

IN THE MATTER OF
INTERMATIC INCORPORATED

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

Docket C-2961. Complaint, April 25, 1979 — Decision, April 25, 1979

This consent order, among other things, requires a Spring Grove, Ill. manufacturer and distributor of electrical devices to cease misrepresenting energy or cost savings that may be realized through the use of its water heater timer without disclosing that use of the timer would decrease the quantity and temperature of hot water used and adversely affect dishwasher operations. The firm would be required to make relevant disclosure statements in product advertising, labeling and instructions; and recall all previously disseminated material which fails to conform with the terms of the order. Additionally, the firm would be required to continue its existing refund policy; and maintain specified records for designated time periods.

Appearances.

For the Commission: *Randall H. Brook* and *Michael E. Kipling*.

For the respondent: *Ann Ray Heitland* and *Richard J. Hoskins*,
Schiff, Hardin & Waite, Chicago, Ill.

COMPLAINT

The Federal Trade Commission, having reason to believe that Intermatic Incorporated, a corporation, has violated Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding in that respect is in the public interest, issues this complaint.

PARAGRAPH 1. Respondent Intermatic Incorporated ("Intermatic") is a Delaware corporation with its principal office and place of business at Intermatic Plaza, Spring Grove, Illinois.

Allegations below stated in the present tense include the past tense.

PAR. 2. Intermatic is engaged in the manufacture, advertising, offering for sale, sale and distribution of a variety of electric appliances (primarily electric timing and switching devices) for home and business usage.

PAR. 3. In the conduct of its business, Intermatic ships electric appliances and devices to wholesale purchasers throughout the United States. Intermatic prepares advertising, promotional and labeling materials for its products in Spring Grove, Illinois and disseminates these materials throughout the country. Intermatic, therefore, maintains a substantial course of advertising and trade in

electric appliances and devices in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course of its business, Intermatic has advertised and sold an "electric water heater timer," and electric appliance or device designed for permanent installation in electrical circuits supplying home water heaters. The timer is identical in function to standard electric 24-hour clock timers (*i.e.*, those not designated as "water heater timers"). The timer can be set to turn on and off the power supplied to the water heater at various preset times during each 24-hour period.

PAR. 5. Intermatic's advertising for its electric water heater timer suggests using it to turn on the heater for a one-hour period in the morning and for a two-hour period in the evening during "periods of major hot water usage."

PAR. 6. Intermatic represents, directly or by implication, that:

A. Use of the timer will result in substantial savings on water heating bills without significant reduction in hot water usage or change in lifestyle. Expected annual savings range in amount from \$48 to \$120. Electric water heating costs are expected to diminish by an average of 35 percent because of the timer.

B. Cost savings are attributable to saving energy which is used by a water heater during periods when no hot water is being drawn off.

C. Intermatic has a reasonable basis in valid scientific studies or tests from which to conclude that substantial or specific cost savings will be realized by typical consumers using its timer without significant reduction in hot water usage.

PAR. 7. Contrary to these representations:

A. The use of a water heater timer will not result in substantial savings on water heating bills, nor in the specific dollar or percentage savings claimed by Intermatic, without a significant reduction in both the quantity and temperature of hot water used.

B. Any savings actually attributable to "off" periods will be negligible, since any heat lost during "off" periods must be made up by additional energy consumption during "on" periods. The only substantial savings occur from consumer acceptance of lower temperature and quantity of hot water.

C. Intermatic did not have a reasonable basis in valid scientific studies or tests from which to conclude that its representations were true.

PAR. 8. In actual use as suggested by Intermatic's instructions, hot

water temperature may drop thirty to forty degrees or more. Consumers may be unaware that water temperature is inadequate for some uses, particularly to meet recommended minimum temperatures for dishwashers.

PAR. 9. The misrepresentations by Intermatic have the tendency and capacity to induce consumers to purchase the water heater timer based on the incorrect belief that substantial savings may be realized without reduction in hot water usage.

PAR. 10. The fact that the temperature of hot water available to consumers is much lower when the water heater timer is used and the fact that consumers who use the timer may be forced to schedule certain activities (e.g., dishwashing) at specific times of the day when adequate hot water is available are facts material in light of consumers' understanding of the function and use of the timer. Failure to disclose these material facts has the tendency and capacity to mislead consumers to purchase the timer based on the incorrect belief that substantial savings may be realized without reduction in hot water usage and that substantial savings may be realized without changing one's lifestyle.

