

Modifying Order

IN THE MATTER OF
NORRIS INDUSTRIES, INC.MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2946. Decision, Dec. 27, 1978 — Modifying Order, July 12, 1979*

This order modifies the cease and desist order issued on December 27, 1978, 44 FR 6380, 92 F.T.C. 989, by revising Paragraph "2." of Part II of the original order to require affirmative disclosures and include definitions of "clear and conspicuous" for purposes of print, radio, and television advertising.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on April 25, 1979, issued its Order to Show Cause why this proceeding should not be reopened and its order of December 27, 1978, modified.

Respondents filed an Answer on May 31, 1979, setting forth objections to the Order to Show Cause, and proposing certain amendments. Commission staff interposed no objections and recommended that the respondent's amendments be incorporated into the order,

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the Order to Show Cause and the Respondent's Answer, without necessity of further action by the Commission, as follows:

ORDER

PART I

It is ordered, That Norris Industries, Inc., [hereinafter referred to as the respondent], its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of dishwashers in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can sterilize or destroy all microorganisms on utensils placed in the dishwasher.
2. Representing directly, or by implication, that the stainless steel parts in any dishwasher manufactured or sold by respondent are rustproof or will not rust under normal household conditions.

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3. Representing, directly or by implication, that the disposo-drain in any dishwasher manufactured or sold by respondent will remove all soft food waste from the dishwasher.

4. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can completely clean dishes, cookware, and other utensils placed in the dishwasher, without prior scraping, scouring, or rinsing.

5. Representing, directly or by implication, that any dishwasher manufactured or sold by respondent can be randomly loaded or that there are no special instructions to follow when loading.

PART II

It is further ordered, That respondent, its successors and assigns, either jointly or individually, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of major home appliances in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. (a) Making any statements or representations, directly or by implication, concerning the performance of such products unless at the time that the statements or representations are made respondent possesses and relies on a reasonable basis for such statements or representations, which shall consist of a competent and reliable scientific test, as defined in Paragraph One (b) hereafter.

(b) For purposes of this order a "competent and reliable scientific test" is one in which one or more persons with education, knowledge, and experience in the field conduct a test and evaluate its results in an objective manner using testing, evaluation, and analysis procedures generally accepted in the profession and which best insure valid and reliable results. Moreover, the test results must either accurately predict, or be correlated with, the results that a consumer ordinarily would obtain using the product under normal household conditions.

2. Failing to make a "clear and conspicuous disclosure" that product features, depicted or described in advertising for a product, apply only to the model being advertised or, if applicable, only to certain models. Such disclosure shall identify the model(s) by number(s) (and name(s) if applicable) to which the product features do or, at the respondent's option, do not apply. This disclosure shall not be required where the advertisement clearly and conspicuously identifies the model by number (and model name if applicable) to which the product features being advertised apply.

For purposes of this provision:

Television Advertising – clear and conspicuous shall be as set forth in the FTC's Statement of Enforcement Policy of October 21, 1970;

Radio Advertising – the disclosure shall be clear and conspicuous and shall be made with no other sounds including music;

Print Advertising – clear and conspicuous shall mean that the disclosure of the model number and name, if applicable, shall be in no less a type size than that used to describe the product features and shall be in immediate conjunction with the description of the product features.¹

3. Making any statements or representations, directly or by implication, in connection with the advertisement of any such product, which are inconsistent in any material respect with any statements or representations contained, directly or by implication, in post purchase material(s) supplied to the purchaser of such products.

4. For purposes of this order the term "major home appliances" means the following appliances presently manufactured or sold by the respondent: automatic dishwashers; garbage disposers; trash compactors; and microwave ovens.

PART III

It is further ordered, That respondent, its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, distribution or sale of "major home appliances" in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain the following accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) documentation in support of and on which respondent relied in making any claim included in advertising, sales promotional material, or post purchase materials, disseminated by respondent or by any division or subdivision of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division or

¹ The provisions of this order in respect to print advertising will be implemented per the following schedule: (1) Reproducible advertising for use by distributors and retail dealers – when stock in existence on June 1, 1979, is exhausted but in any event no later than January 1, 1980; (2) Advertising for placement by respondent – promptly upon the effective date of this modification to the final order; (3) Brochures – when stock in existence on June 1, 1979, is exhausted but in any event no later than January 1, 1980, except, respondent's brochure identified as Exhibit 22 in the Compliance Report dated as of April 12, 1979 – promptly upon the effective date of this modification to the final order.

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subsidiary, concerning the performance characteristics of any of respondent's major home appliances;

(b) documentation which contradicts, qualifies or calls into serious question any claim included in advertising, sales promotional material or post purchase materials disseminated by respondent or by any division or subdivision of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division or subsidiary, concerning the performance characteristics of any of respondent's major home appliances.

Such documentation shall be retained by respondent for a period of three years from the date such advertising, sales promotional or post purchase materials were last disseminated.

PART IV

It is further ordered, That respondent notify the Commission at least 30 days prior to the effective date of 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 the respondent shall forthwith distribute a copy of this order to each of its officers, agents, representatives or employees of the respondent's Thermador/Waste King division who are engaged in the preparation, placement, or review of advertisements for the "major home appliances" defined in this order.

It is further ordered, That the respondent 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.

IN THE MATTER OF

TRANS WORLD ACCOUNTS, INC., ET AL.

MODIFIED ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9059. Decision, October 25, 1977 — Modified Order, July 25, 1979

This modified order to cease and desist replaces an order issued on October 25, 1977, 43 FR 2388, 90 F.T.C. 350. To clarify and reformulate the earlier order in accordance with the March 29, 1979 mandate of the Court of Appeals for the Ninth Circuit, 594 F.2d 212, Paragraph 3, which is the subject of further proceeding, has been omitted, but Paragraph 4 has not been renumbered.

MODIFIED ORDER TO CEASE AND DESIST

On February 21, 1978, respondents filed in the United States Court of Appeals for the Ninth Circuit a petition to review an order to cease and desist issued herein on October 25, 1977. The Court thereafter rendered its decision and judgment, affirming and enforcing the Commission's order with the exception of numbered Paragraph 3 thereof which was remanded for clarification pursuant to the decision of the Court. The time in which to file a petition for certiorari has now expired without any party having filed such a petition, and, accordingly, the order of the Commission shall be rendered in accordance with the mandate of the Court. See 15 U.S.C. 45(i).

Therefore, It is ordered, That the aforesaid order to cease and desist, save for numbered Paragraph "3" (which is the subject of further proceedings), be rendered to read as follows:

ORDER

It is ordered, That respondents, Trans World Accounts, Inc., a corporation, its successors and assigns, and its officers, and Floyd T. Watkins, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by their appearance,