

GEORGE'S RADIO AND TELEVISION CO., INC.

1135

Complaint

IN THE MATTER OF

GEORGE'S RADIO AND TELEVISION COMPANY, INC.

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

Docket 9115. Complaint, July 25, 1978—Final Order, Nov. 7, 1979

This order, among other things, requires a Washington, D.C. retailer of furniture and home appliances to cease failing to properly designate written warranties; clearly identify in written warranties the product, parts, components and properties covered or excluded; the items or services furnished by the warrantor; and a statement advising that the warranty provides purchasers with specific legal rights. Respondent must make the text of written warranties readily available to prospective purchasers prior to sale; and conspicuously post signs advising consumers that all warranties are not the same, and that written warranties are available for their review. Additionally, the firm is required to instruct its employees as to their obligations under the law, and to institute a surveillance program designed to detect violations of the order.

Appearances

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

For the respondent: *Arnold F. Shaw, Donohue, Kaufmann, Shaw & Kligman*, Washington, D.C.

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 George's Radio and Television Co., Inc., a corporation sometimes referred to in this 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 George's Radio and Television Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office

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and place of business located at 2850 New York Ave., N.E., Washington, D.C.

PAR. 2. Respondent has been, and is now, engaged in the advertising, offering for sale and sale of appliances, furniture and other consumer products to the public.

PAR. 3. In the course and conduct of its business, respondent offers for sale and sells consumer products to consumers distributed in commerce as "consumer product", "consumer" and "commerce" are defined by Sections 101(1), 101(3) and 101(13) and (14), respectively, of the Warranty Act. In connection with the offering to sell and sale of consumer products manufactured after July 4, 1975, respondent grants 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 [2] 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 upon consumer products costing the consumer in excess of \$10.00, respondent designates each such warranty as "George's extended limited warranty."

PAR. 5. Respondent's use of the phrase "George's extended limited warranty" violates Section 103 of the Warranty Act, by failing clearly and conspicuously to exclusively designate each such warranty as either a "full (statement of duration) warranty" or a "limited warranty" 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. 6. 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 II by reference as if fully set forth verbatim.

PAR. 7. Subsequent to January 1, 1977, in connection with its offering and granting of written warranties on consumer products costing the consumer in excess of \$15.00 which were manufactured subsequent to January 1, 1977, respondent failed to clearly and conspicuously disclose, in single documents, in simple and readily understood language:

a) a clear description and identification of the products, parts, characteristics, components [3] or properties covered by, and where necessary for clarification excluded from, each written warranty, as required by Section 701.3(a)(2) of the Disclosure Rule;

b) the point in time or event on which the warranty term commences, if different from the purchase date, and the period or other measurement of warranty duration, as required by Section 701.3(a)(4) of the Disclosure Rule; and

c) 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", as required by Section 701.3(a)(9) of the Disclosure Rule.

PAR. 8. Respondent's failure to comply with the Disclosure Rule as described in Paragraph Seven 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.

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. 9. The Federal Trade Commission, pursuant to Title I, Section 109 of the Warranty Act, (15 U.S.C. 2309) has duly promulgated the Rule Concerning the Pre-Sale Availability of Written Warranty Terms on December 31, 1975 (16 CFR 702 (1977)) (effective January 1, 1977) ("Pre-Sale Rule"). A copy of the Pre-Sale Rule is marked and attached as Appendix B* and is incorporated in Count III by reference as if fully set forth verbatim.

PAR. 10. Subsequent to January 1, 1977, respondent has failed, in

* For reasons of economy, not reproduced herein.

the ordinary course and conduct of its business, to make available for prospective buyers' review, prior to sale, the text of its written warranties offered or granted in connection with the offering for sale and sale of consumer products manufactured after January 1, 1977 and costing the consumer [4] in excess of \$15.00, as required by Section 702.3(a)(1) of the Pre-Sale Rule.

PAR. 11. Subsequent to January 1, 1977, respondent, in the course and conduct of its business, has offered for sale and sold consumer products costing the consumer in excess of \$15.00, many of which are warranted by the manufacturer. Respondent is therefore a seller as "seller" is defined in Section 702.1(e) of the Pre-Sale Rule.

As a seller, respondent elected, in accordance with Section 702.3(1)(ii) of the Pre-Sale Rule, to implement a binder system to make available for prospective buyers' review, prior to sale, the text of the manufacturer's written warranty terms.

In connection with the above-mentioned binder system, respondent failed, as required by Section 702.3(1)(ii) of the Pre-Sale Rule, to:

a) provide the prospective buyers with ready access to such binder(s);

b) (1) display such binder(s) in a manner reasonably calculated to elicit the prospective buyers' attention; or

(2) (A) make the binder(s) available to the prospective buyers on request; and

(B) place signs reasonably calculated to elicit the prospective buyers' attention in prominent locations within the store, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access;

c) index such binder(s) according to product or warrantor; and

d) clearly entitle such binder(s) as "Warranties" or other similar title.

PAR. 12. Respondent's failure to comply with the Pre-Sale Rule as described in Paragraphs Ten and Eleven 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.

