

IN THE MATTER OF

MAN PRODUCTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2789. Complaint, Feb. 17, 1976—Decision, Feb. 17, 1976*

Consent order requiring a Glen Cove, N.Y., manufacturer and installer of all-steel utility buildings and cellar doors, and two of its affiliates, among other things to cease misrepresenting their products as burglar proof and weatherproof and making other false claims; failing to honor estimates made by their representatives; and failing to disclose to consumers their right-to-cancel any contract they have signed within three business days. Further, respondents are required to complete installation of their products within 90 days of the date of sale or to make full refund of monies paid.

Appearances

For the Commission: *Martin D. Gorman.*

For the respondents: *Zola A. Aronson, Conroy, Guirgio, DePoto & Merritt, Syosset, N.Y.*

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 Man Products, Inc., M.J.M. Corporation, and Man Contracting Corp., corporations and Attilio Mancusi, individually and as an officer of said corporations, 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. Respondents Man Products, Inc., M.J.M. Corporation, and Man Contracting Corp. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. All of the above-named corporate respondents have their principal offices and places of business at 100 Carney St., Glen Cove, New York.

Respondent Attilio Mancusi is an officer of each of the corporate respondents herein named, and he formulates, directs and controls the policies, acts and practices of said corporate respondents including the acts and practices hereinafter set forth. His address is the same as that of said corporate respondents.

PAR. 2. Respondents, are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale, distribution and installation of all steel utility buildings, and all steel cellar doors, hereinafter sometimes referred to as "all steel structures" and related products to the public at retail.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning their products and services by the United States mail and by various other means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in newspapers of interstate circulation and the mailing of brochures through the United States mail, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their merchandise.

PAR. 5. By virtue of the aforesaid acts and practices, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale, purchase and installation of their all steel structures, respondents have made, and are now making, numerous statements and representations by repeated advertisements in newspapers of general interstate circulation and in other promotional literature, brochures and letters and by oral statements and representations of their salesmen to prospective purchasers.

Typical and illustrative of the foregoing, but not all-inclusive thereof, are the following:

Install Man's completely burglar proof all steel door.

BURGLAR PROOF LOCKING SYSTEM

Garage Door type lock * * * can be locked from * * *

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Complaint

Most robberies are caused by burglars breaking through old wooden cellar doors. Install MAN'S Completely burglar proof all steel cellar door.

Fully automatic steel door works with TORSION BARS like trunk of car-No heavy lifting.

ALL WEATHER PROOF-Overlapped flanges on frame and door assumes snug fit. Keeps out rain, snow and wind.

Installed by Our Qualified Mechanics in Less Than A Day! If you are interested we will send a mechanic to measure the job and discuss the work with you.

With MAN PRODUCTS, your needs are inspected in advance by one of our own experienced mechanics. This man is trained to judge expertly what your needs are for a satisfactory and economical installation.

MAN'S METHOD MAKES A WALL INTO A DOOR IN A MATTER OF HOURS Whether your need is for a new life-time steel top to replace an existing cellar door or a complete enclosed steel basement entrance with excavation, steps, cover and doorway, it is reassuring to know that one source, MAN PRODUCTS, does the complete job.

PERMANENCE, BURGLAR PROOF, WEATHER PROTECTION, EASE OF HANDLING, NEATNESS OF APPEARANCE, AND DESIGN are some of the exclusive features which will make you the wise and proud owner of our product * * * Every product is factory adapted to your particular needs. For this reason, we cannot quote prices without first seeing the situation. Don't put off the opportunity to provide your family with the proper protection while increasing the value of your home with an economical, weather and burglar proof ALL STEEL CELLAR DOOR.

PAR. 7. By and through the use of the above-quoted statements and representations in Paragraph Six and others of similar import and meaning, not specifically set out herein, the respondents represent, and have represented, directly or by implication, that:

1. Respondents are selling completely burglar proof doors.
2. Purchasers of respondents' products will obtain complete protection and maximum security against theft because of the reliability and design of component parts and expertise of installers and supervisors.
3. Respondents' all steel products are structured so that they are all weather proof, providing complete protection against all inclement weather.
4. Respondents' all steel products will be installed by highly qualified mechanics who will provide satisfactory installation through good installation techniques.
5. Purchasers of respondents' products will be provided complete installation within a reasonable time.
6. Respondents' steel products and installation will provide purchasers with a cellar door that is durable, easy to operate and which functions properly.

