

Complaint

IN THE MATTER OF
SAXONY POOLS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 8962. Complaint* Apr. 19, 1974-Decision, July 28, 1975*

Consent order requiring a Linden, N.J., seller and distributor of swimming pools, among other things to cease using bait and switch tactics; misrepresenting prices; misrepresenting their product as "maintenance free;" furnishing false or misleading guarantees.

Appearances

For the Commission: *John A. Crowley* and *Alan F. Rubinstein*.

For the respondents: *Edward B. Dreskin*, Newark, N.J., and *Edwin S. Rockefeller, Bierbower & Rockefeller*, Wash., D.C.

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 Saxony Pools, Inc., a corporation, and Simon Sax, individually and as an officer 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 Saxony Pools, 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 416 E. Elizabeth Ave., Linden, N.J.

Respondent Simon Sax is the president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is 45 Hassa St., Linden, N.J.

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 and other merchandise and home improvement products.

PAR. 3. In the course and conduct of their business as aforesaid, respondents cause advertisements designed to secure leads to potential

* Reported as amended by the administrative law judge's order of Aug. 23, 1974, to reflect that there have been changes in the name and address of the corporate respondent and in the address of the individual respondent.

purchasers of swimming pools and other merchandise and home improvement products to be placed in various newspapers and other publications. The respondents are responsible for the content of said advertisements.

PAR. 4. In the further course and conduct of their business as aforesaid, respondents sell and distribute the aforementioned swimming pools and other merchandise and home improvement products by causing said swimming pools and other merchandise and home improvement products to be shipped from the places of business of their various suppliers in the United States to purchasers at retail in States other than the States from which such shipments originate.

There is now, and has been, at all times mentioned herein, a substantial and continuous course of trade in said swimming pools and other merchandise and home improvement products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have made statements and representations with respect thereto in advertisements inserted in newspapers of general interstate circulation, of which the following are typical and illustrative, but not all inclusive:

Low Low Pre-Season Priced! \$499 Completely Installed

Only \$599 Completely Installed

Unbelievably Priced from ONLY \$599 Completely Installed

NEVER NEEDS MAINTENANCE

PAR. 6. In the further course and conduct of their business as aforesaid and for the purpose of inducing the sale of their products, respondents, their representatives, agents or employees have made, and are now making oral statements and representations to the effect that respondents' products are fully guaranteed for a period of ten years and that customers will receive a lifetime filter with their pool and that one of respondents' pools has been advertised in a national magazine at a price of \$5,000 and respondents' lower price for said pool is a special price and that the pools of some customers will be used as "demonstrators."

PAR. 7. 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 offers set out in their advertisements are bona fide offers to sell swimming pools of the kind therein described and on the terms and conditions stated.

2. Their advertised offer of a pool for \$499 is a special offer made only during the "pre-season" period.
3. Respondents' pools are maintenance free or will not require periodic inspection or servicing to remain in useable condition.
4. Some of the swimming pools sold by respondents are fully guaranteed for a period of ten years.
5. The filter provided with respondents' pools is a "Lifetime Filter" without qualification as to what period is covered by the term lifetime.
6. One of respondents' pools has been advertised in a nationally distributed magazine at a price of \$5,000 and, therefore, respondents' customers are being offered a bargain or special price for said pool which would effect a savings amounting to the difference between the nationally advertised price and the price at which the pool is being sold.
7. The pools of certain of respondents' customers will be used for the purpose of demonstrating respondents' pool and as a result of such use, said customers will receive a discount from the purchase price of the pool or will receive a referral fee or monetary allowance for each pool sale resulting therefrom.

PAR. 8. In truth and in fact:

1. The offers set out in respondents' advertisements are not bona fide offers to sell swimming pools of the kind therein described at the prices or on the terms and conditions stated but are made for the purpose of obtaining leads to persons interested in the purchase thereof. After obtaining such leads, individual respondent Simon Sax or respondents' salesmen or representatives call upon such persons and disparage respondents' advertised swimming pools and otherwise discourage the purchase thereof and attempt to sell and frequently do sell different and more expensive swimming pools.
2. The advertised offer of a \$499 pool is not a special offer made only during the "pre-season" period. Said pool is advertised regularly at the represented price and on the terms and conditions therein stated.
3. Respondents' pools are not maintenance free. In fact, they require such maintenance as is usual and customary for swimming pools.
4. Respondents' swimming pools are not warranted in every respect without limitations or conditions for a period of ten years or any other period of time. 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 or guarantee and fails to set forth 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.
5. 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.

6. Respondents have not sold their pool for \$5,000, but use this price to mislead potential customers into the belief that they are receiving a special or discount price. In fact respondents do not have a regular selling price for this pool; the price for which the pool is sold is often substantially below \$5,000 and varies from purchaser to purchaser depending upon the resistance of the particular customer.

7. After the installation of respondents' swimming pool is completed, the purchaser's pool will not, in a substantial number of instances, be used for demonstration or advertising purposes by respondents. As a result of allowing, or agreeing to allow their pools to be used as models, purchasers are not granted reduced prices, nor do they receive allowances, discounts, commissions or referral fees.

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

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in competition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of swimming pools and other merchandise of the same general kind and nature as sold by respondents.

PAR. 10. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices had had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements 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. 11. The aforesaid acts and practices of the respondents were and are to the injury and prejudice of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent 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, 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 set forth 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 makes the following jurisdictional findings, and enters the following order:

1. Respondent Saxony Pools, 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 416 E. Elizabeth Ave., Linden, N.J.

Respondent Simon Sax is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his business address is the same as that of said corporation.

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 Saxony Pools, Inc., a corporation, its successors and assigns, and its officers and Simon Sax, individually and as an officer of said corporation, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, distribution or installation of swimming pools or any home improvement product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations designed to obtain leads or prospects for the sale of other merchandise.

2. Representing directly or indirectly that any products or services are offered for sale when such is not a bona fide offer to sell said products or services.

3. Disparaging any product, installation or service which is advertised or offered for sale by respondents.

4. Representing, directly or by implication, through the use of terms such as special, preseason, reduced or sale price, or words of similar import and meaning, that a swimming pool or any home improvement product has been reduced in price unless the lower price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities by respondents in the recent regular course of business or when the price for such merchandise has not been established by respondents through offering said merchandise for sale in good faith for a substantial period of time in the recent regular course of business; or misrepresenting in any manner that respondents' purchasers or prospective purchasers will be granted reduced prices or will receive discounts, referral fees or allowances of any type.

5. Representing that the swimming pools or any home improvement products sold or offered for sale by respondents are maintenance free, or employing representations of similar meaning and import.

6. Representing directly or indirectly 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.

7. Representing, directly or by implication, through the use of the term "Lifetime," or through any other phrase or term, that the filter will last for the period of a lifetime or for any other period of time which is in excess of the time period covered by the filter's guarantee or warranty.

8. Representing directly or indirectly that any saving is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

9. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced either from the price at which it has been usually and customarily sold by respondents in the recent regular course of business, or from the price at which it has been

usually and customarily sold at retail in the trade area where the representation is made.

It is further ordered, That respondents shall maintain business records adequate to establish that the pricing claims and similar representations of the type referred to in Paragraph 4 of this order constitute a significant reduction from the prices at which such merchandise has been sold in substantial quantities or offered for sale in good faith by respondents for a substantial period of time in the recent regular course of their business.

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

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 the order.

It is further ordered, That respondents shall forthwith distribute a copy of this order to all operating personnel, agents or representatives concerned with the promotion, sale, distribution or installation of swimming pools or any home improvement product and secure from each such person a signed statement acknowledging receipt of said 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.