INITIAL DECISION BY THOMAS F. HOWDER, ADMINISTRATIVE
LAW JUDGE

JULY 16, 1979

PRELIMINARY STATEMENT

On July 25, 1978, the Commission issued its complaint in this case, charging respondent George's Radio and Television Company, Inc., ("George's") with violating the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Warranty Act"), and two Rules promulgated thereunder: the Rule concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule"), and the Rule concerning the Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule"). Specifically, the complaint alleged that respondent failed to properly designate its warranty as required by Section 103 of the Warranty Act; failed to make certain written disclosures in its warranty in violation of Sections 701.3(a)(2), (4) and (9) of the Disclosure Rule; failed to make its own warranties available for prospective buyers' review, prior to sale, in violation of Section 702.3(a)(1) of the Pre-Sale Rule; and failed to properly [2] implement a binder system making available for prospective buyers' review, prior to sale, the texts of manufacturers' written warranty terms in violation of Section 702.3(1)(ii) of the Pre-Sale Rule. The complaint further alleged that the above conduct of respondent violated Section 5 of the Federal Trade Commission Act, pursuant to Section 110(b) of the Warranty Act.

Respondent answered on September 26, 1978, denying the violations alleged. It admitted, however, its corporate identity and business as described in the complaint (Answer, pars. 1, 2). It further admitted the validity and application of the Warranty Act and the implementing Rules to its business operation (Answer, pars. 3, 6, 9, 11).

A prehearing conference was held in Washington, D. C., on October 30, 1978. Following the completion of discovery, trial of this matter was held in Washington, D. C., in February 1979. The record was closed for the reception of evidence on April 2, 1979, and respondent's motion to dismiss was denied on April 11, 1979. Proposed findings of fact and conclusions of law were filed by the parties on April 20, 1979, and replies thereto on April 30, 1979.

This proceeding is before me upon the complaint, answer, testimony and other evidence, and proposed findings of the parties. These findings have been carefully considered, and those not adopted either in the form proposed or in substance are rejected as not

supported by the evidence or as involving immaterial matters not necessary for this decision.

Having heard and observed the witnesses and after having carefully reviewed the entire record in this proceeding, together with the proposed findings of the parties, I make the following findings:

FINDINGS OF FACT

1. Respondent George's is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 2850 New York Ave., N.W., Washington, D.C. (Answer, par. 1).

2. George's is in the business of advertising and selling televisions and other major and small appliances, furniture and other products to the consuming public (Answer, par. 2). [3]

3. At the time of trial, George's maintained thirteen retail sales branches at various locations throughout the Washington, D. C., metropolitan area (CX 1).¹

4. George's advertises its products regularly in local newspapers, primarily The Washington Post (Filderman 25; CX 5, 6, 7). It also advertises from time-to-time on local television stations (Filderman 27).

5. Respondent purchases its products from approximately 50 manufacturers and suppliers located in numerous states of the United States (CX 2A-B).

6. The warranties associated with retail sales of products by respondent arise from two sources: In addition to the manufacturer's warranty which normally comes with the product, George's often offers its own "extended" warranty (Filderman 84, 39-51; CX 4A-B, 18-87).

7. Accordingly, in view of the above findings and of the admissions contained in respondent's answer, it is found that (in the language of paragraph three of the complaint): In the course and

¹ As of August 3, 1977, George's maintained 13 retail outlets located at the following places:

1. 2135 Queens Chapel Rd., N.E., Washington, D.C.
2. 816 F St., N.W., Washington, D.C.
3. 6192 Greenbelt Rd., Greenbelt, MD
4. 7700 Richmond Highway, Hybla Valley, VA
5. 3807 Branch Ave., Hillcrest Heights, MD
6. 12125 Rockville Pike, Rockville, MD
7. 3036 Annandale Rd., Falls Church, VA
8. 8837 Leesburg Pike, Tyson's Corner, VA
9. 3509 Connecticut Ave., N.W., Washington, D.C.
10. 8239 Georgia Ave., Silver Spring, MD
11. 6200 Branch Ave., Camp Springs, MD
12. 6400 Commerce St., Springfield, VA
13. 13534 Occoquan Rd., Woodbridge, VA

conduct of its business, respondent offers for sale and sells consumer products to consumers distributed in commerce as "consumer product," "consumer" and "commerce" are defined by Section 101(1), 101(3) and 101(13) and (14), respectively, of the Warranty Act. It is further found that in connection with the offering to sell and sale of consumer products manufactured after July 4, 1975, respondent grants 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. [4]

COUNT I

8. Respondent entitles its warranty "George's Extended Limited Warranty." This is printed on the reverse side of respondent's retail sales tickets, along with definitions or explanations of what is meant by various terms such as "Carry-In (Shop Service)," "Home Service," "Cost of Parts." Certain disclaimers as to George's warranty undertakings are also set forth (CX 4B).

9. According to the testimony of George's president and chief executive official, Mr. Filderman, the printed warranty information on the reverse of the retail sales invoice is to be taken in conjunction with the information handwritten on the face of the ticket by a salesman at the time of a customer's purchase (Filderman 39-48). This written information indicates the type of warranty service given and the extent of its duration. Examples of this would include language such as "15 Months Free Shop Service, Parts and Labor," "2 Year Free Home Service," "3 Year Picture Tube," "3 Year Free Home Service," etc. (See CX 18-87).

