

Complaint

94 F.T.C.

IN THE MATTER OF

KORVETTE'S, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS WARRANTY
ACTS*Docket C-2987. Complaint, Aug. 16, 1979 — Decision, Aug. 16, 1979*

This consent order would require a New York City department store chain, among other things, to cease failing to provide its stores with statutorily required warranty material; and to make the terms of written warranties on consumer products available to prospective purchasers prior to sale. The firm is further required to develop and implement a program to instruct its sales personnel about the availability and location of warranty information; and maintain adequate business records for a period of two years.

*Appearances*For the Commission: *Stewart McCloud.*For the respondent: *Charles Meyers, New York City.*

COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act and Rule 702 (16 C.F.R. 702) promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Korvette's, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Rule 702 promulgated under the Magnuson-Moss Warranty 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. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, Pub. Law 93-637, 15 U.S.C. 2301 (Supp. 1975) and in Rule 702 (16 C.F.R. 702) promulgated thereunder, shall apply to the terms used in this complaint.

PAR. 2. Respondent Korvette's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 450 West 33rd St., New York, New York.

PAR. 3. Respondent is now and has been engaged in the operation of a chain of department stores throughout the United States. Its volume of business has been and is substantial. In the operation of its

department stores, respondent is now and has been distributing, advertising, offering for sale and selling among other items, appliances, including but not limited to household appliances, radios, stereos, and televisions which are consumer products. Therefore, respondent is both a supplier and seller of consumer products.

PAR. 4. Respondent, in the course and conduct of its aforesaid business, now causes and has caused consumer products to be distributed in commerce.

PAR. 5. The Federal Trade Commission, pursuant to Title I, Section 109 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2309, has duly promulgated on December 31, 1975 [40 F.R. 60189] the Rule concerning the Pre-Sale Availability of Written Warranty Terms (16 C.F.R. 702 (1977)), effective January 1, 1977. A copy of the Rule* is marked and attached as Appendix A, and is incorporated in this complaint by reference as if fully set forth verbatim.

COUNT I

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

PAR. 6. In the ordinary course and conduct of its aforesaid business, respondent regularly offers and has offered written warranties on consumer products. Therefore, respondent is a warrantor of consumer products.

PAR. 7. In the further course and conduct of its business as warrantor of consumer products actually costing more than \$15.00 respondent has failed to provide its department stores with the warranty materials required by 16 C.F.R. 702.3(b)(1) which are necessary for such stores to comply with the requirements for sellers of consumer products as set forth in 16 C.F.R. 702.3(a).

PAR. 8. Respondent's failure to comply with the provisions of 16 C.F.R. 702 constituted and now constitutes a violation of the Magnuson-Moss Warranty Act and, pursuant to Section 110(b) thereof, an unfair or deceptive practice under Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), as amended.

COUNT II

Alleging violations of the Magnuson-Moss Warranty Act and the

* Not reproduced herein for reasons of economy.

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

PAR. 9. In the ordinary course and conduct of its aforesaid business, respondent regularly sells or offers for sale consumer products for purposes other than resale or use in the ordinary course of the buyer's business. Therefore, respondent is a seller of consumer products.

PAR. 10. On or after January 1, 1977, respondent, in the ordinary course of its aforesaid business as a seller of consumer products actually costing more than \$15.00 and manufactured on or after January 1, 1977 has failed to make the terms of written warranties available to the consumer prior to sale through utilization of one or more of the methods required by 16 C.F.R. 702.3(a)(1) by:

- A. Clearly and conspicuously displaying the text of the written warranty in close conjunction with the product;
- B. Maintaining a binder system readily available to the consumer along with conspicuous signs noting the location of binders where the binders themselves are not in plain view;
- C. Displaying the warranty package in such a way that the text of the warranty is visible; and
- D. Placing a sign with the warranty terms in close proximity to the product.

PAR. 11. Respondent's failure to comply with the provisions of 16 C.F.R. 702 constituted and now constitutes a violation of the Magnuson-Moss Warranty Act and, pursuant to Section 110(b) thereof, an unfair or deceptive practice under Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), as amended.

APPENDIX A

COMPARE WARRANTIES BEFORE YOU BUY!

