

IN THE MATTER OF
TARA INDUSTRIES, INC., ET AL.

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

Docket C-2736. Complaint, Oct. 6, 1975-Decision, Oct. 6, 1975

Consent order requiring a Fords, N.J., seller and distributor of swimming pools and swimming pool accessories, among other things to cease misrepresenting the availability of merchandise; using bait advertising; disparaging products offered for sale; misrepresenting reductions in prices; misrepresenting guarantees; failing to disclose customer's right to cancel contracts within specified time frames; and failing to make material disclosures as to the major structural components of their swimming pools.

Appearances

For the Commission: *John A. Crowley.*

For the respondents: *Pro se.*

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 Tara Industries, Inc., a corporation, and James Mac Dermott, 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 Tara Industries, 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 554 New Brunswick Ave., Fords, N.J.

Respondent James Mac Dermott is an individual and an officer of Tara Industries, Inc. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His 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 and swimming pool accessories.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, the aforementioned swimming pools and swimming pool accessories, when sold, to be shipped from the places of business of their supplier in the United States to purchasers thereof located in States other than the State 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 swimming pool accessories in or affecting 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 of their products, respondents have made statements and representations with respect thereto in advertisements inserted in newspapers of general interstate circulation and by oral statements and representations made by respondents, their representatives, agents or employees with respect to the nature and limitations of their offers, their prices, their purchasers' savings and the quality of their products.

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

ACT NOW

31' x 16'

Outside

5' x 24' x 4'

Swim

Prices will

NEVER BE LOWER!

SWIMMING POOL

885

Complaint

Area

only \$549,
Completely
Installed

Sensational PRE-SEASON OFFER

New

1973

Outside Dimensions 16'x31'

SWIMMING POOL
Swim Area 15'x24' — 4' Deep
\$689
Completely Installed

Sensational PRE-SEASON OFFER

New

1973

Outside Dimensions 16'x31'

SWIMMING POOL
Swim Area 15'x24' — 4' Deep
\$889
Completely Installed

* * * Unconditionally guaranteed for 10 years.

* * * Swimming pools are maintenance free.

* * * Usual selling price \$6000.

* * * Reduced Prices * * * use of Pools as models or demonstrators.

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, 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 offers of a swimming pool for \$689 or \$889 is a special or sale price and respondents' purchasers or potential purchasers are being offered a price for said pool which would effect a savings amounting to the difference between the special or sale price and some higher price at which such pool is usually and customarily sold.

3. Swimming pools sold by respondents are maintenance free.

4. Some swimming pools sold by respondents are unconditionally guaranteed for a period of ten years.

5. Certain swimming pools sold by respondents are usually sold at prices higher than those offered to potential purchasers and therefore respondents' purchasers are being offered a special or bargain price for said pools which would effect a savings amounting to the difference between the usual and customary price and the price at which the pools are being sold.

6. After the installation of their pool is completed, some purchasers who permit their pools to be used for demonstration and advertising

purposes by respondents in selling pools to other persons would receive an allowance or reduction in price.

PAR. 6. 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 purchasing said pools. After obtaining such leads, respondent Mac Dermott, 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 swimming pools are not being offered for sale at special or reduced prices and savings are not thereby afforded to purchasers from respondents' usual and customary selling price.

3. The swimming pools sold by respondents are not maintenance free.

4. The swimming pools sold by respondents are not warranted in every respect without conditions or limitations for a period of ten years or any other period of time. Such warranty or guarantee as may be provided is subject to numerous terms, conditions and limitations with respect to the duration of the warranty or guarantee. The purchaser is not informed of 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 until after the installation of the swimming pool.

5. Certain swimming pools sold by respondents have not usually been sold at prices higher than those offered to potential purchasers. Respondents use the stated higher price to mislead potential purchasers into the belief that they are receiving a special or discount price. Respondents do not have a usual and customary selling price for these pools and the prices at which these pools are sold is often substantially below the stated price and varies from purchaser to purchaser depending upon the resistance of the particular purchaser.