10. Mr. Filderman testified that George's warranty is but an extension of duration of the warranty already given on the product by the manufacturer; that except for extending the time, respondent undertakes no additional obligation (Filderman 53-55). George's employs its warranty as a merchandizing aid, to assist in moving products where there is an excess of inventory. Whether or not to offer a George's warranty on any given product for any given time period is a matter of discretion on the part of respondent's managing officials. The terms of George's warranties can and do vary both as to different products and as to the same product (Filderman 338-43). Sometimes respondent does not offer a George's warranty on a product; in such cases salesmen are instructed to write "Manufacturer's Warranty" on the face of the sales ticket (Filderman 48).

11. It is charged in the complaint that the phrase "George's Extended Limited Warranty" violates Section 103 of the Warranty Act, because such terminology is impermissible when used in

connection with consumer products costing the consumer in excess of \$10.00 (Complaint, pars. 4, 5).²

12. According to complaint counsel, the only warranty designations allowed under the statute are either "full (statement of duration) warranty" or "limited warranty." [5]

13. Respondent denies that the use of its warranty designation is unlawful (Answer, par. 5). And it does appear to be factually accurate that "George's Extended Limited Warranty" is what it purports to be: an extension of a manufacturer's warranty by respondent (Filderman 53).

14. Nevertheless, the Commission, in interpreting the applicable provision of the Warranty Act, has stated (16 C.F.R. 700.6):

(a) Section 103 of the Act provides that written warranties on consumer products manufactured after July 4, 1975, and actually costing the consumer more than \$10, excluding tax, must be designated either "Full (statement of duration) Warranty" or "Limited Warranty." Warrantors may include a statement of duration in a limited warranty designation. The designation or designations should appear clearly and conspicuously as a caption, or prominent title, clearly separated from the text of the warranty. The full (statement of duration) warranty and limited warranty are the exclusive designations permitted under the Act, unless a specific exception is created by rule.

15. Since no specific exception has been made in this case, the finding must be, and hereby is, made that George's warranty terminology does not comply with the statute.

16. Complaint counsel further argue that the record contains instances where respondent's use of the word "extended" is misleading and deceptive in that George's warranty did not in fact extend the manufacturer's warranty. Compare CX 88A-28 with CX 51, where on a General Electric dryer the manufacturer offered a full one-year warranty while respondent gave its limited one-year warranty. Compare CX 88A-40 with CX 78, where General Electric air conditioners carried a full one-year warranty on the entire unit, a full four-year warranty on the sealed refrigerating system and a full nine-year warranty on the moulded outdoor case, whereas George's limited warranty on a sale to a consumer was "2 yr. Home Service" and "5-year Sealed System." Other instances include a Brothers Stereo purchase where George's extended limited warranty was a one-year parts and shop service (CX 94A; tr. 154), whereas the manufacturer offered a limited five-year warranty on the transistors, a one-year limited warranty on parts and 90 days free labor (CX 94; tr. 160). Another consumer purchased a Tappan microwave [6]

² Average retail prices at George's range anywhere from \$25 to over \$1,000 (Filderman 24; See CX 18-87).

oven from respondent and received a one-year limited warranty on parts and service (CX 92; tr. 177), whereas the manufacturer offered a full one-year warranty, an additional one-year limited warranty on parts and an additional four-year limited warranty on the magnetron (CX 88A-135; tr. 181-93).

17. However, in view of my above finding of noncompliance it is unnecessary to determine how the terminology "George's Extended Limited Warranty" might otherwise be misleading. In this connection, it should be noted that respondent's president, Mr. Filderman, testified that George's employed from 110 to 120 salesmen, and that from January, 1977, up until the time of trial approximately one-quarter million sales tickets had been written—approximately 1,000 tickets per year per salesman. Mr. Filderman readily acknowledged that mistakes do occur (Filderman 305). Whatever the case, the few instances cited by complaint counsel do not permit the finding that such discrepancies occurred on a systematic basis in respondent's operations.

COUNT II

18. Paragraph seven of the Commission's complaint charges respondent with three specific violations of the Disclosure Rule, 16 C.F.R. 701, effective January 1, 1977, promulgated under the Warranty Act.

19. It is charged that subsequent to January 1, 1977, in connection with its offering and granting of written warranties on consumer products costing the consumer in excess of \$15, which were manufactured subsequent to January 1, 1977, respondent failed to clearly and conspicuously disclose, in single documents, in simple and readily understood language:

(a) a clear description and identification of the products, parts, characteristics, components or properties covered by, and where necessary for clarification excluded from, each written warranty, as required by Section 701.3(a)(2) of the Disclosure Rule.

(b) the point in time or event on which the warranty term commences, if different from the purchase date, and the period or other measurement of warranty duration, as required by Section 701.3(a)(4) of the Disclosure Rule; and

(c) 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," as required by Section 701.3(a)(9) of the Disclosure Rule. [7]

20. Respondent has admitted that it offered for sale and sold, on and after April 1, 1977, consumer products which were manufac-

tured after January 1, 1977, as evidenced by CX 10A-B, 13A-C, 15A-D and 18-86.³ As noted previously, Mr. Filderman testified that George's retail prices charged to consumers generally ranged from \$25 to \$1000.