PAR. 11. Many of the purchasers of Intermatic's water heater timer may incur additional, often greater, expense in paying for installation of the device by a licensed electrician. Consumers could realize savings equal to or greater than those claimed by simply turning down water heater thermostats and/or reducing hot water usage. PAR. 12. The use of the water heater timer could be of harm to some electrical generation programs by public and private utilities. By maximizing water heater usage during peak energy consumption periods of the day, as directed by Intermatic, additional strains will be put on some power generating facilities at the hours when they are already most heavily taxed. The result of increased peak hour load usage is that utilities will have to rely on their oldest or most expensive back-up generation systems to meet the peaks. This will increase costs to the consumers and the public as a whole. On a long range basis, it may further increase public costs by contributing to the need for new generator facilities.

The promotion and sale of the water heater timer to be used as directed is contrary to public policy and therefore unfair.

PAR. 13. For the reasons stated above, and because sale of the timers may divert consumer expenditures away from valid energy saving methods, including insulating water heaters and pipes, the acts and practices of Intermatic are to the prejudice and injury of the public and constitute false, misleading, deceptive and unfair acts or

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 has initiated an investigation of certain acts and practices of respondent Intermatic Incorporated. The respondent has been furnished with a copy of a draft complaint which the Seattle Regional Office proposed to present to the Commission for its consideration. If issued by the Commission, this complaint would charge respondent with violation of the Federal Trade Commission Act.

Respondent, its attorney, and counsel for the Commission have executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts in the complaint, and a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint. The agreement also includes waivers and other provisions as required by the Commission's Rules.

The Commission has considered the matter and has determined that it has reason to believe that the respondent has violated the Federal Trade Commission Act, and that the complaint should issue. The Commission has therefore accepted the executed consent agreement and placed the agreement on the public record for a period of sixty (60) days. Now, in conformance with Section 2.34 of its Rules, the Commission issues the complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Intermatic Incorporated is a Delaware corporation with its office and principal place of business at Intermatic Plaza, Spring Grove, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

This order applies to respondent Intermatic Incorporated ("Intermatic"), its successors, assigns, officers, agents and employees, whether acting directly or through any corporation, subsidiary, division or other device. Order provisions apply to any acts taken in connection with Intermatic's advertising, displaying, offering for sale, sale or distribution of electric water heater timers except that paragraphs I.C., X., XI., and XII. also apply to any other electric

appliance or device which is promoted, displayed, offered for sale or distributed directly or indirectly to consumers, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

I. *It is ordered*, That Intermatic cease and desist from representing, directly or by implication, that:

A. Use of Intermatic's water heater timers will result in substantial savings on hot water heating bills without significant reduction in the temperature or quantity of hot water used, except where the savings would be attributable to the consumer's use of the timer to take advantage of utilities' discount or time-of-day rates.

B. Significant cost savings from the use of the water heater timer are attributable to saving energy used by water heaters during periods when no hot water is being drawn off. This subparagraph does not prohibit respondent from making any representation that meets the requirements of subparagraph I.C., below.

C. Any energy or cost savings can be realized by any electric appliance or device unless Intermatic has a reasonable basis in valid scientific studies or tests from which to conclude that typical consumers, in the areas in which the representations are disseminated, will achieve those savings under expectable and usual consumer usage.

II. *It is further ordered*, That Intermatic make the following affirmative disclosures in any advertisement or promotional, labeling, or packaging material for its water heater timer:

A. That cost savings are accompanied by a decrease in the quantity and temperature of hot water available.

B. That dishwashers should be used during certain periods of the timer's cycle in order to operate properly.

The above affirmative disclosures shall be made clearly and conspicuously. The disclosure required in subparagraph II.A. shall be in close conjunction with and in type size at least as large as any reference to cost savings. In the case of packaging materials these disclosures need be made only once; the disclosure required in subparagraph II.A shall be on the most prominent face of each packaging material.

The above affirmative disclosure need not be made in any advertisement: (1) which is disseminated only in areas where some form of discount or time-of-day rates are offered by local utilities or where such rates are reasonably foreseeable; and (2) where no cost savings

claim is made except a claim that the water heater timer provides savings by turning the water heater off during periods of higher rates.

The affirmative disclosure contained in subparagraph II.B. need not be made in advertising prepared by customers of respondent and for which respondent pays only part of the cost; *provided*, that the advertising appears as part of a multi-product advertisement the portion of which advertisement relating to the Intermatic water heater timer is no greater than eleven (11) square inches and the purpose of which is only to make the availability of the product at the retail outlet known.

III. *It is further ordered*, That Intermatic's instructions or directions for use of its water heater timer contain the following information in clear lay language:

A. The affirmative disclosures in paragraph II above. Type size shall be the same as (or larger than) that of the rest of the instructions or directions.

