

Complaint

94 F.T.C.

IN THE MATTER OF

WOODLAND MOBILE HOMES, INC., ET AL.

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

Docket C-2984. Complaint, Aug. 3, 1979 — Decision, Aug. 3, 1979

This consent order, among other things, requires a Santa Rosa, Calif. seller of mobile homes and other consumer products and its affiliate, Woodland Mobile Homes, Inc. of Nevada, to cease failing to make available to prospective buyers, prior to purchase, the text of written warranties offered for their products as required by federal regulations.

Appearances

For the Commission: *Harold G. Sodergren.*

For the respondent: *Pro se.*

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 Rule Concerning the Pre-Sale Availability of Written Warranty Terms (16 CFR 702 (1977)) (effective January 1, 1977) ("Pre-Sale Rule") duly promulgated on December 31, 1975 [40 F.R. 60189] pursuant to Title I, Section 109 of the Warranty Act (15 U.S.C. 2309) (a copy of the Pre-Sale Rule is marked and attached as Appendix A* and is incorporated herein by reference as if fully set forth verbatim), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Woodland Mobile Homes, Inc., and Woodland Mobile Homes, Inc. of Nevada, corporations, and Allan Borgia, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and Pre-Sale Rule, 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 Woodland Mobile Homes, Inc. is a corporation organized, existing and doing business under and by virtue

* Not reproduced herein for reasons of economy.

of the laws of the State of California. Its principal office and place of business is located at 333 South E St., Santa Rosa, California.

Respondent Woodland Mobile Homes, Inc. of Nevada, an affiliate of Woodland Mobile Homes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada. Its principal office and place of business is located at 440 Gentry Way, Reno, Nevada.

Respondent Allan Borgia is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations and his address is the same as that of said Woodland Mobile Homes, Inc.

PAR. 2. Respondents have been, and are now, engaged in the advertising, offering for sale, and sale of mobile homes to the public.

PAR. 3. In the course and conduct of their business, respondents offer for sale and sell to consumers, consumer products distributed in commerce as "consumer product", "consumer", and "commerce" are defined by Sections 101(1), 101(3), 101(13) and 101(14), respectively, of the Warranty Act.

PAR. 4. Subsequent to January 1, 1977, respondents, in the course and conduct of their business, have offered for sale and sold mobile homes and other consumer products costing the consumer in excess of \$15.00, many of which are warranted by the manufacturer. Respondents are, therefore, sellers as "seller" is defined in Section 702.1(e) of the Pre-Sale Rule.

PAR. 5. In connection with the offering for sale and sale of mobile homes and other consumer products, respondents have failed, as required by Section 702.3(a) of the Pre-Sale Rule, to make the text of the written warranties available for prospective buyers' review prior to sale through one or more of the following methods:

(a) Clearly and conspicuously displaying the text of the written warranty in close conjunction to each warranted product;

(b) Maintaining a warranty binder system which is readily available to the prospective buyers, along with conspicuous signs indicating the availability and identifying the location of binders when the binders are not prominently displayed;

(c) Displaying the package of the consumer product on which the text of the written warranty is disclosed in such a way that the warranty is clearly visible to prospective buyers at the point of sale; and

(d) Placing a sign which contains the text of the written warranty in close proximity to the product to which it applies.

PAR. 6. Respondents' failure to comply with the Pre-Sale Rule as

described in Paragraph Five 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 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, as amended, the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, and the Rule Concerning the Pre-Sale Availability of Written Warranty Terms promulgated under the Magnuson-Moss Warranty-Federal Trade Commission Improvement 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 Acts, 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Woodland Mobile 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 333 South E St., Santa Rosa, California.

Respondent Woodland Mobile Homes, Inc. of Nevada is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Nevada, with its office and principal place of business located at 440 Gentry Way, Reno, Nevada.

Respondent Allan Borgia is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations and his address is the same as that of said Woodland Mobile Homes, Inc.

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

I

DEFINITIONS

For the purposes of this order the definitions of the terms "consumer product," "warrantor," and "written warranty" as defined in Section 101 of the Warranty Act shall apply. The definition of the term "binder" as defined in Section 702.1(g) of the Pre-Sale Rule shall apply.

II

It is ordered, That respondents Woodland Mobile Homes, Inc., and Woodland Mobile Homes, Inc. of Nevada, corporations, their successors and assigns, and their officers, and Allan Borgia, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, and sale of mobile homes or other consumer products, do forthwith cease and desist from:

1. Failing to make available in respondents' display area for prospective buyers' review prior to sale, the text of any written warranties offered or granted by the manufacturers of mobile homes and consumer products sold by respondents.

With respect to mobile homes, "display area" means a prominent location inside each mobile home.

2. Maintaining a binder or series of binders to satisfy the requirements of Paragraph 1, above, unless such binder or binders are located in each mobile home being displayed for sale by respondents, and such binder or binders include at least one copy of each written warranty applicable to the mobile home and the consumer products contained in the mobile home.

