

Complaint

IN THE MATTER OF

G. & A. INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2776. Complaint, Jan. 6, 1976—Decision, Jan. 6, 1976*

Consent order requiring two Brooklyn, N.Y., wholesalers of DynaGlaze and Astrashield automobile polish, among other things to cease exaggerating the earnings of any former salesman or the "possible" earnings or profit percentage of a prospective salesman; using pictures or written expressions in advertising which give an exaggerated impression of the success of individuals who have sold the polish; misrepresenting any sales aids or product samples to be "free"; representing that salesmen can obtain exclusive selling territories; and using any statements which exaggerate the lasting qualities of the auto polish. Further, the order requires the firms to send a letter to eligible distributors making a one-time-only offer of a refund for all unsold merchandise returned in good condition within thirty days.

Appearances

For the Commission: *Matthew Gromet.*

For the respondents: *Jack Strauss*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that G. & A. Industries, Inc., and Nord-Viscount Incorporated, corporations, and Louis Green, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent G. & A. Industries, Inc. is a New York corporation with its office and principal place of business located at 50 Lawrence Ave., Brooklyn, New York.

Respondent Nord-Viscount Incorporated is a New York corporation with its office and principal place of business located at 50 Lawrence Ave., Brooklyn, New York.

Respondent Louis Green is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now and have been engaged in the

advertising, offering for sale, sale and distribution of various product at the wholesale level to persons who act as salesmen of these product to the public. Products distributed by respondents have included, *inter alia*, automobile cleaning and polishing compounds. Sales of such products to salesmen are induced by advertisements in national publications and by promotional materials sent by mail.

PAR. 3. In the course of their business, respondents have been and are now engaged in acts and practices in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. Respondents promote their products and their product distribution plans by the use of advertisements in magazines of national circulation and by advertisements sent through the United States mail. Merchandise of substantial value is sold by respondents and is shipped from respondents' place of business in New York to purchasers located in various other States and the District of Columbia.

PAR. 4. In the course of their business, and in order to recruit salesmen to sell respondents' products to the general public, respondents have disseminated and caused to be disseminated certain advertisements concerning their products. Within these advertisements, respondents have made certain statements and representations respecting the high earnings which can be made by selling respondents' products and the ease with which high earnings can be realized. Typical and illustrative of these statements and representations made by respondents in said advertisements, but not all inclusive thereof, are the following:

ENJOY a YEAR'S PAY in 3 MONTHS

EXPECT EARNINGS OF \$15 TO \$35 AN HOUR PART-TIME or FULL TIME!

BUILD A \$50,000 BUSINESS * * * GIVING AWAY FREE SAMPLES!

Yes You Can Literally RETIRE WITH RICHES Just By Passing Out FREE Samples of ASTROSHIELD, The Only Auto Polish and Glaze GUARANTEED IN WRITING TO LAST AS LONG AS YOU OWN YOUR CAR!

More than 400% Profit — Up to \$2.32 Cash Profit On Each Easy \$3 Sale!

The Gold Rush has started! For a select group of wide-awake men — no more than ten to twenty per state — this is the year that will turn daydreams into DOLLARS * * * hard cash dollars that can add up to a steady, ever-growing income of \$20,000 * * * \$35,000 * * * yes, even \$50,000 and more * * *

The product I'm talking about makes "selling" obsolete, old-fashioned, and unnecessary. Your biggest problem will be to keep enough on hand to supply the demand.

Authorized Distribution Rights to Dyna-Glaze are now being granted to qualified applicants on a first-come, first-served basis.

ONE WORD OF WARNING: I am seeking only a limited number of ambitious men and women to share in the American distribution of Dyna-Glaze.

Distributorships will be rewarded FREE to men who show me they can do the job. NO FRANCHISE FEES, ACTIVITY GUARANTEES OR OTHER CHARGES WILL BE MADE.

PAR. 5. Through the use of the aforesaid statements and representations, and others not specifically set forth herein, respondents have represented, directly or by implication, that:

1. The average person selling respondents' products can reasonably expect to earn \$15 to \$35 an hour working full or part time.
2. The average person selling respondents' products can reasonably expect to earn \$50,000 a year by giving away samples which are furnished by respondents at no cost.
3. A person selling respondents' products will make a 400 percent profit on each \$3 sale.
4. Respondents have a reasonable basis from which to conclude that their products can be sold by salesmen easily, quickly and in substantial quantities on a regular and continuing basis.
5. Only a limited number of persons will be permitted to sell respondents' products in territories that will be assigned on a first-come, first-served basis without any fees, obligations or hidden costs.