21. It cannot be determined from an examination of George's warranties in evidence whether any particular parts of products are excluded from coverage (See CX 18-87, 91-94).

22. However, Mr. Filderman made it clear that it was George's warranty policy not to include "[a]ll items such as glass, knobs, etc., normally excluded by the manufacturer * * *" (tr. 50; CX 8), and that this fact is not disclosed on George's extended limited warranty (tr. 97-98; see also tr. 51-52).

23. The record provides examples of the exclusion from manufacturers' warranties and consequently from George's warranties, of such items as glass, knobs, antennas, light bulbs, accessories and appearance items (CX 88A-97, 88A-115).

24. Notwithstanding the foregoing, Mr. Filderman testified that in actual practice he had instructed George's service department not to charge customers for the replacement of knobs, glass, etc., unless "willful neglect" were involved, and in the case of knobs "we have replaced thousands of them" (tr. 91-92).

25. Certain consumer testimony was presented by complaint counsel concerning their understanding of what items were or were not covered under a George's warranty. These witnesses were too sparse in view of respondent's many thousands of transactions to permit a finding of violation based on their testimony. And I find reliance upon their testimony unnecessary in view of the documents in evidence and the testimony of Mr. Filderman concerning George's policy and practice in this area.

26. Accordingly, based upon the above findings, I find that, as a technical matter, George's warranties are not in compliance with 701.3(a)(2) of the Disclosure Rule in that there was failure to specify certain excluded items. [8]

27. An examination of respondent's warranties in evidence reveals that they do not disclose the point in time or event on which the warranty term commences. They are simply silent on this matter (See CX 18-87).

28. In this connection Mr. Filderman testified that respondent's warranties take effect on the date of delivery (tr. 68).

29. Although the date of sale may coincide with the date the consumer actually takes possession of the product, this is not

³ See the third request in complaint counsel's request for admissions, dated November 14, 1978, and respondent's answer thereto, dated November 27, 1978 (p. 1).

necessarily the case at George's. Mr. Filderman testified that date of delivery may sometimes be months following the date of purchase (tr. 68).

30. In view of the above, it must be found that respondent's practice is technically not in compliance with Section 701.3(a)(4) of the Disclosure Rule.

31. An examination of respondent's warranties reveals that they do not contain the necessary statement informing consumers concerning specific rights and additional rights which vary by state, as required by Section 701.3(a)(9) of the Disclosure Rule (CX 18-87).

32. Mr. Filderman acknowledged that this language was lacking in George's warranties, explaining that it was contained on the manufacturers' warranties accompanying the products George's sold to consumers (tr. 52-53, 90).

33. Nevertheless, the finding must be made that the mandatory language does not appear in conjunction with the warranties of respondent. Hence there is violation of Section 701.3(a)(9) of the Disclosure Rule.

COUNT III

34. Paragraph ten of the complaint charges that subsequent to January 1, 1977, respondent failed, in the ordinary course and conduct of its business, to make available for prospective buyers' review, prior to sale, the text of its written warranties offered or granted in connection with the offering for sale and sale of consumer products manufactured after January 1, 1977 and costing the consumer in excess of \$15, as required by Section 702.3(a)(1) of the Pre-Sale Rule.⁴ [9]

35. As earlier indicated, respondent's warranty is contained on the front and back of the retail sales invoice. This ticket is not given to the customer prior to the sale of a product. It is given to the customer upon consummation of a sale, where the customer takes the item with him from the store. Where delivery is to be later made, the customer is given only the perforated top of the form as a receipt, with the balance of the ticket, containing George's warranty, being furnished to the customer upon delivery (respondent's answer to complaint counsel's request for admissions, p. 2, par. 2). Thus, the practice with respect to George's warranties is not in compliance with the Rule.

36. The record contains testimony given by Mr. Irvin E. Abrams,

⁴ There is no dispute, and it is hereby found with respect to the Pre-Sale Rule charges that respondent sold after April 1, 1977, consumer products which were manufactured after January 1, 1977. Consumer products sold by respondent generally range from \$25 to \$1,000 (Filderman tr. 24-25).

a Commission investigative employee. Mr. Abrams testified that he had had the occasion to visit George's F Street store in June, 1977, acting solely in his private capacity as a consumer in search of a washer and dryer for his new home (tr. 102-03).

37. As Mr. Abrams relates the event, he was met at the entrance by one of respondent's salesmen, and was directed to the area where the washers and dryers were located. After examining several machines, Mr. Abrams attempted to open a plastic package in one of the washers which contained the manufacturer's warranty information. He was prevented from doing so by the salesman, who expressed concern that the written materials could become "mixed up", causing "problems" at time of delivery (tr. 104). In response to Mr. Abrams' query as to how he could read the warranty, the salesman responded that they are all the same, and that their duration is for one-year. Mr. Abrams testified that the salesman went on to state that in addition to the manufacturer's warranty, George's offered a separate warranty, which is written on the sales slip at time of purchase (tr. 104). Upon Mr. Abram's persistence in attempting to read a warranty, the salesman procured an assistant manager. This gentleman likewise informed Mr. Abrams that all warranties (on washers) were the same, and that, in the words of the witness, "if I would give him a down payment and tell him when I wanted the machine delivered, he would write the warranty out for me, just like they did for everyone else" (tr. 106).

