

IN THE MATTER OF
ALBANO ENTERPRISES, INC., ET AL.

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

Docket C-2891. Complaint, May 31, 1977 — Decision, May 31, 1977

This consent order, among other things, requires a Santa Ana, Calif., manufacturer and distributor of automatic gas-saver devices to cease misrepresenting the performance or efficacy of its products; that its devices will fit all engines; that these products are patented; or that they have been tested, inspected or recommended by government agencies. Further, the firm is required to substantiate all product claims; withdraw and destroy any promotional material containing false or unsubstantiated representations; make refunds to dissatisfied customers, within one year from time of product purchase; and disclose this refund policy in all advertising material. The order additionally requires the firm to maintain prescribed records; and institute a program of continued surveillance to ensure that its distributors conform to the terms of the agreement.

Appearances

For the Commission: *John M. Porter.*

For the respondents: *Edward J. Atkinson, Los Angeles, Calif.*

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 Albano Enterprises, Inc., a corporation, and Louis Albano, individually and as an officer of said corporation, and Joseph Albano, individually, 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 Albano Enterprises, Inc. 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 1570 E. Edinger, Santa Ana, California.

Respondent Louis Albano is an officer of the corporate respondent. Respondent Joseph Albano is the manager of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been

engaged in the manufacture and distribution of so-called automobile gas saver products, which are marketed under such trade names as "Mini-Turbo Charger," "H. P. Air Injector," "Variable Combustion Meter," "V. C. Meter," "Air Jet," "Ram Jet," "Power-on-Gas-Saver," and "Air Master." These products are designed to fit between the PCV valve (positive crankcase ventilation) of the intake manifold and the carburetor. At sufficiently high engine speed, these products are purported to introduce minute additional amounts of air into the carburetor, thus allegedly creating a significantly better fuel burn by improving (increasing) the air to fuel ratio. At lower engine speeds, these products are designed to be inactive and have no effect at all.

PAR. 3. Respondents sell their products through distributors, and supply advertising materials and other promotional materials to these distributors for their use in reselling gas savers to the general public. These advertising materials and other promotional materials are disseminated to respondents' distributors located in various States of the United States, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. Typical, but not all inclusive thereof, of such advertisements and promotional material disseminated by respondents are the following:

A. MAKE YOUR CAR AN AIR BURNER — GET AS MUCH AS 37% MORE FUEL, MORE POWERFUL FUEL OUT OF EVERY GALLON OF GAS YOU BUY

B. WITH SUPERCHARGING you increase your horsepower dramatically up to 28% more full-time firing power.

C. GAIN 2 to 6 OR MORE MILES PER GALLON.

D. SAVE UP TO 2 GALLONS OF GAS EVERY HOUR YOU DRIVE

E. HORSEPOWER INCREASE * * * Some increases: 36%, 18.75%, 55%, 43%.

Test Lab-Walton's Auto Lab., Massachusetts

F. *Better Gas Mileage* * * * test result from one of the top U.S. labs. 16.7% MORE M.P.G. test lab: Fema Corporation, CA.

G. *Less Air Pollution* * * * Percentages of Reduction: HC 13.74%, Co: 19.96%, NOX: 30.85%—Test Lab: Anaheim, California.

PAR. 4. At the time respondents disseminated the representations contained in advertisements and other promotional materials as alleged in Paragraph Three, respondents did not possess and rely upon a reasonable basis for making these representations. Therefore, the said advertisements and other promotional materials were and are unfair and/or deceptive.

PAR. 5. The advertisements and other promotional materials disseminated as alleged in Paragraph Three, and others substantially similar thereto represent, directly or by implication, that respondents, at the time the advertisements and other promotional materials were disseminated, possessed and relied upon a reasonable

basis for making the representations contained in the advertisements and other promotional materials.

PAR. 6. In truth and in fact, at the time respondents made the representations contained in the advertisements and other promotional materials as alleged in Paragraph Three, respondents did not possess or rely upon a reasonable basis for making such representations. Therefore, the said advertisements and other promotional representations were and are unfair and/or deceptive.

