

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

STEREO EQUIPMENT SALES, INC. T/A BALTIMORE
STEREO WHOLESALERS, ETC., ET AL.

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

Docket C-2740. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a Timonium, Md., mail-order seller of stereo equipment and components, and related merchandise, among other things to cease soliciting prepaid orders if respondent cannot ship ordered merchandise within a stated time period; failing to make refunds; failing to maintain records; failing to disclose the shipping weight of merchandise; and misrepresenting any of their divisions as wholesalers.

Appearances

For the Commission: *Alan L. Cohen* and *Thomas J. Keary*.

For the respondents: *H. George Schweitzer, Heffelfinger, Schweitzer & Rabil*, Wash., D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Stereo Equipment Sales, Inc., a corporation, doing business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters, and Benjamine Shumate, 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 Stereo Equipment Sales, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 7A Aylesbury Rd., Timonium, Md. Such

corporation does business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters.

Respondent Benjamine Shumate is an individual and an officer 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 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 stereo equipment and components and other related merchandise to the public by mail order and through retail outlets.

PAR. 3. In the course and conduct of their business, respondents are causing, and for some time last past have caused, said merchandise, when sold, to be shipped from their place of business located in the State of Maryland to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. 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 or affecting commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of their mail order business, as aforesaid, respondents offer merchandise for sale by means of advertisements, brochures, flyers, catalogs, letters, and oral representations by telephone. In connection with their aforesaid business and for the purpose of inducing the purchase of their said merchandise, respondents have made, and are now making, certain statements and representations with respect to delivery and the promptness with which orders will be filled.

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

UPON RECEIPT OF YOUR ORDER AT STEREO WHOLESALERS IT IS ASSIGNED AN ORDER NUMBER AND PROCESSED THROUGH OUR MAIL ORDER DEPARTMENT WHERE PRICING IS VERIFIED AND THE AVAILABILITY OF THE EQUIPMENT IS CHECKED. YOU ARE NOTIFIED AT THAT TIME AS TO THE SHIPPING STATUS OF YOUR ORDER. THE ORDER THEN GOES TO THE SHIPPING DEPT. WHERE IT IS NORMALLY SHIPPED WITHIN THREE WORKING DAYS.

IF YOUR REQUEST SHOULD NOT BE IN STOCK, NO SUBSTITUTIONS WILL BE MADE WITHOUT YOUR APPROVAL. WE WILL WRITE TO SEE IF YOU WISH A SUBSTITUTION OR A REFUND.

PAR. 6. By and through the use of the statements and representations quoted in Paragraph Five hereof, and others of similar import and meaning but not expressly set forth herein, and by the offering of merchandise for sale, respondents have represented, and are now representing, directly or by implication, that:

1. merchandise ordered and prepaid will be delivered within a reasonable period of time after receipt of a purchaser's order; and
2. if the merchandise ordered by a purchaser is not in stock, the purchaser will be so notified and will be sent a notice asking whether the purchaser wants a substitution or a refund.

PAR. 7. In truth and in fact:

1. Respondents, in many instances, have not and are not now shipping merchandise within a reasonable period of time after receipt of a purchaser's prepaid order. Respondents, in many instances, ship merchandise many weeks after receipt of a purchaser's order.
2. When ordered merchandise is not in stock, respondents, in many instances, have not notified purchasers and offered such purchasers substitutions or refunds.

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

PAR. 8. In the further course and conduct of their mail order business and for the purpose of inducing the purchase of their said merchandise, respondents have distributed advertisements, brochures, flyers, catalogs, letters or other material soliciting orders which provide the purchaser with order blanks. The purchaser, if he wishes to completely prepay his order, is required to calculate the postage or shipping charges based on the weight of the merchandise offered, using the postage and shipping rate charts provided. However, the advertisements, brochures, flyers, catalogs, letters and other material soliciting orders do not indicate the weight of the merchandise offered.

Consequently, in many instances, purchasers have paid respondents more for postage or shipping than the actual postage or shipping charges incurred by respondents in mailing or shipping the merchandise, and said purchasers have not received from respondents a refund for their overpayments. Therefore, the failure of respondents to disclose the weights of their merchandise, and their failure to make refunds of postage or shipping overpayments, was and is unfair, misleading and deceptive.

PAR. 9. By and through the use of the trade name "Baltimore Stereo Wholesalers" and "Stereo Wholesalers" separately and in conjunction with statements appearing in their advertisements, brochures, flyers, catalogs, letters, or other material soliciting orders, respondents have

represented and do represent, directly or by implication, that they are wholesalers and that their prices are wholesale prices and that in each instance the savings afforded to their purchasers is that amount which is realized by purchasers who buy at actual wholesale prices.

PAR. 10. In truth and in fact, respondents are not wholesalers with respect to many of the articles offered for sale and sold by them, nor do they offer to sell, or sell, many of their articles of merchandise at wholesale prices but, to the contrary, the prices of many of such articles are in excess of the prices usually and customarily paid by retailers. Consequently, in many instances, the savings afforded is less than that amount which is realized by purchasers who buy at actual wholesale prices.

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

PAR. 11. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, 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 complete and into the purchase of substantial quantities of respondents' products, and overpayment of postage or shipping charges, 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 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, as amended.

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 Washington, D.C. 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 of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Stereo Equipment Sales, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 7A Aylesbury Rd., Timonium, Md. Such corporation does business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters.

Respondent Benjamine Shumate is an individual and an officer of said corporation. He formulates, directs and controls the policies acts and practices of said corporation and his 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 respondent, and the proceeding is in the public interest.

ORDER

A

For purposes of this order, the following definitions shall apply:

(1) "Shipment" shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(2) "Receipt of payment" shall be deemed to be, (1) at the time respondents receive the order with payment enclosed either in cash or by check or (2) at the time respondents charge a purchaser's account for a credit order.