38. Following this experience in George's F Street Store, and after consultation with a superior in the Commission's Washington, D. C. regional office, Mr. Abrams visited in his official capacity four other retail outlets of respondent, viz., Branch Avenue, Landover Mall, Greenbelt Road and Silver Spring. In each of these stores, the response of respondent's sales personnel was substantially similar; the plastic bag containing [10] the manufacturer's warranty was not to be tampered with; and George's warranty was to be written on the sales slip at the time of sale (tr. 111-14, 117-18, 121-22, 124, 128, 143).

39. The testimony of certain consumer witnesses concerning the Pre-Sale availability of written warranties is not inconsistent with the testimony of Mr. Abrams. However, in view of the factors outlined in the legal discussion, *infra*, p. 17, I do not consider it sufficiently indicative or reliable enough upon which to base findings concerning respondent's warranty practices.

40. For the above reasons it must be found that respondent's practices, with respect to its own warranties at least, are not in compliance with the Pre-Sale Availability Rule.

41. Respondent is admittedly a "seller" within the definition of

that term in Section 702.1(e) of the Pre-Sale Rule (Answer, par. 11). As a seller, respondent elected, in accordance with Section 702.3(1)(ii) of the Pre-Sale Rule, to implement a binder system to make available for prospective buyers' review, prior to sale, the text of the manufacturers' written warranty terms (Answer, par. 11).

42. The warranty binder identified as Commission's Exhibit 88A-88A-203 was used by respondent for this purpose following the effective date of the Rule. This binder was superseded in 1978 by new warranty binders identified as Respondent's Physical Exhibits 1-3 (Filderman tr. 57-58, 78-79, 282-85, 295-99).

43. The complaint charges that, in connection with the above-mentioned binder system, respondent failed, as required by Section 702.3(1)(ii) of the Pre-Sale Rule, to:

(a) provide the prospective buyers with ready access to such binder(s);

(b)(1) display such binder(s) in a manner reasonable calculated to elicit the prospective buyers attention; or

(2)(A) make the binder(s) available to the prospective buyers on request, and

(B) place signs reasonably calculated to elicit the prospective buyers' attention in prominent locations within the store, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access. [11]

44. In support of this charge, complaint counsel rely upon the testimony of Mr. Abrams and the consumer witnesses who testified in this proceeding. Mr. Abrams related that in his June 1977 visit to F Street he looked around but did not notice any type of warranty information about, nor any signs relating to warranty information, except for an "umbrella" over the TV's promoting George's own warranty (tr. 107-08). He did not remember seeing CX 88, the warranty binder Mr. Filderman identified as then in use in the stores (tr. 109).

45. At Branch Avenue, Mr. Abrams was shown a filled-in sales slip containing George's warranty and a supposedly representative manufacturer's warranty taken from a plastic package previously opened (tr. 113). He saw no other warranty, and no signs pertaining to manufacturers' warranties, nor any binder such as CX 88 or similar thereto (tr. 115-16).⁵

46. At Landover Mall, Mr. Abrams looked around but saw no

⁵ Mr. Abrams did notice, however, a sign advertising George's warranty, but not the terms thereof, in the TV section of the store (tr. 115-16).

signs pertaining to manufacturers' warranties, nor any binder or similar book (tr. 119-20).⁶ Upon asking whether there was any one place or book where he could read and compare all warranties, he was told that there was no need (tr. 120).

47. At Greenbelt, Mr. Abrams again inquired whether there was any one place where he could read manufacturers' warranties. In response, the salesman, after going from machine to machine, finally found a washing machine which had an open package, whereupon he read certain warranty terms to Mr. Abrams from a sheet (tr. 121). Other than signs in the TV department pertaining to George's warranty, Mr. Abrams was unsuccessful in discovering information concerning manufacturers' warranties or any book or binder such as CX 88 (tr. 122-23).

48. At Silver Spring, Mr. Abrams had a similar experience, with a salesman searching for and reading to Mr. Abrams from a supposedly representative manufacturer's warranty (tr. 124-26). Other than George's TV warranty signs, Mr. Abrams saw no signs regarding manufacturer's warranties nor any book or binder, although he looked carefully (tr. 126-27).

49. As for consumer testimony on this point, I do not believe it is sufficiently reliable, upon which to base a finding concerning respondent's business practices. See legal discussion, *infra*, p. 17. [12]

50. Turning to respondent's defense, Mr. Filderman testified that he prepared to comply with the provisions of the Rule by compiling pertinent manufacturers' warranty information and instituting a binder system (tr. 203). A meeting was held on December 31, 1976, to advise store managers about the new legal requirements and to distribute the warranty book (CX 88). The store managers were instructed to make the binder available to inquiring customers (tr. 282-84).