PAR. 8. In truth and in fact:

1. Respondents' all steel structures will not provide complete protection against theft.

2. In many instances there is faulty workmanship in the product or installation causing the door not to close properly thereby making it impossible to lock.

3. Respondents' all steel structures do not provide complete protection against inclement weather. To the contrary, there are numerous instances where installed structures peel, leak and rust.

4. Respondents' mechanics have not provided satisfactory installation. To the contrary, there are numerous instances of poor workmanship in the installation which allow leakage and make it impossible to close the door properly.

5. The speedy installation implied by respondents is not provided soon after purchase nor is the job completed in one day. To the contrary, in many instances installation is not commenced for several months and is not completed for an extended period thereafter.

6. In many instances doors do not work easily, torsion bars fit improperly or doors cannot be locked because of poor installation or product failure.

PAR. 9. Therefore, the aforesaid statements and representations regarding respondents' products and installations as set forth in Paragraphs Six and Seven were, and are, false, misleading, unfair and deceptive in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Nine hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. In the further course and conduct of their business, as aforesaid, and for the purpose of inducing the sale of their all steel structures, respondents, through the representations and practices set forth in Count I and others of similar import and meaning, but not expressly set out herein, have represented, and are now representing, directly and by implication, that their products are free of defects in material and workmanship.

In this connection, respondents and their sales representatives have made, and are now making, numerous oral statements and representations to customers and prospective customers regarding the expert inspection to estimate the cost of installation, the quality and durability of their all steel structures and the time and manner in which

respondents will provide installations and perform various adjustments, replacements and repairs.

Moreover, respondents warrant in their contracts that their products are free of defects in material and workmanship for a period of 90 days from date of installation.

PAR. 11. By and through the use of the aforementioned warranty in respondents' sales contracts, together with the aforesaid oral statements, representations and promises made by respondents, their sales representatives and other employees, respondents have represented, and are now representing, directly or by implication, that:

1. All steel structures sold by respondents will be delivered to purchasers and installed by respondent free from damages or defects.

2. All steel structures, which are delivered to purchasers and/or installed with damages or defects, will be repaired or replaced within a reasonable time.

3. All steel structures, which are delivered to purchasers and/or installed with damages or defects, will be repaired to the satisfaction of the purchasers.

4. All steel structures, which are delivered to purchasers and/or installed with damages or defects, will be replaced to the satisfaction of the purchasers.

5. By virtue of Man Products' warranty in their sales contract, damaged or defective all steel structures will be repaired or replaced free of charge by Man Products within a ninety-day period.

6. Sales include a service component of estimates which will realistically determine the individual needs and which will be binding.

PAR. 12. In truth and in fact:

1. In many instances, all steel structures sold by respondents are delivered to purchasers and installed with damages and/or defects.

2. In many instances, all steel structures which are delivered to purchasers and installed with damages and/or defects, are not repaired or replaced within a reasonable time.

3. In many instances, all steel structures which are delivered to purchasers and installed with damages and/or defects, are not repaired or replaced to the satisfaction of the purchasers.

4. In many instances, damaged and defective all steel structures are not repaired or replaced to the satisfaction of the customers within the warranty period or in conformance with Man Products' warranty.

5. Respondents have failed to honor their estimate obligations and in some instances have attempted to cancel contracts in order to coerce customers to accept a new contract at a much higher price. In other instances respondents have refused to honor warranties when the

improper functioning of respondents' products were the result of inaccurate estimates.

PAR. 13. Therefore, the aforesaid statements, representations, acts and practices regarding respondents' products, installation and other services, were and are, false, misleading and deceptive, in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Thirteen are incorporated herein by reference in Count III as if fully set forth verbatim.

PAR. 14. In the further course and conduct of their business, and for the purpose of inducing and securing sales of Man Products' all steel structures, respondents and their representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

1. In a substantial number of instances, separately and through the use of the false, misleading and deceptive representations and practices set forth in Paragraphs Six, Seven, Ten and Eleven, respondents or their representatives have induced customers into signing contracts without disclosing to the customer, orally or in writing, that installation may not begin for several months nor completed for an extended time thereafter; that there are no installations performed during winter months; and that respondents fail to give refunds and, in fact, may penalize customers who attempt to cancel contracts when installation has not been performed within a reasonable time.