PAR. 7. In connection with advertising materials and other promotional materials regarding product efficacy supplied by respondents to distributors as alleged in Paragraph Three, respondents supply additional advertising and promotional materials to their distributors for their use in reselling gas savers to the general public. Typical, but not all inclusive thereof, of such advertisements and promotional materials disseminated by respondents are the following:

- A. will fit all cars, domestic and foreign, and any truck or boat that runs on gasoline;
- B. approved by the State of California;
- C. an automotive device so original it was granted U.S. Patent No. 2454480 as a BASIC invention

PAR. 8. Through the use of the promotional representations set forth in Paragraph Seven above, and others of similar meaning and import, respondents represent directly or indirectly that their gas saver products:

- A. will fit all cars, including all imported cars, and all trucks and boats which run on gasoline;
- B. are "approved" by the State of California;
- C. are automotive products so original they are patented as a basic invention.

PAR. 9. In truth and in fact, respondents' gas saver products:

- A. will not fit all vehicles, most notably certain foreign cars and diesel engine vehicles;
- B. are not approved by the State of California and in fact California law expressly prohibits the use of the term "approved" in the advertising of such products;
- C. are not protected by any U.S. patent currently in effect.

PAR. 10. The advertisements and other promotional claims, as set forth in Paragraph Seven herein, therefore contain false, misleading, and deceptive statements and representations concerning respondents' gas saver products.

PAR. 11. In the course and conduct of the 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 sale and distribution of gas saver products of the same general kind and nature as that sold by respondents.

PAR. 12. The use by respondents of the aforesaid unfair and/or deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of the aforesaid products manufactured and distributed by respondents. Further, as a result thereof, substantial trade is being unfairly diverted to respondents from their competitors.

PAR. 13. 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 or deceptive acts or practices in or affecting commerce and 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 San Francisco 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 the Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Albano Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1570 E. Edinger, Santa Ana, California.

Respondent Louis Albano is an officer of said corporation, and respondent Joseph Albano is the manager of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their 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

It is ordered, That respondents Albano Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Louis Albano, individually and as an officer of said corporation, and Joseph Albano, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale, or distribution of any products promoted as capable of causing a beneficial effect in the fuel economy, emission or other performance characteristics of any internal combustion engine in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Making, directly or by implication, any statement or representation regarding the performance or effectiveness of said products unless such statement or representation is based upon and supported by prior, fully documented, adequate and well-controlled scientific studies or tests.

2. Failing to maintain copies of all documentation for the studies or tests referred to in subparagraph (1) of this paragraph.

3. Representing, directly or by implication, that respondents' products will fit all vehicles which are powered by gasoline engines.

4. Representing, directly or by implication, that the respondents' products have been approved, inspected, recommended or tested by the State of California or any other agency of government unless prior written approval is secured from the particular agency, or include in any public representation the name of any such agency without prior written authorization.

5. Representing, directly or by implication, that the respondents' products have been granted a patent unless there is in fact a current United States patent in force protecting those products.

It is further ordered, That any advertisement or other form of promotional representation respecting the efficacy or utility of respondents' products in the form of testimonials, must be based on fully documented, adequate, and well-controlled scientific studies or tests performed prior to the publishing or dissemination of said testimonials.

It is further ordered, That respondents shall forthwith cause the recall from all further use and destruction of all advertising copy, brochures and any other form of promotional representation, distributed to non-retail purchasers, which include statements or representations concerning the efficacy or utility of respondents' products that are inconsistent with any of the provisions set forth in this order.

It is further ordered, That respondents refund to each retail purchaser of the product the purchase price paid, in the event that such purchaser is dissatisfied with the product for any reason, within a period of one year from the date of purchase. Furthermore, should the product have any defect in workmanship or materials, the respondents shall replace the defective part or the product, as necessary, free of charge, within a one-year period from the date of purchase. Respondents shall clearly and conspicuously disclose their refund policy pursuant to the exact provisions of this order, in all advertising, promotional literature, package insert materials and the like, pertaining to the product.