51. Mr. Filderman's testimony is supported by a contemporaneous document, dated January 5, 1977, sent by respondent's stores supervisor, Morris Kottler (known in George's operations as Moe Kay) to all store managers (RX 13):

By this time your warranty books should be in your stores and all sales personnel should be aware of its function.

You are being sent out warranties from different manufacturers as they come into my office. Make sure that they are being put into your book.

At the Managers meeting held on December 31st, 1976, you were told to have your

⁶ Again, Mr. Abrams observed a sign in the TV Section advertising George's warranty (tr. 1A).

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Initial Decision

cashier put this book in alphabetical order in a loose leaf book, and label it Manufacturers Warranties.

I hope this has been done.

52. Subsequently, in July, 1977, Mr. Filderman received a visit from two staff employees of the Federal Trade Commission, Mr. Abrams and Mr. Fensterwald (the latter being one of the complaint counsel in the instant case) (tr. 286-87). The subject of discussion was the degree of George's compliance with the Warranty Act and Rules promulgated thereunder. One of the areas touched upon was the posting of signs in George's stores (although the visitors declined to specify any exact wording (tr. 287-88)).

53. On July 29, 1977, Mr. Kottler (Moe Kay) sent the following bulletin to the store managers (RX 14):

EACH STORE WILL IMMEDIATELY RECEIVE WARRANTY INFORMATION SIGNS.

THESE SIGNS MUST BE PROMINENTLY DISPLAYED.

IT IS AN ABSOLUTE NECESSITY TO KEEP YOUR WARRANTY INFORMATION BOOKS UP TO DATE.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ME. [13]

54. Mr. Filderman further testified that by August 1, 1977 signs containing the following language had been posted in every store (16):

WRITTEN WARRANTY INFORMATION

Available On Request

Ask Your Salesman

At least one of these signs, which measure 14" x 22", were placed in each department in respondent's stores (major appliance, small appliance and furniture). Each store received from three to eight signs. The signs were posted permanently and have been there ever since (tr. 289-90). Mr. Filderman has personally observed their presence (tr. 359).

55. The testimony of Mr. Kottler (Moe Kay) confirms these facts. He personally distributed the signs to the stores and directed that they be posted. In his capacity as stores supervisor Mr. Kottler visits each of the thirteen stores in the chain at least twice a month. He stated categorically that the signs, numbering from five to nine per store, have remained in each George's store continuously since August, 1977 (tr. 406-08).

56. As proof that the signs were in place as of the time of trial, certain photographs taken by Mr. Kottler were received in evidence (RX 23A-E, 24A-G, 25A-F, 26A-E, 27A-E, 28A-E, 29A-E, 30A-C, 31A-D, 32A-E). These photographs show the signs in ten of George's 13 branches.

57. Moreover, the store managers of George's three remaining locations were called as witnesses. Each identified posted sign photographs taken in their respective stores (RX 20A-H, 21A-D, 22A-D). Each testified as to the accuracy of, Mr. Filderman's and Mr. Kottler's testimony concerning the furnishing and continuous posting of the warranty signs (Ogilvie tr. 365-71; Mangum tr. 371-81; Kennedy tr. 390-96).

58. Respondent is also charged with violating the Pre-Sale Rule by failing to index its binder according to product or warrantor as required by Section 702.3(1)(ii). In this connection, Mr. Filderman conceded that George's earlier book of warranties, CX 88, in use during 1977, did not contain an index. This was called to his attention during the July 1977, visit of Messrs. Abrams and Fensterwald (tr. 315-16). [14]

59. In addition, the earlier warranty book was admittedly deficient under the Rule in that it was not labeled with the word "Warranties," or other similar title. This, too, was duly noted by the visiting Commission employees (tr. 130).

60. Following further consultation with the Commission's staff and upon advice of counsel, Mr. Filderman initiated changes in Georges's method of maintaining warranty information. CX 88 was replaced with the three binders (RX 1, 2, 3), entitled "Small Appliance Warranty Book," "Major Appliance Warranty Book," and "Furniture Warranty Book." These new binders were distributed to the store managers at a meeting on December 30, 1977, with the instruction to place them in the appropriate departments (RX 15; Filderman tr. 334).

61. An examination of the new warranty binders discloses that each is indexed separately by each letter of the alphabet. George's own warranties which were not contained in the prior warranty binder (CX 88), are contained in the new binders immediately following the manufacturers' warranties. This appears to be a logical procedure, even though complaint counsel contend that their placement is not in strict alphabetical order (Complaint counsel's proposed findings, p. 28).

62. While violations of the Rule appear to have occurred with respect to respondent's earlier attempts to implement a binder

system, respondent's present practices are in substantial accord with Section 702.3(1)(ii).