PAR. 6. In truth and in fact:

1. The average person selling respondents' products cannot reasonably expect to earn \$15 to \$35 an hour. Such earnings are gross exaggerations and are greatly in excess of the average earnings of persons selling respondents' products. Respondents have no knowledge of the earnings made by their salesmen.
2. The average person selling respondents' products cannot reasonably expect to earn \$50,000 a year. Samples of respondents' products are not furnished free to salesmen, but must be purchased by salesmen from respondents.
3. A person selling respondents' products will not make a 400 percent profit on each \$3 sale. Based on respondents' wholesale price lists, respondents' salesmen can make a gross profit of between 82 percent and 300 percent, the latter percentage only obtainable by salesmen who sell more than 12,000 pints of product directly to consumers every six months. The great majority of respondents' salesmen make a gross profit percentage of 89 percent or less, before allowance for advertising, selling expenses and discounts given to quantity purchasers and subsalesmen.
4. Respondents have no reasonable basis from which to conclude that their products can be sold by salesmen easily, quickly and in substantial quantities on a regular and continuing basis.

5. Respondents do not limit the number of persons who may sell their products; any number of salesmen are appointed by respondents in a given territory. A person maintains his wholesale buying rights only if he buys a stated minimum quantity of merchandise each month. For example, an "area distributor" entitled to buy respondents' product at a 61 percent discount must purchase at least 3000 quarts of product every four months.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive acts or practices.

PAR. 7. In the course of their business, and in order to promote the sale of their car polish to salesmen and consumers, respondents have represented that their polish will protect and beautify an automobile finish for years. Typical and illustrative of such representations, but not all inclusive thereof, are the following:

NEVER WAX YOUR CAR AGAIN

Imagine wrapping your car in an invisible shield of protective "armor" — which, with minimum upkeep, will provide a brilliant, gleaming "showroom" shine not just for weeks, or months, but for YEARS!

EXCLUSIVE 3 YEAR LONGEVITY ASTROSHIELD GUARANTEE

YES, ONCE YOU BUY ASTROSHIELD, YOU NEVER BUY CAR POLISH AGAIN!

That's right: Every can of Astroshield is guaranteed — *in writing* — to actually last the life of your car!

* * * specifically designed to outlast the vehicle to which it is applied.

* * * a single pint can of Dyna-Glaze is GUARANTEED — *in writing* — to protect and beautify your car for up to 18 FULL MONTHS!

PAR. 8. In truth and in fact, respondents' car polish will not protect and beautify any automobile finish for years. According to the instructions on the can of respondents' product, the automobile must be repolished every six months. The finish obtained by using respondents' product will last only a few months or a shorter period of time if the automobile is not washed regularly.

Therefore, the statements and representations set forth in Paragraph Seven hereof were and are false, misleading and deceptive acts or practices.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts 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 to induce a

substantial number thereof to purchase respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the wholesale and retail sale of products of the same general type and nature as those sold by respondents.

PAR. 11. 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 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, as amended; 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. Proposed respondents G. & A. Industries, Inc. and Nord-Viscount Incorporated are New York corporations with their offices and

principal places of business located at 50 Lawrence Ave., Brooklyn, New York.

Proposed respondent Louis Green is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations and his business address is the same as that of said corporations.

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, G. & A. Industries, Inc. and Nord-Viscount Incorporated, corporations, their successors and assigns, and their officers, and Louis Green, individually and as an officer of said corporations, 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 or distribution of automotive cleaning products, or any other articles of merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) The possible earnings, sales or wholesale purchases which might be made by persons who sell respondents' products, or

(b) The earnings, sales or wholesale purchases which have been made by persons who have sold respondents' products in the past,

unless such earnings, sales or wholesale purchases are not greater than the average net earnings, sales or wholesale purchases made consistently by all sellers of respondents' products in the ordinary course of business and under normal conditions and circumstances.

Subdivision (a) of this paragraph shall not prohibit respondents from representing the wholesale cost per unit or per case of their products.

2. Representing any sales aids, product samples or other items as "free," unless respondents supply such items to salesmen without charge, in quantities sufficient to meet the reasonable business needs of the average active salesman. If the quantity of any item that is furnished free is limited, with additional quantities available to salesmen at extra cost, then the free quantity and the cost of additional quantities shall be conspicuously disclosed whenever the item is represented to be free.

3. Representing directly or indirectly that persons can be assigned territories within which to sell respondents' products, or otherwise

representing that only a limited number of persons will be permitted to sell respondents' products.

4. Representing directly or by implication, by the use of: (1) photographs, drawings or written descriptions of amounts of money, automobiles, or any luxury items, or (2) words, phrases or expressions such as "Big Money," "Enjoy a year's pay in 3 months," "Retire with Riches," or others of similar import, that persons may achieve a status of financial or material wealth which in fact is not customarily achieved by persons who sell respondents' products.

5. Representing, directly or by implication, by the use of phrases such as "Never wax your car again," "Never buy car polish again," "18-month guarantee of service," "3 year longevity guarantee," or others of similar import, that one application of respondents' product will last for any period of time in excess of that which respondents can affirmatively establish is the fact.

6. Representing, directly or by implication, that:

(a) Respondents' products can be sold by salesmen easily, quickly or in substantial quantities.

(b) A specified percentage of profit will be earned on sales of respondents' products, unless such percentage is not greater than the net profit percentage, after costs and operating expenses, made by all persons who sell respondents' products.