2. In a substantial number of instances, separately and through the use of the false, misleading and deceptive representations and practices set forth in Paragraphs Six, Seven, Ten and Eleven, respondents or their representatives have induced customers into signing contracts without disclosing to the customer, orally or in writing, material facts regarding the condition of customer's premises and its effect on the functioning of respondent's structure, and the difficulty in obtaining a refund or to have additional repairs made when their structures fail to perform properly due to deficiencies in purchaser's property or premises after an estimate has been given.

PAR. 15. The failure of respondents to disclose material facts separately, and in conjunction with their aforesaid statements and representations, has the tendency and capacity to mislead prospective purchasers into mistaken beliefs, as to the total cost which they will have to incur if they purchase respondents' all steel structures, as to the relative benefits and disadvantages of such purchases and as to

their options and rights in regard to such purchases. Thus, respondents have failed to disclose material facts which, if known to certain customers, would likely affect their consideration of whether or not to respond to respondents' advertisements and to purchase all steel structures being offered for sale.

PAR. 16. In the further course and conduct of their business, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Six, Seven, Ten and Eleven above, respondents or their representatives have been able to induce customers into signing the contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

PAR. 17. Therefore, respondents' use of such deceptive, exploitive and unfair representations, tactics and contracts, and respondents' failure to disclose material facts, as aforesaid, orally and in writing, was and is unfair, false, misleading and deceptive and constituted and now constitutes an unfair, misleading and deceptive act and practice, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT IV

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Sixteen hereof are incorporated by reference in Count IV as if fully set forth verbatim.

PAR. 18. By virtue of respondents' misleading, deceptive and false representations, acts and practices, set forth in Counts One through Three, customers have been induced to pay substantial sums of money to respondents for all steel structures. Respondents have received said sums and have failed to offer or agree to refund payments to purchasers when merchandise has been or is delivered in a damaged or defective condition or when such merchandise has not been installed, repaired or replaced by respondents within a reasonable period of time.

PAR. 19. In connection with their sales, respondents include in the contract, a provision which limits venue for any action commenced by any purchaser including those who reside in States other than New York (hereinafter referred to as out-of-State plaintiffs) to the Supreme Court of Nassau County, New York. Courts located in the State and county where out-of-State plaintiffs reside or where they signed the contracts sued upon could be used for these suits. Almost all out-of-State plaintiffs have received respondent's catalogs or other advertis-

ing material, and executed purchase orders or contracts, in their home States. Almost all out-of-State plaintiffs have had no pertinent contact with the State of New York other than their dealings with respondents. The distance, cost and inconvenience of commencing such suits in New York place a virtually insurmountable burden on out-of-State plaintiffs. Respondents thus effectively deprive these plaintiffs of a reasonable opportunity to commence an action. Therefore, such use of distant or inconvenient forum is unfair.

PAR. 20. In connection with their sales, respondents include in the contract, a provision which limits the time of service of process for any action commenced by the buyer to six months from the date of the agreement. Such a limitation precludes many purchasers from bringing an action since numerous installations are delayed several months and defective workmanship and poor quality installation does not reveal itself for some time thereafter. Respondents thus effectively deprive these plaintiffs of a reasonable opportunity to commence an action. Therefore, such a limitation of the time of service of process is unfair.

PAR. 21. Therefore, the use by the respondents of the aforesaid acts and practices and their continued retention of the said sums under the circumstances described herein are all to the prejudice and injury of the public and constitute unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

COUNT V

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Twenty-One hereof are incorporated by reference in Count V as if fully set forth verbatim.

PAR. 22. By and through the use of advertisements set forth in Paragraph Six, and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have also represented, directly or by implication, that respondents had a reasonable basis from which to conclude that individuals who purchase, and have a Man Products' all steel structure installed, receive complete protection, maximum security and a total guarantee against theft.

PAR. 23. In truth and in fact, at the time the aforesaid statements and representations were made, respondents had no reasonable basis from which to make the conclusion set forth in Paragraph Twenty-Two.

PAR. 24. Therefore, the statements and representations contained in the advertisements referred to in Paragraph Six and Twenty-Two were and are false, misleading and deceptive; and the respondents' dissemination of the commercials and advertisements referred to in Paragraph Six, without a reasonable basis for making such representa-

tions, were and are unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT VI

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Twenty-Four are incorporated herein by reference in Count VI as if fully set forth verbatim.