It is further ordered, That each respondent shall forthwith

1. Deliver a copy of this order to cease and desist to all persons now engaged, or who become engaged in the advertising, offering for sale, sale, or distribution of respondents' products, as respondents' agent, salesman, franchisee, independent contractor, representative, or employee, and secure from each of said persons a signed statement acknowledging receipt of a copy thereof. For purposes of brevity, said persons shall be referred to hereinafter as "distributors."

2. Inform all distributors that the respondents are obligated by the acts or practices prohibited by this order, under the circumstances set forth in subparagraph 4 of this paragraph.

3. Institute a program of continuing surveillance to reveal whether the business operations of each of said distributors conform to the requirements of this order.

4. Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating a violation of any provision of this order by any distributor, or by any of such distributor's present and future dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or

other representatives, respondents shall within 24 hours notify such distributor by certified mail, return receipt requested, that such violation of this order has occurred ("Notice"), and that respondents will discontinue dealing with said distributor upon receipt by respondents of actual knowledge of one (1) or more further violations of this order by such distributor, or by any of such distributor's present and future dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or other representatives, within one hundred and eighty (180) days of receipt of said Notice by such distributor. Respondents shall obtain from such distributor written acknowledgement of receipt of such Notice, which acknowledgement shall indicate the date of receipt of such Notice.

Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating one (1) or more violations of any provision of this order, within one hundred and eighty (180) days following a distributor's receipt of the aforesaid "Notice," by a distributor, or by any of such distributor's present or future dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or other representatives, respondents shall permanently discontinue dealing with such distributor.

5. Maintain complete records for a period of no less than three years from the date of the incident, of any written or oral information received which indicates the possibility of a violation of this order by any respondent or distributor, or any of such distributor's present and future dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives; and maintain complete records of notifications of violations as required by subparagraph 4 of this paragraph, and of distributors' acknowledgements of receipt of such notifications. Any oral information received indicating the possibility of a violation of this order shall be reduced to writing, and shall include the name, address and telephone number of the informant, the name and address of the distributor involved, the date of the communication, and a brief summary of the information received. Such records shall be available upon request to representatives of the Federal Trade Commission, at normal business hours upon reasonable advance notice.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That each 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. In addition, for a period of ten years from the effective date of this order; the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacturing, advertising, offering for sale, sale, or distribution of any products promoted as capable of causing a beneficial effect in the fuel economy, emission or other performance characteristics of any internal combustion engine, or of his affiliation with a new business or employment in which his own duties and responsibilities involve the manufacturing, advertising, offering for sale, sale, or distribution of any products promoted as capable of causing a beneficial effect in the fuel economy, emission or other performance characteristics of any internal combustion engine. Such notice shall include the respondent's new business address and a statement as to the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligations arising under 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.

IN THE MATTER OF
ALEXANDER'S, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING
ACTS

Docket C-2892. Complaint, May 31, 1977 — Decision, May 31, 1977

This consent order, among other things, requires a New York City department store chain to cease failing to notify those individuals denied employment or terminated based on a consumer reporting agency report, the name and address of the reporting agency furnishing the report. Further, the firm must retroactively provide such information to those individuals denied employment or terminated because of adverse consumer reports during the two years preceeding issuance of this order.

Appearances

For the Commission: *Diana M. Kirigin and Ronald F. Stryshak.*
For the respondent: *Peter M. Gilman, Bartel, Engelman & Fishman,* New York City.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Alexander's Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, 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, Alexander's, Inc. 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 500 Seventh Ave., New York, New York.

PAR. 2. Respondent, Alexander's, Inc. has been and is now operating a chain of department stores in the States of New York and New Jersey. In connection with the operation of these stores, respondent employs over 10,000 individuals.

PAR. 3. Respondent, in the course of processing applications for employment, obtains "consumer reports" from a "consumer reporting agency" as these terms are defined in Sections 603(d) and 603(f), respectively, of the Fair Credit Reporting Act.

PAR. 4. In a number of instances, subsequent to April 25, 1971,