In utilizing any such binder or binders respondents shall:

- (a) provide prospective buyers with ready access thereto; and
- (b) (1) display such binder(s) in a manner reasonably calculated to elicit the prospective buyers' attention; or
- (2) (i) make such binder(s) available to prospective buyers on request; and
- (ii) place signs reasonably calculated to elicit the prospective buyers' attention in prominent locations within each mobile home, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access; and
- (c) index such binder(s) according to product or warrantor; and
- (d) clearly entitle such binder(s) as "Warranties" or other similar title.

III

It is further ordered, That respondents post, in a prominent location in each mobile home being displayed for sale, a sign, two feet (length) by two feet (width), reasonably calculated to elicit prospective buyers' attention, which contains a verbatim reproduction of the following language:

IMPORTANT!

NOT ALL WARRANTIES ARE THE SAME

We provide warranties for you to compare before you buy

Please ask to see them

Check: Full or limited?

What costs are covered?

What do you have to do?

Are all parts covered?

How long does the warranty last?

Such sign shall be posted for a period of not less than three years from the effective date of this order. The language in such sign shall be unencumbered by other written or visual matter, shall be indented and punctuated as indicated in this paragraph, above, and shall be printed in black against a solid white background, as follows:

a. The word "Important" shall serve as the title of the notice and shall be printed in capital letters in 42 point boldface type followed by an exclamation mark.

b. The next phrase shall be printed on a separate line in capital letters and in 42 point boldface type.

c. The next two phrases shall be printed on separate lines and in 36 point medium face type.

d. Each succeeding phrase shall be printed on a separate line and in 24 point medium face type.

IV

1. *It is further ordered*, That respondents deliver a copy of this order to cease and desist to all present and future employees, salespersons, agents, independent contractors, and other representatives of respondents engaged in the sale of mobile homes or consumer products on behalf of respondents, and secure a signed statement acknowledging receipt of the order from each such person.

2. *It is further ordered*, That respondents instruct all present and future employees, salespersons, agents, independent contractors, and other representatives of respondents, engaged in the sale of mobile homes or other consumer products on behalf of respondents, as to their specific obligations and duties under the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. Law 93-637, 15 U.S.C. 2301, *et seq.*), all present and future implementing Rules promulgated under the Act, and this order.

3. *It is further ordered*, That respondents institute a program of continuing surveillance to reveal whether respondents' employees, salespersons, agents, independent contractors, or other representatives are engaged in practices which violate this order.

4. *It is further ordered*, That respondents maintain complete records for a period of not less than three (3) 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 of respondents' employees, salespersons, agents, independent contractors, or other representatives. 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 individual 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 during normal business hours upon reasonable advance notice.

5. *It is further ordered*, That respondents maintain, for a period of not less than three (3) years from the effective date of this order, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relating to the manner and form of their continuing compliance with all the terms and provisions of this order.

6. *It is further ordered*, That the corporate respondents notify the Commission at least thirty (30) days prior to any proposed change 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 corporate respondents which may affect compliance obligations arising out of this order.

7. *It is further ordered*, That the 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 10 years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of 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 obligation arising under this order.

8. *It is further ordered*, That respondents 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
THE DINERS CLUB, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2884. Complaint, April 22, 1977 — Decision, Aug. 10, 1979*

This amended order modifies an April 22, 1977 consent order issued against National Account Systems, Inc. (NAS), its owner, The Diners Club, Inc. (Diners), and three NAS subsidiaries, by including Payco American Corporation (Payco) as a respondent. Payco, who has purchased NAS and its subsidiaries from Diners, has agreed, upon transfer of interest, to assume Diners' obligations under the amended order, although Diners would still be bound by the provision prohibiting the use of independent agents or other entities to circumvent any term of the amended order.

Appearances

For the Commission: *Kenneth H. Donney.*

For the respondents: *Frank C. Christl, Gendel, Raskoff, Shapiro & Quittner*, Los Angeles, Calif.

DECISION AND ORDER

The Diners Club, Inc. and Payco American Corporation, by a petition filed April 3, 1979, withdrawing a petition filed by The Diners Club, Inc. on July 19, 1978, request, pursuant to Rule 3.72(b)(2) of the Commission's Rules of Practice, that the Commission reopen these proceedings and modify the order to cease and desist against Diners Club, Inc., *inter alia*, which has become final.

The staff of the Los Angeles Regional Office has filed an answer to the petition to reopen and modify. In the answer, it is stated that the staff joins with The Diners Club, Inc. and Payco American Corporation in urging that the order to cease and desist be modified by the Commission. The Director of the Bureau of Consumer Protection concurs with this recommendation.

In the complaint in this case issued by the Commission on April 22, 1977, Diners Club, Inc. was named as a respondent in that it was the parent corporation of National Account Systems, Inc. The complaint did not allege that Diners Club, Inc. engaged in any unlawful practices. The order required Diners Club, Inc. to be financially responsible for any civil penalties assessed and prohibited Diners Club, Inc. from knowingly using independent agents or other entities to circumvent

* Complaint previously published at 89 F.T.C. 282.