(3) "Prompt refund" shall mean a return of the full amount remitted by the purchaser or the crediting of the purchaser's account for the full indebtedness incurred for the unshipped merchandise within seven (7) working days of the date on which the purchaser's right to refund vests under the provisions of this order. Refunds shall be deemed made when one of the following is mailed to the purchaser by first class mail:

(a) cash, money order or check; or

- (b) if respondents are the creditor, a copy of the credit memorandum which removes the charge from the purchaser's account; or
- (c) the actual charge or sales document which would create an obligation by the purchaser to a third party creditor; or
- (d) a copy of the appropriate credit memorandum to the third party creditor which will remove the charge from the purchaser's account.

B

It is ordered, That respondents Stereo Equipment Sales, Inc., a corporation, doing business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters, or under any name or names, and its officers, and Benjamine Shumate, individually and as an officer of said corporation, and respondents' representatives, agents, employees, successors and assigns directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of stereo equipment and components and other merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Soliciting orders for the sale of merchandise to be ordered by the purchaser through the mail on a prepaid basis, unless such merchandise is shipped within that time clearly and conspicuously stated in such solicitation or, if no time is stated, within thirty (30) days after receipt of payment and a properly completed order from the purchaser.

2. Failing to make, without prior demand, a prompt refund to the purchaser of all moneys received for merchandise solicited on a prepaid basis and ordered through the mails when the merchandise is not shipped:

(a) Within that time clearly and conspicuously stated in the solicitation to which the purchaser responded as the time in which shipment will be made, or

(b) If no time is stated, within thirty (30) days of receipt of the purchaser's payment by respondents.

Provided, however, That the inhibitions of Paragraph B(1) shall not apply if the provisions of Paragraph B(2) are complied with; *and, Provided, further,* That Paragraph B(1) and Paragraph B(2) shall not apply under the following circumstances: where respondents, due to circumstances beyond their control, are unable to make shipment as required in Paragraph B(1) and respondents send to the purchaser a notice of delayed shipment providing the purchaser with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. The notice shall be sent by first class mail and accompanied by a self-

addressed, postage paid device upon which the purchaser may indicate his choice, and mailed in advance of the expiration of the thirty (30) day period, or that time stated in the solicitation. The notice shall expressly advise the purchaser of the estimated date of shipment for his order. If, prior to shipment, respondents receive a response from the purchaser requesting a refund, such refund shall be promptly made.

If no response is received from the purchaser and respondents do not ship the merchandise within the estimated date of shipment given in the above notice, and for each subsequent time respondents do not ship merchandise by the estimated date of shipment to which a purchaser has agreed, respondents must send to the purchaser an additional notice of delayed shipment providing the purchaser with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. This additional notice shall be sent by first class mail and accompanied by a self-addressed, postage paid device upon which the purchaser may indicate his choice, and mailed in advance of the estimated date of shipment given in the previous notice. This additional notice shall expressly advise the purchaser of the estimated date of shipment for his order. If, prior to shipment, respondents receive a response from the purchaser requesting a refund, such refund shall be promptly made.

Provided, further, however, That Paragraphs B(1) and B(2) shall not apply to any advertisement which:

(1) does not contain an order blank or other similar means to order merchandise from respondents;

(2) does not make any representation concerning the speed or promptness with which respondents ship merchandise to its customers; and

(3) does not offer specific items for sale at specified prices.

3. Failing to:

(a) Maintain a record of each complaint alleging failure to ship merchandise solicited and ordered on a prepaid basis, or of failure to make refund within the applicable period of time, as specified in Paragraphs B(1) and B(2) of this order, and the disposition of each such complaint. Such record shall be kept for a period of at least eighteen (18) months following the disposition of such complaint;

(b) Maintain records showing the employment of systems and procedures designed to comply with Paragraphs B(1) and B(2) of this order.

4. Failing to disclose, in any brochures, flyers, catalogs, letters, oral representations or other solicitations of orders which provide the purchaser with the means to order merchandise from respondents, the shipping weight of any of the items of merchandise offered.

5. Failing to promptly refund any postage or shipping payments made by a purchaser which are in excess of the postage or shipping charges incurred by respondents in mailing or shipping the merchandise to the purchaser; *Provided, however*, That respondents may charge a flat percentage of the order price for postage or shipping and handling if that fact is clearly and conspicuously disclosed, orally or in writing, to prospective purchasers before they order merchandise from respondents.

6. Representing, directly or by implication, in any advertisements, brochures, flyers, catalogs, letters or any other material soliciting orders, or in any of respondents' places of business open to the public, or otherwise representing, directly or by implication, that respondents or any of their divisions are wholesalers, or that they or their divisions sell articles of merchandise at wholesale prices, unless respondents, or the division referred to, in fact:

(a) make a substantial number of their sales to retailers in the ordinary course of business, and

(b) sell items which they offer at wholesale at prices which do not exceed the prices usually and customarily paid by retailers for such merchandise to any source of supply, when purchased in the quantity offered for sale by respondents.

Provided, further, however, That respondents shall be permitted to phase out the use of the word "Wholesalers" in their trade name:

(a) in all advertisements, brochures, flyers, catalogs or any other material soliciting orders within six (6) months from the date this order is finally accepted;

(b) in all stationery, invoices and other business forms (and in-store promotional material) as the current supply is exhausted, but no later than six (6) months from the date this order is finally accepted; and

(c) in all store signs within eight (8) months from the date this order is finally accepted.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future employees or other persons engaged in the preparation and placing of respondents' advertisements, brochures, flyers, catalogs, letters or other material soliciting orders, and the offering for sale, or sale, of respondents' products, and secure from each such employee or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

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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 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 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.