There's a binder with warranties in this department. If you can't find the warranty binder, ask for it.

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 New York Regional Office 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 Act, and the Pre-Sale Availability Rule promulgated thereunder; 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 Acts and Rule, 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 Korvette's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 450 West 33rd St., in the City of New York, State of New York.

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

The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, Pub. Law 93-637, 15 U.S.C. 2301 (Supp. 1975) and in Rule 702 (16 C.F.R. 702.1) promulgated thereunder shall apply to the terms in this order.

I

It is ordered, That respondent Korvette's, 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 its business as a seller and warrantor of consumer products distributed in commerce as "seller", "warrantor", and "consumer product" are defined in Rule 702 (16 C.F.R. 702.1) of the Magnuson-Moss Warranty Act (15 U.S.C. 2301) do forthwith cease and desist from:

Decision and Order

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A. Failing, in the further course and conduct of its business as warrantor of consumer products actually costing more than \$15.00, to provide its department stores with the warranty materials required by 16 C.F.R. 702.3(b)(1) which are necessary for such stores to comply with the requirements for sellers of consumer products, as set forth in 16 C.F.R. 702.3(a).

B. Failing, in its course of business as a seller of consumer products, to make the terms of written warranties on consumer products actually costing more than \$15.00 and manufactured on or after January 1, 1977, available to the consumer prior to sale through utilization of one or more means specified in 16 C.F.R. 702.3(a)(1).

II

It is further ordered, That for those departments in which respondent chooses to use a binder system to comply with seller's duties under 16 C.F.R. 702.3(a), respondent shall:

A. Maintain a permanently affixed binder system in each such department which provides the consumer with ready access; and either

B. Label and display such binders in a manner reasonably calculated to elicit the consumer's attention and accessible for consumer use without the assistance of store personnel; or

C. Place permanently affixed signs, not smaller than 8-1/2 inches by 11 inches advising the consumer of the availability of the binders, in a prominent location in each such department. The content of these permanently affixed signs is included in this order as Appendix A.

III

It is further ordered, That respondent shall:

A. Deliver a copy of this order to cease and desist to all present regional and store managerial employees engaged in the sale of consumer products on behalf of respondent.

B. Instruct all present and future regional and store managerial employees engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and under this order relating to the requirements about the availability and location of warranty information for customers.

C. Develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

D. Maintain, for a period of not less than two (2) years from the effective date of the order, adequate business records to be furnished

upon request to the staff of the Federal Trade Commission, relating to the manner and form of its continuing compliance with the terms and provisions of this order.

E. 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.

F. 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 A

COMPARE WARRANTIES BEFORE YOU BUY!

There's a binder with warranties in this department. If you can't find the warranty binder, ask for it.

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94 F.T.C.

IN THE MATTER OF
HOWARD JOHNSON COMPANY

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

Docket C-2988. Complaint, Aug. 16, 1979 — Decision, Aug. 16, 1979

This consent order requires a Boston, Mass. restaurant chain, among other things, to cease requiring its licensees to purchase food products, or other products or services from the company, or from particular sources. The firm is additionally required to cancel or delete from its franchising agreements all provisions which fail to conform with the terms of the order.

Appearances

For the Commission: *Harold F. Moody* and *Joanne M. Neale*.

For the respondent: *Walter W. Curcio*, Boston, Mass. and *Malcolm D. Perkins, Herrick & Smith*, Boston, Mass.

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 Howard Johnson Company, a corporation, hereinafter sometimes referred to as respondent, 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. For the purposes of this complaint the following definitions shall apply:

"Ice cream products" means ice cream, ice milk, sherbert, ice cream cake, ice cream pie, frostee, thick shake mix, frozen yogurt, and yogurt mix;

"Food products" means all foodstuffs; including, but not limited to, syrups and toppings, condiments, candy, bakery products, dry mixes, processed foods, raw and prepared meats, fish and poultry, chowders, gravies, soups and ice cream products; and

"Howard Johnson's" restaurant means a restaurant operated by Howard Johnson Company or its licensee under the trademark "Howard Johnson's."

PAR. 2. Respondent Howard Johnson Company is a corporation organized, existing and doing business under and by virtue of the laws