

IN THE MATTER OF
ARNAUDVILLE INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS
WARRANTY ACTS

Docket C-2972. Complaint, June 21, 1979 — Decision, June 21, 1979

This consent order, among other things, requires an Arnaudville, La. manufacturer and seller of mobile homes to cease improperly designating its warranties; and failing to include in its warranties all the information required by the Disclosure Rule, 16 CFR 701 (1977). The order further requires that purchasers of firm's products manufactured after July 4, 1975, whose warranties are still in effect, be informed, as prescribed, of their legal rights and the firm's obligations under warranties.

Appearances

For the Commission: *Michael E.K. Mpras, Bernard Fensterwald III*
and *Rachel Miller*.

For the respondent: *Robert G. Szabo*, Arnaudville, La.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act ("Warranty Act") and the implementing rules promulgated under the Warranty Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Arnaudville Industries, Inc., a corporation, sometimes referred to in the complaint as respondent, has violated the provisions of said Acts and implementing rules, 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 Arnaudville Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business located at Highway 31, P.O. Box 79, Arnaudville, Louisiana.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, distribution and sale of mobile homes to the public.

PAR. 3. In the course and conduct of its business, respondent is a supplier of consumer products distributed in commerce, as "suppli-

er," "consumer product," and "commerce" are defined by Sections 101(4), 101(1) and 101(13) and (14) of the Warranty Act respectively. In connection with the distribution in commerce of its consumer products, manufactured subsequent to July 4, 1975, respondent offers a written warranty, as "written warranty" is defined by Section 101(6) of the Warranty Act, and is therefore a warrantor, as "warrantor" is defined by Section 101(5) of the Warranty Act.

COUNT I

Alleging violations of the Warranty Act and the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Three are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 4. In connection with respondent's offering and granting of written warranties on its mobile homes, respondent failed to clearly and conspicuously designate each such warranty as either a "full (statement of duration) warranty" or a "limited warranty."

PAR. 5. Respondent's failure to designate its warranties as described in Paragraph Four of this complaint is a violation of Section 103 of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 6. In connection with its written warranty, respondent has designated such warranty as a "FULL ONE YEAR LIMITED WARRANTY." The use by respondent of such designation has had and continues to have the capacity and tendency to mislead consumers as to the nature or scope of the warranty.

PAR. 7. Respondent's designation of its written warranties as described in Paragraph Six of this complaint constitutes a deceptive warranty in violation of Section 110(c)(2) of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violations of the Warranty Act and the implementing rule promulgated under the Warranty Act, and the Federal Trade Commission Act, as amended, the allegations of Paragraphs One through Three are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 8. The Federal Trade Commission, pursuant to Title I, Section

1061

Decision and Order

109 of the Warranty Act, (15 U.S.C. 2309), duly promulgated the Rule concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions on December 31, 1975 (16 CFR 701 (1977)) (effective January 1, 1977) ("Disclosure Rule"). A copy of the Disclosure Rule is marked and attached as Appendix A* and is incorporated in Count II by reference as if fully set forth verbatim.

PAR. 9. Subsequent to January 1, 1977, in connection with its offering and granting of written warranties on mobile homes, which were manufactured subsequent to January 1, 1977, respondent failed to clearly and conspicuously disclose, in a single document, in simple and readily understood language, the following information:

(1) A statement in the following language as required by Section 701.3(a)(9) of the Disclosure Rule:

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

(2) A statement in the following language as required by Section 701.3(a)(8) of the Disclosure Rule:

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

PAR. 10. Respondent's failure to comply with the Disclosure Rule as described in Paragraph Nine of this complaint is a violation of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, the Magnuson-Moss Warranty — Federal Trade Commission Improvement Act ("Warranty Act"), and the Rule Concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule"); and

The respondent, its attorney, and counsel for the Commission

* Not reported herein for reasons of economy.

having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Arnaudville Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at Highway 31, P.O. Box 79, in the City of Arnaudville, State of Louisiana.

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

I. Definitions

For the purposes of this order the definitions of the terms "written warranty" and "consumer product" as defined in Section 101 of the Warranty Act shall apply.

II.

It is ordered, That respondent Arnaudville Industries, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly, through any corporation, subsidiary, division or any other device in connection with the advertising, offering for sale and sale of mobile homes and all other consumer products, do forthwith cease and desist from:

1. Offering or granting a written warranty on consumer products actually costing the consumer in excess of \$10.00 which is not clearly and conspicuously designated as either a "full (statement of duration) warranty" or a "limited warranty."

having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Arnaudville Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at Highway 31, P.O. Box 79, in the City of Arnaudville, State of Louisiana.

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

I. Definitions

For the purposes of this order the definitions of the terms "written warranty" and "consumer product" as defined in Section 101 of the Warranty Act shall apply.

II.

It is ordered, That respondent Arnaudville Industries, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly, through any corporation, subsidiary, division or any other device in connection with the advertising, offering for sale and sale of mobile homes and all other consumer products, do forthwith cease and desist from:

1. Offering or granting a written warranty on consumer products actually costing the consumer in excess of \$10.00 which is not clearly and conspicuously designated as either a "full (statement of duration) warranty" or a "limited warranty."

2. Offering or granting a written warranty on consumer products actually costing the consumer in excess of \$15.00, which fails to clearly and conspicuously disclose, in a single document, in simple and readily understood language, the following information:

This warranty gives your specific legal rights, and you may also have other rights which vary from state to state.