PAR. 25. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, directly or by implication, 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 into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 26. 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 commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

PAR. 27. 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 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Man Products, Inc., M.J.M. Corporation and Man Contracting Corp. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their principal office and place of business located at 100 Carney St., Glen Cove, New York.

Respondent Attilio Mancusi is an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporate respondents. 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 respondents, and the proceeding is in the public interest.

ORDER

A. *It is ordered*, That respondents Man Products, Inc., M.J.M. Corporation, Man Contracting Corp., corporations, their successors and assigns and their officers, and Attilio Mancusi, individually and as an officer of said corporate respondents, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale, installation or distribution of all steel cellar doors or other products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, visually or in writing, directly or by implication, that their all-steel cellar doors are burglar proof or misrepresenting the manner in which protection is provided.

2. Representing, orally, visually or in writing, directly or by implication, that their all-steel cellar doors are all-weatherproof or misrepresenting the weather-proofing abilities of their products.

3. Failing to install respondents' all-steel cellar doors within a reasonable time unless delays are disclosed.

4. Misrepresenting, orally, visually, or in writing, directly or by implication, the date when installation will commence or misrepresenting in any manner the time for installation to be completed.

5. Representing, orally, visually or in writing, directly or by implication, that Man Products' all-steel cellar doors are durable, easy to operate structures which will function properly unless such advertised products are capable of adequately performing the function for which they are offered; or misrepresenting, in any manner, the performance characteristics or quality of respondent's products.

6. Representing, orally, visually or in writing, directly or by implication, that estimates are determined by expert mechanics or other experienced professionals unless such inspectors have the requisite professional training or experience.

7. Representing, orally or in writing, directly or by implication, 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.

B. *It is further ordered*, That beginning the effective date of this order, respondents shall:

1. Furnish each customer, at the time the customer signs a sales contract, with a clear and conspicuous written date certain for completion on that contract, not more than ninety (90) days from the date the contract was signed.

2. At the time the contract is signed, if respondents foresee that they will not be able to install within 90 days, they must so disclose, furnish a new date certain for completion and obtain a written consent from the consumer.

3. Set forth customers cancellation rights in the contract so that if performance is not made within a 90-day period set forth in the contract, the customer has the right and option to cancel.

4. Cancel the contract upon request of the consumer and make a full refund within one week of the request, if installation cannot be completed within the 90-day period stated for completion.

C. *It is further ordered*, That beginning the effective date of this order, respondents shall honor estimates made by its representatives.

D. *It is further ordered*, That respondents cease and desist from:

1. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution,

which is in the same language, as that principally used in the oral sales presentation and which shows the date of the transaction, a description of the merchandise to which it applies and the total cost to the customer of the same 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.

2. Failing to furnish each buyer, at the time he signs the door-to-door 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, as that used in the contract.

NOTICE OF CANCELLATION

[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 INSTRUMENT 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.

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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 _____ at _____ NOT LATER THAN MIDNIGHT OF [DATE].

I HEREBY CANCEL THIS TRANSACTION.

[Date]

[Buyer's signature]

3. 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.

4. Including in any door-to-door sales 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.

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

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

7. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (a) refund all payments made under the contract or sale; (b) return any goods or property traded in, in substantially as good condition as when received by the seller; (c) 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.

8. 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.

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

10. *Provided, however,* That nothing contained in Paragraph D of 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 a showing of inconsis-

tenancy, shall make such modifications as may be warranted in the premises.

E. *It is further ordered*, That in addition to other rights given to a customer pursuant to this order:

1. If the respondents and a customer are unable to agree upon a settlement of any controversy involving the sale, repair, service, installation or guarantee of merchandise, the failure to adequately replace or repair damaged, defective or nonconforming merchandise; the failure to honor guarantees or warranties; the failure of equipment to function properly or as represented; the failure to repair any damages done to the premises of customers during installation of respondents' equipment; cancellation rights to which the customer is entitled; or involving sales presentations to induce customers to purchase respondents' equipment which contained representations prohibited by this order or which failed to make disclosures that were required by this order then, at the option of the customer, such customer shall have the right to submit the issues to an impartial arbitration procedure entailing no mandatory administrative cost or filing fee to the customer, which will be conducted in accordance with the arbitration procedures annexed to this order, as Appendix "A," and the procedures for arbitration adopted in Appendix "A" are to be considered as incorporated within the terms of this order.

2. Respondents shall provide adequate notification to customers of their right to submit such controversy to arbitration and respondents shall incorporate the following statement on the face of all sales contracts with such conspicuousness and clarity as is likely to be read and understood by customers:

NOTICE

Any right or claim which the customers may have arising out of or relating to this contract or any breach thereof shall be settled, at the option of the customer, by arbitration. Such arbitration shall be conducted in accordance with Arbitration Rules of the Consumer-Business Arbitration Tribunal of the Better Business Bureau of Metropolitan New York, Inc., whose offices are located at 110 Fifth Avenue, New York, New York 10011, telephone (212) 989-6150.

Under New York State law, arbitration, if undertaken, is legally binding and final.

3. Whenever respondents are required, pursuant to the terms of this order, to give notice of a customer's right to arbitration, the notice must set forth the name, address and telephone number of the arbitration tribunal and the manner in which arbitration can be obtained. Respondents are authorized and directed to change the instruction as to how to secure arbitration if circumstances so require; including referrals by the Better Business Bureau of Metropolitan New

York to a more convenient office in those circumstances where a purchaser resides outside the New York metropolitan area.

4. Respondents shall comply with and abide by any award or decision rendered pursuant to the arbitration procedures of Paragraph E, subparagraph (1) of this order I.

5. Respondents shall not be entitled to prevent arbitration pursuant to any provision of this order by reason of having obtained a default judgment against any customer in an action for money allegedly due the respondents or their assignees.

F. *It is further ordered*, That beginning the effective date of this order, respondents shall:

1. Remove that provision in their contract which limits venue for any action commenced by the purchaser to the Supreme Court of Nassau County, New York.

2. Defend suits initiated by purchasers in the county where plaintiff resides or in the county where the plaintiff signed the contract sued upon. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

3. Remove that provision in their contract which limits the time of service of process for any action commenced by the purchaser to six months from the date of the agreement. In addition, respondents shall not reduce the period of limitation below that minimum period provided by law.

H. *It is further ordered*, That for a period of one year, respondents post in a prominent place in each salesroom or other area wherein respondents sell equipment or other products or services, a copy of this cease and desist order, with a notice that any customer or prospective customer may receive a copy on demand.

I. *It is further ordered*, That respondents deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondents engaged in the consummation of any consumer credit transaction or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

J. *It is further ordered*, That:

1. Respondents deliver, by registered mail, a copy of this decision and order to each of its present and future employees, salesmen, agents, solicitors, installers, independent contractors or to any other person or entity which promotes, offers for sale, sells, leases, distributes or installs the products or services included within the scope of this order;

2. Respondents herein provide each person or entity so described in subparagraph (1) above with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his business practices to the requirements of this order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

3. Respondents herein inform each person or entity so described in subparagraph (1) above that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this order;

4. If such party as described in subparagraph (1) above will not agree to so file the notice set forth in subparagraph (2) above with the respondents and be bound by the provisions of the order, the respondents shall not use or engage or continue the use or engagement of, such party to promote, offer for sale, sell or install any equipment included in this order;

5. Respondents herein inform the persons or entities described in subparagraph (1) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this order;

6. Respondents herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (1) above conform to the requirements of this order;

7. Respondents herein discontinue dealing with or terminating the use or engagement of any person or entity described in subparagraph (1) above, as revealed by the aforesaid program of surveillance, who continues on his or her own any act or practice prohibited by this order.

K. *It is further ordered*, That respondents shall forthwith 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 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 with which they subsequently open an account.

L. *It is further ordered*, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, visual aids and any other such promotional material utilized in the advertising,

promotion or sale of all steel products and other merchandise or services.

M. *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 directive of any kind obtained by any other agency or act as a defense to actions instituted by municipal, State or 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.

N. *It is further ordered*, That respondents 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 successor corporations, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations arising out of this order.

O. *It is further ordered*, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That respondent 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"

Agreement of Parties — The parties shall be deemed to have made these Rules a part of their arbitration agreement. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

Administrator — When parties agree to arbitrate under these Rules and an arbitration is initiated thereunder, they thereby constitute BBB the administrator of the arbitration. The authority and obligations of the administrator are prescribed in the agreement of the parties and in these Rules.

Panel of Arbitrators — The BBB shall establish and maintain a Panel of Arbitrators and shall appoint Arbitrators therefrom as hereinafter provided.

Change of Claim — After filing of the claim, if either party desires to make any new or different claim, such claim shall be made in writing and filed with the BBB, and a copy thereof shall be mailed to the other party who shall have a period of seven days from the date of such mailing within which to file an answer with the BBB. However, after the Arbitrator is appointed no new or different claim may be submitted to him except with his consent.

Initiation under a Submission — Parties to any existing dispute may commence an arbitration under these Rules by filing at the BBB two (2) copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties. It shall contain a

statement of the matter in dispute, the amount of money involved, if any, and the remedy sought.

Initiation under an Arbitration Provision in a Contract — Arbitration under an arbitration provision in a contract may be initiated in the following manner:

(a) The initiating party may give notice to the other party of his intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and

(b) By filing at the office of the BBB two (2) copies of said notice, together with two (2) copies of the arbitration provisions of the contract.

The BBB shall give notice of such filing to the other party. If he so desires, the party upon whom the demand for arbitration is made may file an answering statement in duplicate with the BBB within seven days after notice from the BBB, in which event he shall simultaneously send a copy of his answer to the other party. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

Fixing of Locale — The parties may mutually agree on the time and place where the arbitration is to be held. If any party requests that the hearing be held at a specific time and place and the other party files no objection thereto within seven days after notice of the request, the time and place shall be the one requested.

If the time and place is not designated within seven days from the date of filing the Submission the BBB shall have power to determine the time and place. Its decision shall be final and binding.

Qualifications of Arbitrator — No person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

Appointment from Panel — The Arbitrator shall be appointed in the following manner: Immediately after the filing of the Submission, the BBB shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the BBB. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the BBB shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the BBB shall have the power to make the appointment from other members of the Panel without the submission of any additional lists.

Number of Arbitrators — In disputes involving amounts of \$5000 or less, there shall be one Arbitrator. In all other cases there shall be one Arbitrator unless one or both the parties specifies three Arbitrators. If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the BBB, in its discretion, directs that a greater number of Arbitrators be appointed.

Notice to Arbitrator of His Appointment — Notice of the appointment of the Arbitrator, shall be mailed to the Arbitrator by the BBB, together with a copy of these Rules, and the signed acceptance of the Arbitrator shall be filed prior to the opening of the first hearing.

Disclosure by Arbitrator of Disqualification — Prior to accepting his appointment, the prospective Arbitrator shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt of

such information, the BBB shall immediately disclose it to the parties who, if willing to proceed under the circumstances disclosed, shall so advise the BBB in writing. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of these Rules.

Vacancies — If any Arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of his office, the BBB may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules and the matter shall be reheard unless the parties shall agree otherwise.

Representation by Counsel — Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the BBB of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

Stenographic Record — The BBB shall make the necessary arrangements for the taking of a stenographic or electronic record whenever such record is requested by a party. The requesting party or parties shall pay the cost of such record, unless otherwise agreed.

Interpreter — The BBB shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, who shall assume the cost of such service if a volunteer interpreter cannot be secured.

Attendance at Hearings — Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons. The Arbitrator shall otherwise have the power to require the retirement of any witness or witnesses during the testimony of other witnesses.

Adjournments — The Arbitrator may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

Oaths — Before proceeding with the first hearing or with the examination of the file, each Arbitrator may take an oath of his office, and if required by law, shall do so. The Arbitrator may, in his discretion, require witnesses to testify under oath administered by any duly qualified person, or if required by law or demanded by either party, shall do so.

Witnesses, Subpoenas, Depositions —

(a) The arbitrator may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the Court by a party or the Arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the Arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

Majority Decision — Whenever there is more than one Arbitrator, all decisions of the Arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

Order of Proceedings — A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of the place, time and date of the hearing, the presence of the Arbitrator and parties, and counsel if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present his claim and proofs and his witnesses who shall submit to questions or other examination. The defending party shall then present his defense and proofs and his witnesses, who shall submit to questions and other examination. The Arbitrator may in his discretion vary this procedure but he shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

Arbitration in the Absence of a Party — Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as he may require for the making of an award.

Evidence — The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties, except where any of the parties is absent in default or has waived his right to be present.

Evidence by Affidavit and Filing of Documents — The Arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the BBB for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

Inspection or Investigation — Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall direct the BBB to advise the parties of his intention. The Arbitrator shall set the time and the BBB shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

Conservation of Property — The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

Closing of Hearings — The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

Reopening of Hearings — The hearings may be reopened by the Arbitrator on his own motion, or upon application of a party at any time before the award is made. If the

reopening of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon the extension of such time limit. When no specific date is fixed in the contract, the Arbitrator may reopen the hearings, and the Arbitrator shall have thirty days from the closing of the reopened hearings within which to make an award.

Waiver of Oral Hearing — The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the BBB shall specify a fair and equitable procedure.

Waiver of Rules — Any party who proceeds with the arbitration after knowledge that any procedure or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

Extension of Time — The parties may modify any period of time by mutual agreement. The BBB for good cause may extend any period of time established by these Rules, except the time for making the award. The BBB shall notify the parties of any such extension of time and its reason therefor.

Communication with Arbitrator and Serving of Notices —

(a) There shall be no communication between the parties and the Arbitrator other than at oral hearings. Any other oral or written communications from the parties to the Arbitrator shall be directed to the BBB for transmittal to the Arbitrator.

(b) Each party to an agreement which provides for arbitration under these Rules shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party by mail addressed to such party or his attorney at his last known address or by personal service, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

Time of Award — The award shall be made promptly by the Arbitrator and, unless otherwise agreed by the parties, or specified by law, no later than thirty days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the Arbitrator.

Form of Award — The award shall be in writing and shall be signed either by the sole Arbitrator or by at least a majority if there be more than one. It shall be executed in the manner required by law.

Scope of Award — The Arbitrator may grant any remedy or relief which he deems just and equitable and within the scope of the agreement of the parties.

The award may require specific performance of a contract; require the acceptance or replacement of merchandise; fix allowances for defective merchandise; declare a contract breached in whole or in part; and/or award money damages in the alternative or otherwise; but the foregoing shall not limit the power of the arbitrators to grant any other remedy or relief which they deem just and equitable within the framework of the Submissions or the contract before the arbitrators.

Award upon Settlement — If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

Delivery of Award to Parties — Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the BBB, addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

Release of Documents for Judicial Proceedings — The BBB shall, upon the written

request of a party, furnish to such party, at his expense, certified facsimiles of any papers in the BBB's possession that may be required by judicial proceedings relating to the arbitration.

Applications to Court — No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

Expenses — The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic or electronic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall otherwise agree and shall be paid for the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required travelling and other expenses of the Arbitrator and of BBB representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the Arbitrator in his Award assesses such expenses or any part thereof against any specified party or parties.

Arbitrator's Fee — Members of the Panel of Arbitrators serve without fee in arbitrations. In prolonged or in special cases the parties may agree to the payment of a fee. Any arrangements for the compensation of an Arbitrator shall be made through the BBB and not directly by him with the parties.

Interpretation and Application of Rules — The Arbitrator shall interpret and apply these Rules insofar as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by a majority vote. If that is unobtainable, either an Arbitrator or a party may refer the question to the BBB for final decision. All other Rules shall be interpreted and applied by the BBB.

IN THE MATTER OF
SHAKLEE CORPORATION

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

Docket C-2790. Complaint, Feb. 18, 1976—Decision, Feb. 18, 1976

Consent order requiring an Emeryville, Calif., manufacturer and distributor of food supplements, cosmetics and cleaners, among other things to cease requiring, coercing, threatening or otherwise exerting pressure on any distributor to observe, maintain or advertise established or suggested retail prices. Further, respondent is required to conspicuously state that all pricelists are suggested only and that dealers are permitted to sell Shaklee products to any retail outlets they wish.

Appearances

For the Commission: *Jeffrey Klurfeld.*

For the respondent: *Harvey Applebaum, Covington & Burling,*
Washington, D.C. and *Paul Greenberg,* Los Angeles, Calif.

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 Shaklee Corporation, a corporation, hereinafter sometimes referred to as respondent, has 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 Shaklee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1900 Powell St., Emeryville, California.

PAR. 2. Respondent is now, and for some time last past has been engaged in the manufacture, distribution, offering for sale and sale to distributors located throughout the United States of the following products: food supplements, including proteins, vitamins and minerals; cosmetics, toiletries and fragrances; and household and industrial cleaners. In 1973, respondent had sales revenues of approximately \$75 million.

PAR. 3. In the course and conduct of its business as aforesaid, respondent ships or causes such products to be shipped from the State in which they are manufactured and/or warehoused to distributors