B. A statement that when the timer is off, the temperature of the water in the tank will decline. An explanation that if the consumer increases the amount of water drawn from the hot water tank as the temperature drops (such as by adjusting the hot/cold mix at a faucet) or uses any hot water during the "off" periods of the timer the temperature of available hot water will be decreased.

C. A method for using a dishwasher in order to have hot water available at the maximum temperature.

D. That the local electrical utility should be contacted to determine how to use timers on water heaters to avoid or minimize peak load demand problems for the utility.

E. A statement that in the event that the electrical utility serving the consumer introduces lower rates for "off peak" electrical consumption, the consumer should contact the utility to determine the "off-peak" periods so as to take advantage of lower rates.

IV. *It is further ordered*, That Intermatic immediately recall from all persons and entities that have engaged in the advertising, promotion, sale or distribution of the Intermatic water heater timer since January 1, 1977 (or request the disposal of) all advertising mats and promotional materials which contain a representation prohibited by this order or which omit a disclosure required by this order.

V. *It is further ordered*, That Intermatic prepare and distribute to all Intermatic customers who may reasonably be expected to have

remaining stocks of the Intermatic water heater timer on hand, replacement packaging materials and instructions to conform with the terms of this order. Intermatic shall ask its customers to replace the packaging materials and instructions with the new ones provided, prior to making a further sale of the Intermatic water heater timer. In lieu of replacing the packaging materials Intermatic may provide its customers with self-adhesive labels to cover existing packaging materials.

VI. *It is further ordered*, That Intermatic distribute a copy of this order to each of its customers to which it has shipped five or more water heater timers at any time since January 1, 1977.

VII. *It is further ordered*, That Intermatic continue its present policy of refunding the purchase price and installation cost for the Intermatic water heater timer.

VIII. *It is further ordered*, That Intermatic prepare a point-of-sale display, in a form to be approved by authorized representatives of the FTC, which clearly and conspicuously (1) refers to the Intermatic "Little Gray Box" water heater timer; (2) contains the affirmative disclosures in paragraph II above; and (3) contains a statement of the refund policy required by paragraph VII above. Intermatic shall provide copies of the display, directly or through its distributors, to all retail stores which have sold the Intermatic water heater timer at any time since January 1, 1977, and request that the stores post the display for at least 30 days.

IX. *It is further ordered*, That respondent maintain complete business records relative to the manner and form of its compliance with this order. Respondent shall retain each record for at least three years, and shall retain substantiation and other documentation at least two years beyond the last dissemination of any representation contingent thereon under the provisions of this order. Upon reasonable notice, respondent shall make any and all the records available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

X. *It is further ordered*, That respondent forthwith deliver a copy of this order to each operating division and affiliated business, to all present and future franchisees and licensees, and to all employees or agents now or hereafter engaged in the sale or offering for sale of respondents's products or in any aspect of the preparation, creation or placing of advertising on behalf of respondent; and that respondent secure from each such person a signed statement acknowledg-

ing receipt of this order. In the case of persons or entities not involved with respondent's water heater timers, this paragraph shall be satisfied by delivery of a statement including, verbatim, the order preamble and paragraph I.C., above.

XI. *It is further ordered,* That respondent notify the Commission at least thirty days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in said corporations which may affect compliance obligations arising out of the order.

XII. *It is further ordered,* That respondent shall, within sixty days after service upon it of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
HUK-A-POO SPORTSWEAR, INC., ET AL.

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

Docket C-2962. Complaint, April 25, 1979 — Decision, April 25, 1979

This consent order, among other things, requires two New York City wearing apparel manufacturers to cease establishing, maintaining or enforcing resale price agreements; suggesting retail prices or issuing price lists for a three-year period; pre-ticketing products with recommended retail prices; soliciting the identity of non-conformers and taking any adverse action against them. Additionally, respondents are required to reinstate customers who were terminated since January 1, 1974 for failing to maintain suggested prices; and keep records regarding reinstatement requests for five years.

Appearances

For the Commission: *Judith Braun and Sandra Bird.*

For the respondents: *Gilbert S. Edelson, Rosenman, Colin, Freund & Cohen, New York City.*

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 the parties identified in the caption hereof, 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. Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

PAR. 2. Respondents are now, and have been engaged in the manufacture, sale and distribution of wearing apparel. In 1977 respondents had net sales in excess of \$ 70,000,000.

PAR. 3. Respondents sell and distribute their products to retail dealers located throughout the United States who in turn resell respondents' products to the general public.

PAR. 4. In the course and conduct of their business as aforesaid, respondents cause and have caused apparel and related products to be shipped from the states in which they are manufactured or warehoused to purchasers in other states. Respondents maintain and