be only a 15 percent reduction in the amount of fuel available this year versus last year.

There will be enough fuel to go around.

PAR. 5. By and through the use of the aforesaid representations, respondent has represented, directly or by implication, that at the time the aforesaid statements and representations were made, respondent had a reasonable basis from which to conclude that:

1. Recreational boaters will have access to fuel equal to 85 percent of the amount of fuel available in 1972.

2. There will be sufficient fuel available for recreational boating to

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supply everyone without significant changes from recreational boating usage patterns of prior years.

PAR. 6. In truth and in fact, at the time the aforesaid representations were made, respondent had no reasonable basis to conclude that they were true.

Therefore, the representations in Paragraphs Four and Five were, and are, misleading, deceptive and unfair.

PAR. 7. The use by respondent of the aforesaid misleading, deceptive and unfair representations has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts or practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or 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 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 sixty days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its com-

plaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Northwest Marine Industries, Inc. is a trade association organized, existing and doing business as a non-profit corporation under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1910 Fairview East, Seattle, Wash.

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 Northwest Marine Industries, Inc., its successors and assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of marine equipment, including but not limited to power boats, boat trailers, marine engines, marine hardware and accessories, etc., in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing orally, in writing, visually or otherwise, directly or by implication, that any general or specific quantity of fuel for recreational boating is, or will be, available, unless at the time of such representation said respondent has a reasonable basis for such representation which shall consist of quantitative data based on a statistically valid sample, or competent scientific or economic data or other appropriate substantiating material.

It is further ordered, That respondent shall, at all times subsequent to the effective date of this order, maintain complete records relative to the manner and form of its compliance with this order during the immediately preceding two-year period. Such records shall include all advertising, promotional literature, the basis for all applicable advertising claims, correspondence with persons who formulate or place advertising, and other pertinent documents, and shall be made available for inspection and photocopying by authorized representatives of the Federal Trade Commission upon reasonable notice at respondent's place of business or other properly designated location.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each operating division, to all present and future personnel of respondent engaged in the preparation, creation or placing of advertising, and to all present and future agencies engaged in the preparation, creation or placing of advertising on behalf of respondent;

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and that respondent secure from each such person and agency a signed statement acknowledging receipt of said order.

It is further ordered, That respondent notify the Commission at least thirty days prior to any proposed change in the corporate respondent such as dissolution, assignment or the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent shall, within sixty 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.

IN THE MATTER OF

TRAILER COACH ASSOCIATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE