

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.

Respondent distributes its mobile homes primarily in California, Arizona, and Nevada.

PAR. 3. In the course and conduct of its business, respondent is a supplier of consumer products distributed in commerce, as "supplier," "consumer product," and "commerce" and defined by Sections 101(4), 101(1) and 101(13) and (14), respectively, of the Warranty Act. 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 mobile homes which cost the consumer in excess of \$10.00, 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.

COUNT II

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 II as if fully set forth verbatim.

PAR. 6. In connection with respondent's offering and granting of written warranties on mobile homes, respondent has disclaimed all implied warranties available to consumers under state law with respect to the mobile homes sold by respondent, including the implied warranty of merchantability and the implied warranty of fitness for a particular purpose.

PAR. 7. Respondent's disclaimer of the implied warranties as described in Paragraph Six of this complaint is a violation of Section

Complaint

93 F.T.C.

108(a) 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 III

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 III as if fully set forth verbatim.

PAR. 8. The Federal Trade Commission, pursuant to Title I, Section 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 III 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 costing the consumer in excess of \$15.00 which were manufactured subsequent to January 1, 1977, respondent failed to clearly and conspicuously disclose, in each written warranty 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.

A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations. This includes the name of the warrantor, together with the mailing address of the warrantor, and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number which consumers

* Not reported herein for reasons of economy.

may use without charge to obtain information on warranty performance, as required by Section 701.3(a)(5) of the Disclosure Rule.

PAR. 10. Respondent's failure to comply with the Disclosure Rule as described in Paragraph Nine of the 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.

PAR. 11. In connection with respondent's offering and granting of written warranties, respondent has made the following statements and representations in its written warranties and warranty coupons:

To validate this warranty, the warranty [sic], the warranty coupon attached hereto shall be fully executed and returned to the manufacturer within (5) days after the initial delivery of the mobile home to the original retail purchaser.

Return warranty coupon immediately to assure warranty . . .

Note: mail to Madison Mobile — Modular Homes, Inc., within three (3) days after delivery to address below where home was purchased.

PAR. 12. By and through the statements and representations described in Paragraph Eleven of the complaint, respondent has represented, directly or by implication, that the consumer's obligation to return the warranty coupon within five days (or three days) after delivery of the mobile home is a condition precedent to warranty coverage and performance.

PAR. 13. In truth and in fact, respondent, in many instances, does not require the return of the warranty coupon as a condition precedent to warranty coverage and performance. It is respondent's policy to service the mobile homes under warranty whenever the consumers demonstrate any reasonable evidence of date of purchase.

PAR. 14. The use by respondent of the statements and representations in its written warranties as described in Paragraph Eleven of this complaint has had and continues to have the capacity and tendency to mislead consumers into the mistaken and erroneous belief that warranty coverage and performance is only obtainable if the warranty coupon has been returned by the consumer within the stated time. Therefore, the statements and representations as set forth in Paragraph Eleven of the complaint were and are false, misleading and deceptive.

PAR. 15. Respondent's statements and representations as described in Paragraphs Eleven through Thirteen of the Complaint constitute a deceptive warranty in violation of Section 110(c)(2) of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, are

unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 16. In connection with its written warranties, respondent has failed to disclose in such warranties that the return of the warranty coupon is not a condition precedent to warranty coverage and performance, as required by Section 701.4 of the Disclosure Rule.

PAR. 17. Respondent's failure to comply with the Disclosure Rule as described in Paragraph Sixteen of the 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 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, Madison Mobile-Modular Homes, 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 155 S. Cucamonga Ave., in the City of Ontario, State of California.

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 Madison Modular-Mobile Homes, 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 upon 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 upon any consumer product which limits, modifies or disclaims, in any manner, the implied warranties available to the consumer, including, but not limited to, the implied warranty of merchantability and the implied warranty of fitness for a particular use; *provided, however,* that nothing contained in this paragraph shall prevent respondent from limiting the duration of such implied warranties to the duration of a limited written warranty pursuant to Section 108(b) of the Warranty Act (15 U.S.C. 2308(b)). Any such limitation shall be immediately followed by the statement specified in 16 CFR 701.3(a)(7).

3. Offering or granting a written warranty upon consumer products actually costing the consumer in excess of \$15.00, which fails to clearly and conspicuously disclose in the warranty the following items of information:

(a) A statement in the following language:

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

(b) A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations. This includes the name of the warrantor, together with the mailing address of the warrantor, and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number which consumers may use without charge to obtain information on warranty performance.

4. Offering or granting a written warranty upon 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 the warranty a statement in the following language:

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.

5. Offering or granting a written warranty upon any consumer product actually costing the consumer in excess of \$15.00 which employs the use of any card such as an owner's registration card, warranty registration card, warranty coupon, or the like, unless it is clearly and conspicuously disclosed in the warranty that the return of such card or coupon is not a condition precedent to warranty coverage and performance.

6. Offering or granting a written warranty on consumer products actually costing the consumer in excess of \$15.00, which fails to comply with all of the requirements of the Warranty Act and amendments thereto, and all rules promulgated thereunder.

It is further ordered. That respondent:

A. Label or title its warranty coupon, owner's registration card, warranty registration card, or the like, according to the purpose or purposes for which it is intended, *e.g.*, "marketing research card."

B. Disclose, clearly and conspicuously, in simple and readily understood language, and in the largest type that appears on the warranty coupon (appropriately labeled pursuant to paragraph A., above,) the following information:

1. The purpose(s) for which such coupon or card is utilized.
2. That the consumer is not required to fill out or mail the coupon or card for, or as a condition precedent to, warranty coverage and performance.

C. For four years after the effective date of the order:

1. Shall not raise any defenses pertaining to the disclaimer of implied warranties in any case, suit or other proceeding brought against respondent by consumers who have purchased any of respondent's warranted products manufactured between July 4, 1975 and the effective date of the order.

2. Provide all consumers who have purchased any of respondent's warranted products manufactured between July 4, 1975 and the effective date of the order, which do not comply with all of the implied warranties, with all relief available to them by applicable state laws.

D. Notify all consumers who (1) have purchased any warranted product manufactured between July 4, 1975 and the effective date of the order, manufactured by respondent, and (2) received a warranty which does not comply with the Warranty Act and the Disclosure Rule as stated in the complaint, by mailing to each such consumer the notice set forth in Appendix B of this complaint and order. Respondent shall obtain the names and addresses of such consumers from the warranty coupons which have been mailed to respondent by buyers of respondent's products. In the event that respondent does not have the names and addresses of all such affected consumers, respondent shall contact all retail outlets which sell respondent's products and use every means possible, including securing copies of sales invoices in the possession of such retailers, to obtain the names and addresses.

E. 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.

F. 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 change in the corporation which may affect compliance obligations arising out of the Order.

G. Deliver a copy of this order to cease and desist to all present and future 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.

Decision and Order

93 F.T.C.

H. Maintain, for a period of three (3) years from the effective date of the order, complete business records of the manner and form of respondent's continuing compliance with all the terms and provisions of the order, to be furnished upon request to the staff of the Federal Trade Commission during normal business hours and upon reasonable advance notice.

I. Shall within sixty (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]:

You have some added warranty protection for your mobile home. The Federal Trade Commission has told us to write you about it.

The warranty you got says you have no implied warranties under state law. This isn't so. You have these warranties, for at least four years from the date of purchase.

First, you have a warranty of "merchantability." This means your home must be in livable condition.

Second, you may have a warranty of "fitness for a special purpose." If, when you bought your home, you relied on our advice or our ads that it was fit for a special purpose, it must live up to that promise.

If your home doesn't live up to one of these warranties, and we can't make it do so, you may have a legal right to cancel your purchase and make a claim for some of your money back. If you feel this is the case, please contact your dealer, or call us collect at (telephone number).

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.

Our warranty also said you had to send us your registration card. Again, this isn't so. We'll accept any reasonable proof of purchase or delivery date. A sales slip or receipt will be okay.

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

Please excuse these mistakes in our warranty.

Sincerely,

Madison Mobile-Modular Homes, Inc.

IN THE MATTER OF
MOTHERHOOD MATERNITY SHOPS, INC.

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

Docket C-2974. Complaint, June 21, 1979 — Decision, June 21, 1979

This consent order, among other things, requires a Santa Monica, Calif. manufacturer and seller of maternity wearing apparel and related products and its corporate owner to cease establishing, maintaining and enforcing resale prices and sale periods for their products; soliciting, exchanging or disseminating price information; and compelling adherence to such prices and sale periods through persuasion or coercion. Respondents are additionally prohibited from withholding advertising allowances, or otherwise taking adverse action against recalcitrant retailers.

Appearances

For the Commission: *Sandra L. Bird and Elliot Feinberg.*

For the respondents: *George Zachary, Rosenfeld, Meyer & Susman, Beverly Hills, 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 Motherhood Maternity Shops, Inc., a corporation, 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 Motherhood Maternity Shops, Inc. (hereinafter sometimes referred to as Maternity Shops) 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 at 1330 Colorado Ave., Santa Monica, California.

PAR. 2. Respondent MMS of Delaware, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1330 Colorado Ave., Santa Monica, California.

MMS of Delaware, Inc. acquired all of the stock of Motherhood Maternity Shops, Inc. in July 1977, through the merger of Motherhood Maternity Shops, Inc. and MMS of California, Inc., a wholly-owned subsidiary of MMS of Delaware, Inc.

PAR. 3. Respondent Maternity Shops is now, and has been, engaged