It is further ordered, That within thirty (30) days after the effective date of this order, respondents shall send to all eligible persons the notice contained in Appendix A or Appendix B, as applicable. For the purpose of this provision, "eligible persons" shall include all persons who:

(a) purchased merchandise from respondents within three (3) years prior to the effective date of this order, and

(b) purchased merchandise from respondents on three or fewer occasions, not including any initial introductory order for five dollars or less.

It is further ordered, That respondents refund, to all persons returning merchandise in accordance with Appendices A and B, all monies paid by such persons for the merchandise returned. Such refunds shall be mailed by respondents within ten (10) days after the return of said merchandise.

It is further ordered, That respondents submit, as part of their compliance report to the Commission, the following information relating to the previous two provisions: (1) The number of persons to whom the notice was sent, (2) the number of persons responding to the offer contained therein, and (3) the total amount of money refunded by respondents pursuant to this offer.

It is further ordered, That respondents shall maintain for at least three (3) years following the date of each publication, copies of each advertisement, including magazine, newspaper, radio and television advertisements, direct mail and any other promotional material utilized by respondents for the purpose of soliciting persons to sell any product or utilized by respondents in the advertising, promotion or sale of any product, together with all documentation and factual material in substantiation of the claims appearing in said advertisements and promotional materials.

It is further ordered, That respondents maintain files containing all inquiries or complaints from any source relating to acts or practices described in this order, for a period of three (3) years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

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 corporate respondents or their successors or assigns 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 or corporations, the creation or dissolution of subsidiaries or any other change in the corporate respondents which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall deliver a copy of this order to cease and desist, and a copy of the Commission's news release setting forth the terms of the order, to each advertising agency and advertising medium with which respondents deal directly, such as newspaper publishing companies, radio stations or television stations, presently utilized in the course of their business, and that respondents shall, immediately upon opening an account, deliver a copy of such order and news release to any such agency or medium with which they subsequently open an account.

It is further ordered, That for a three (3) year period following the effective date of this order, 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. This provision shall not be construed to exempt in any way the individual respondent, after said three (3) year period, from complying with the other provisions of this 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.

APPENDIX A — FOR CUSTOMERS OF G. & A. INDUSTRIES, INC.

G. & A. INDUSTRIES, INC.
50 LAWRENCE AVENUE
BROOKLYN, NEW YORK 11230
(DATE)

Dear DynaGlaze Distributor:

Our records indicate that you have purchased only three or fewer shipments of DynaGlaze automobile polish.

If you feel that you purchased this product as a result of any deception on our part or any misunderstanding on your part based on our literature or advertising, we would be most willing to refund your original purchase price for any merchandise returned to us. This one-time offer is limited to merchandise in good condition which is returned (postage prepaid) within 30 days of the postmark date on this letter. Your refund will be sent within 10 days after we receive the DynaGlaze.

Very truly yours,
G. & A. INDUSTRIES, INC.
Louis Green

APPENDIX B — FOR CUSTOMERS OF NORD-VISCOUNT INCORPORATED

NORD-VISCOUNT INCORPORATED
50 LAWRENCE AVENUE
BROOKLYN, NEW YORK 11230
(DATE)

Dear Astroshield Distributor:

Our records indicate that you have purchased only three or fewer shipments of Astroshield automobile polish.

If you feel that you purchased this product as a result of any deception on our part or any misunderstanding on your part based on our literature or advertising, we would be most willing to refund your original purchase price for any merchandise returned to us. This one-time offer is limited to merchandise in good condition which is returned (postage prepaid) within 30 days of the postmark date on this letter. Your refund will be sent within 10 days after we receive the Astroshield.

Very truly yours,
NORD-VISCOUNT INCORPORATED
Louis Green

Complaint

87 F.T.C.

IN THE MATTER OF
STP CORPORATION, ET AL.

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

Docket C-2777. Complaint, Jan. 6, 1976—Decision, Jan. 6, 1976

Consent order requiring a Fort Lauderdale, Fla., manufacturer of oil and gasoline additives and oil filters and its Chicago, Ill., advertising agency, among other things to cease making false and misleading effectiveness claims and representations for its products.

Appearances

For the Commission: *Bruce J. Parker.*

For the respondents: *J. Wallace Adair, Howrey, Simon, Baker & Murchison, Washington, 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 STP Corporation, a corporation, and Stern, Walters & Simmons, Inc., a corporation, hereinafter 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. STP Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1400 W. Commercial Blvd., Fort Lauderdale, Florida.

Respondent Stern, Walters & Simmons, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 150 E. Huron St., Chicago, Illinois.

PAR. 2. Respondent STP Corporation is now and for some time past has been engaged in the sale and distribution of automotive filters, oil and gasoline treatments and other products to the public under the trade name STP.

Respondent Stern, Walters & Simmons, Inc. is now and for some time past has been an advertising agency; it prepared for publication advertising material including but not limited to the advertising material referred to herein, for the purpose of promoting the sale of STP Corporation products.