3. Offering or granting a written warranty on consumer products actually costing the consumer in excess of \$15.00, and which excludes or limits relief such as incidental or consequential damages, which fails to clearly and conspicuously disclose, in a single document, in simple and readily understood language, the following information:

Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

4. Offering or granting a written warranty on consumer products actually costing the consumer in excess of \$15.00, which fails to comply with the Warranty Act, the Rule concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions (16 CFR 701 (1977)) (effective January 1, 1977) ("Disclosure Rule"), the Rule concerning the Pre-Sale Availability of Written Warranty Terms (16 CFR 702 (1977)) (effective January 1, 1977) ("Pre-Sale Rule"), and the Rule concerning the Informal Dispute Settlement Procedures (16 CFR 703) (1977) (effective January 1, 1977).

III.

It is further ordered, That respondent:

A. Shall, in performing pursuant to its written warranties, meet the minimum requirements of Section 104 of the Magnuson-Moss Warranty — Federal Trade Commission Improvement Act ("Warranty Act") for all consumer products sold by respondent which are still under warranty as of the effective date of the order, and which were manufactured after July 4, 1975. This provision is limited to warranties issued by respondent which did not comply with the Warranty Act and the Disclosure Rule as stated in the complaint.

B. Notify all consumers affected by Paragraph A., above, by mailing to each such consumer the notice set forth in Appendix B of this order within 30 days from the effective date of the order. Respondent shall obtain the names and addresses of such consumers from its files and/or from the files of all retail outlets which sell respondent's products.

C. Shall not raise any defenses arising from the use of the terms

"Limited Warranty" in any case, suit or other proceeding brought against respondent by consumers affected by Paragraph A, above.

D. Notify, within 30 days from the effective date of the order, all its dealers who sell respondent's mobile homes, and all its agents and employees who are authorized to handle warranty claims, of all changes in its written warranties, including, but not limited to, consumer rights and remedies available to them under the warranty and this order.

E. Deliver a copy of this order to cease and desist to all present employees, salesmen, agents, independent contractors and other representatives engaged in the preparation and distribution of written warranties, and in the sale of warranted consumer products on behalf of respondent and secure a signed statement acknowledging receipt of the order from each such person.

F. Maintain complete records for a period of three (3) years from the effective date of the order to be furnished upon request to the staff of the Federal Trade Commission, including but not limited to, copies of complaints, requests for service, service records, letters mailed to consumers pursuant to Paragraph B of the order, written warranties, and any other written communications between respondent and its customers which relate to warranty service and performance.

G. 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.

H. Shall within sixty days (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

APPENDIX B

[NAME AND ADDRESS OF CONSUMER] [DATE]

Dear [Name of Consumer]:

Following a review of our written warranty by the Federal Trade Commission, it was pointed out to us that we had made a few errors in our warranty. We have voluntarily agreed with the FTC to write you this letter as part of a way to correct those errors.

Now you have some added warranty protection for your mobile home.

The Federal Warranty Act requires warranties to be labeled as full warranties or as limited warranties. Because our warranty was titled "full one year limited warranty," we will treat it as a full warranty.

1061

Decision and Order

Here is what this means.

(1) If a manufacturing defect shows up in the first year since you got your home, we will fix it free. We will also pay for removal, reinstallation, on-site repairs and shipping if needed.

(2) We will fix the problem within a reasonable time after you tell us about it.

(3) If we try a reasonable number of times and still can't fix the problem, we will replace the defective part. If the problem is sufficiently serious and we can't fix it, we will either give you a new mobile home, or if you prefer, we will give you your money back. However, we will not be responsible for fixing any damage caused by your misuse or abuse of the home, or by such uncontrollable forces as lightning, floods, and the like.

Also, some parts of your mobile home, such as your kitchen appliances, carpets, draperies, furniture and other such items, are not covered by our written warranty. These items are covered by written warranties issued by other manufacturers as indicated in your Owner's Manual.

(4) If you sell your home during the first year, the new owner will get the same protection until the warranty ends. If you have already sold your home, please tell the new owner about this, or tell us and we will write to them.

Also, our warranty said we will not pay for any losses caused by a defective product. We want you to know that in some cases, and in some states, even these are covered.

If you have questions or problems, please feel free to contact your dealer. Or call us collect at (tele. no.). We will be glad to help.

Sincerely,

Arnaudville Industries, Inc.

Complaint

93 F.T.C.

IN THE MATTER OF
MADISON MOBILE-MODULAR HOMES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS
WARRANTY ACTS

Docket C-2973. Complaint, June 21, 1979 — Decision, June 21, 1979

This consent order, among other things, requires an Ontario, Calif. manufacturer and seller of mobile homes to cease failing to properly designate its written warranties; disclose in its warranties all the information required by the Disclosure Rule, 16 CFR 701 (1977); and note in its warranty registration cards that warranty coverage or performance is not conditioned on the return of the cards. The firm is further required to notify purchasers of respondent's mobile homes manufactured after July 4, 1975 of their implied warranty rights; and make available to these consumers all the relief provided under applicable state laws. Additionally, the order restrains the firm for four years from raising any defenses relating to the disclaimer of implied warranties in suits brought by affected purchasers.

Appearances

For the Commission: *Michael E.K. Mpras, Bernard Fensterwald III*
and *Rachel Miller*.

For the respondent: *Dan Holden*, Anaheim, Calif.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act ("Warranty Act") and the implementing rules promulgated under the Warranty Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Madison Mobile-Modular Homes, Inc., a corporation ("respondent"), has violated the provisions of said Acts and implementing rules, 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 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 1555 S. Cucamonga Ave., Ontario, California.

PAR. 2. Respondent has been, and is now, engaged in the designing, manufacture, distribution and sale of mobile homes to the public.