6. After the installation of the swimming pool sold by respondents is completed, the purchaser's pool will not, in most 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 demonstrators or models, purchasers are not granted reduced prices or allowances.

Therefore, the statements and representations as set forth in Paragraph Four hereof, were, and are, false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program to induce the purchase of their

swimming pools and swimming pool accessories, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six above, respondents or their salesmen or representatives have induced purchasers to sign contracts upon initial contact by not giving the purchaser sufficient time to carefully consider the purchase and consequences thereof.

PAR. 8. The use by 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 such statements were and are true and into the purchase of substantial quantities of respondents' swimming pools and swimming pool accessories by reason of said erroneous and mistaken belief.

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

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting 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 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 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 (60) 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 Tara Industries, 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 554 New Brunswick Ave., Fords, N.J.

Respondent James Mac Dermott is an individual and is an officer of said corporation. He formulates, directs and controls the acts and practices of said corporation and his 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, Tara Industries, Inc., a corporation, its successors and assigns, and its officers, and James Mac Dermott, individually and as an officer of the aforesaid corporation and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution or installation of swimming pools or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or offering for sale any products for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered, and respondents maintain an adequate and readily available stock of said products

2. 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.

3. 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.

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

5. Representing, directly or by implication, that any price for a swimming pool or other product or service sold by respondents is a special, preseason or sale price, when such price does not constitute a significant reduction from an established selling price at which such swimming pool, product or service has been sold in substantial quantities by respondents in the recent, regular course of business.

6. Representing, in any manner, that the swimming pools or any other products sold by respondents are maintenance free or require no periodic servicing or inspection.

7. 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.

8. Representing that by purchasing any merchandise, purchasers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale at retail in good faith for a reasonably substantial period of time in the recent, regular course of business.

9. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of any merchandise sold or offered for sale by respondents.

10. Representing, directly or indirectly, that any price is reduced from respondents' former price if records customarily maintained by respondents fail to establish that such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

11. Misrepresenting, directly or indirectly, that the pool of any of respondents' purchasers or prospective purchasers will be used for any type of advertising, demonstration or model or that as a result of such use, respondents' purchasers or prospective purchasers will be granted reduced prices or will receive a discount.

12. Failing to furnish the buyer with a fully completed receipt or

copy of any contract pertaining to such sales at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

13. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[*enter date of transaction*]

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENTS EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE: OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO _____ [Name of seller] , AT _____ [address of seller's place of business] _____ , NOT LATER THAN MIDNIGHT OF _____ (Date) .
I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

14. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

15. Including in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

16. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

17. Misrepresenting in any manner the buyer's right to cancel.

18. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

19. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

20. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or abandon any shipped or delivered goods.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the State in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the State in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

It is further ordered, That respondents maintain records, to be

furnished upon request of the Federal Trade Commission or its staff, which disclose the factual basis for any representations or statements made with respect to any prohibition or affirmative disclosure requirement of this order, including, but not limited to, a copy of each advertisement in which a swimming pool is offered for sale at a specified price, the volume of sales of such advertised pool at the advertised price and the name and address of each purchaser of such advertised pool.

It is further ordered, That in any advertisement for swimming pools, respondents shall disclose the material composition of the major structural components of said swimming pool including pool walls, deck, supporting members, rails and liner. Where print advertisements are utilized by respondents, said disclosures shall be set forth in a type size sufficient to clearly and conspicuously disclose the material composition of the said components to a potential purchaser. Where a pool requires periodic painting to preserve or protect wooden components thereof, respondents shall clearly and conspicuously set forth said fact in type of the same size used to list the material composition of major structural components of said swimming pools.

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 and distribution of swimming pools or any other product and secure from such person a signed statement acknowledging receipt of said order.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or

future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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.