LEGAL DISCUSSION

George's contends throughout its proposed findings that the complaint in this case should never have brought; that it has made a greater effort to comply with the Warranty Act and the Rules than most of the retailers in the United States; that it had been dealing with the Commission staff on a voluntary compliance basis for several years; that it had every reason to expect the same treatment following its contacts with Commission staff a few months after the new regulations became effective; that it proceeded earnestly to implement the staff's suggestions regarding compliance; and then, suddenly that it was hit with a formal complaint alleging numerous violations of the sort it was seeking guidance in correcting. Using terms such as "singled out," "scapegoat," "harsh" and "punitive,"⁷ George's argues for dismissal of the case, "[e]ven assuming, *arguendo*, that there were violations" of the Act and Rules (respondent's proposed findings, p. 8). "To enforce the strict [15] letter of the law against this respondent would amount to arbitrary and capricious conduct, condemned by 5 U.S.C. Section 706, and by the 'due process' clause contained in the Fifth Amendment of the United States Constitution" (*ibid*).

Complaint counsel respond in their answering findings, *inter alia*, that respondent's voluntary compliance contacts over the years were with the Commission's staff, not the Commission itself, which issued this complaint; that the Commission has in the past issued formal complaints against George's, resulting in the issuance of cease-and-desist orders;⁸ that this is evidence of respondent's proclivity to violate the laws administered by the Commission; that respondent appears to be unable to comply with such laws without prodding, formal or informal, on the part of the Commission or its staff; that the Commission's formal assurance of voluntary compliance procedures (AVC) were rescinded prior to the completion of the investigation in this case; and that respondent was afforded the chance to have this matter voluntarily disposed of through a consent order, but chose not to exercise that option. Complaint counsel further point to the legal principle that it is the Commission alone which is empowered to develop an enforcement policy best calculated to

⁷ Mr. Filderman testified that the issuance of the complaint left him feeling "shocked," "betrayed," "duped" (tr. 304-05).

⁸ 60 F.T.C. 179 (1962); 52 F.T.C. 599 (1955); 50 F.T.C. 580 (1943). There was also a civil penalty action, 1962 Trade Cases ¶ 70,281. I have given no weight to any of these prior cases in making my decision on the merits of the present case.

achieve the ends contemplated by Congress, and to allocate its available funds and personnel in such a way to execute its policy efficiently and economically, citing *Moog Industries, Inc., v. FTC*, 355 U.S. 411 (1958); *FTC v. Universal-Rundle Corp.*, 387 U.S. 244 (1960).

I believe that respondent is entitled to argue the points which it raises, and I therefore permitted respondent to make a record concerning them (See, e.g., RX 4-11; tr. 272-82).⁹ However, it is clear that I am not the proper party to decide such matters. As noted above, it is the Commission alone who is empowered to make the determination as to how and when to proceed in administering the laws it is charged with enforcing. As an [16] administrative law judge of this Commission, I am not entitled to second guess as to whether the agency has properly exercised its prosecutorial discretion, or as to whether this proceeding was improvidently brought. Respondent, of course, is free to bring its contentions to the Commission's attention on appeal or, if necessary, to the attention of a federal court.

As to whether the law was violated in the present case, it must be observed that the Warranty Act and the applicable Rules are very specific and admit of little or no leeway. Although the company was not required to offer consumers a written warranty, having elected to do so, it was bound by the law's requirements. According to the Commission's interpretation of Section 103 of the Warranty Act, the title "George's Extended Limited Warranty" is not permitted. Thus the Act was violated, even though George's was doing exactly what its title said: extending the duration of the manufacturer's warranty.¹⁰

As to the Disclosure Rule, there is no question that the George's Warranty failed to set forth a disclosure concerning coverage of ancillary items, even though Mr. Filderman testified that George's policy was to replace them free of charge (except for "willful" damage). Consumers were likewise not informed by George's warranty that commencement of coverage occurs upon delivery, not date of purchase, even though the former affords a longer coverage

⁹ During the trial, respondent's counsel raised some question as to whether the proximity of George's operations to the Commission's headquarters in Washington, D.C. had any bearing upon the bringing of this action (tr. 138, 292). On this point it can be said that, historically, George's certainly has not gone unnoticed by this agency (see previous footnote). However, George's has never been alone among local firms in receiving the Commission's scrutiny. See *FTC v. Army and Navy Trading Co.*, 88 F.2d 776, 777 (D.C. Cir. 1937); *In the Matter of Leon A. Tashof, trading as New York Jewelry Company*, 74 F.T.C. 1361, 1366, *aff'd*, 437 F.2d 707 (D.C. Cir. 1970), located a short distance north of the Commission on Seventh St., N.W., and *In the Matter of S. Kann Sons Co.*, 56 F.T.C. 212, 213 (1959), located virtually on the Commission's doorstep. Many other examples of Commission proceedings involving local businesses can be cited.

¹⁰ Although this point is not in issue in this case, and not heretofore mentioned, Mr. Filderman testified that for the duration of the manufacturer's warranty George's acts as the manufacturer's agent in rendering performance thereunder. Under the arrangement, George's has recourse to the manufacturer for reimbursement for parts and services utilized in redressing consumer problems (tr. 328-29).

period. And there is no question that George's Warranties failed to carry the mandatory language concerning consumers' specific legal and other rights. Thus the Rule was violated.

As to the Pre-Sale Rule, the record is clear that it was George's regular business practice to make its written warranties available to consumers at the time of sale (or delivery), not prior to sale, as the Rule requires. Hence a violation. As for George's efforts to implement a binder system under the Rule, the record discloses — especially in the testimony of Mr. Abrams — that this was imperfectly done in the first few months following the effective date of the Rule. Since that time, however, respondent has moved impressively and efficiently to bring its pre-sale availability practices in compliance with the Rule, albeit not to complaint counsel's total satisfaction. While I am mindful of the case law respecting "abandonment," I believe, that an exception should be made in this instance. I simply do not see how the public interest would be served by the issuance of an order in that respect. [17]

I have indicated earlier in the findings that I have chosen not to place reliance upon the consumer testimony in this case (findings 17, 25, 39, 49). My reasons for this are as follows: only eight consumers appeared in this proceeding, attesting to respondent's practices in but four of its 13 branches.¹¹ Mr. Filderman testified that, since the effective date of the Rules (January 1, 1977), George's has engaged in an estimated one-quarter million consumer transactions (tr. 305). While not attempting to determine how many consumer witnesses need be called to establish a pattern of business conduct at George's, I believe that the number called in this case is far too few. In addition, the majority of the consumer witnesses testified that they saw no warranty information signs in the George's stores they visited at a date which the record shows was subsequent to the placement of these signs (tr. 157, 167, 171, 179, 212, 236, 253, 263; CX 97). In view of findings 53-57, I must conclude that the signs were definitely in the store, and that the witnesses simply did not observe them. Thus, I am left in doubt as to the reliability of their reporting. And since I do not believe that their testimony is critical to any material point in this case, I believe it is appropriate not to place reliance upon it.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over the

¹¹ F Street (Magruder and Easton); Greenbelt (Hoffman); Branch Avenue (Moore, Houston and the two Edsels); and Rockville (Butler).

subject matter of this proceeding and over respondent George's Radio and Television Company, Inc.

2. This proceeding is in the public interest.

3. The aforesaid acts and practices of the respondent, as herein found, constitute violations of the indicated Sections of the Warranty Act and the Disclosure and Pre-Sale Rules duly promulgated thereunder. Accordingly, pursuant to Section 110(b) of the Warranty Act, they constitute violations of Section 5 of the Federal Trade Commission Act.

4. The order entered in this proceeding is responsive to the violations found. [18]

ORDER

I.

Definitions

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

II.

It is ordered, That respondent George's Radio and Television Co., 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 appliances, furniture and any other merchandise and services, 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 exclusively as either a "full (statement of duration) warranty" or a "limited warranty."

2. 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 a single document, in simple and readily understood language, the following items of information: [19]

(a) A clear description and identification of products, parts, characteristics, components or properties covered by, and where necessary for clarification excluded from, the warranty;

(b) A statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with the written warranty,

including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;

(c) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;

(d) 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.

3. Failing to make available for prospective buyers' review, prior to sale, the text of any written warranty offered or granted by the respondent.

III.

It is further ordered, That respondent:

1. Deliver a copy of this order to cease and desist to all present and future employees, salesmen, agents, independent [20] contractors and other representatives engaged in the sale of consumer products on behalf of respondent and secure a signed statement acknowledging receipt of the order from each such person.

2. Instruct all present and future employees, salesmen, agents, independent contractors and other representatives engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act (15 U.S.C. 2301, *et seq.*), all present and future implementing Rules promulgated under the Act and the order.

3. Institute a program of continuing surveillance to reveal whether respondent's employees, salesmen, agents, independent contractors and other representatives are engaged in practices which violate this order.

4. 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.

5. 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.

FINAL ORDER

This matter has been heard by the Commission upon the appeal of complaint counsel from the initial decision and upon complaint counsel's brief in support of its appeal. The parties submitted a joint motion to waive oral argument, which was granted. Complaint counsel have argued only for certain modifications in the order recommended by the administrative law judge, and respondent's counsel has stated in writing that respondent agrees to the proposed order and does not oppose complaint counsel's appeal.

The Commission has granted complaint counsel's appeal, because we believe the violations established in the record warrant the modifications in the order that complaint counsel have proposed. These include specific requirements for the manner of implementing a binder system and affirmative disclosures about warranties, both on signs to be posted in the stores and in the warranties themselves. These requirements, and the others hereby imposed, are necessary to ensure compliance with the Magnuson-Moss Warranty Act ("Warranty Act") (15 U.S.C. 2301, *et seq.*), as implemented by the Commission's Rule on the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule") (16 C.F.R. 701), and the Commission's Rule on Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule") (16 C.F.R. 702), and with Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45). Therefore,

It is ordered, That the initial decision of the administrative law judge be adopted as Findings of Fact and Conclusions of Law of the Commission, except for the last two sentences on page 16, the first paragraph on page 17, and the last sentence of each of the following findings: 39, 49. [2]

It is further ordered, That the following order to cease and desist be entered:

ORDER

I.

Definitions

For the purpose of this order the definitions of the terms "consumer product" 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 respondent George's Radio and Television Co., 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 appliances, furniture and any other merchandise and services, 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 exclusively as either a "full (statement of duration) warranty" or a "limited warranty."

2. 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 a single document, in simple and readily understood language, the following items of information:

(a) A clear description and identification of products, parts, characteristics, components or properties covered by, and where necessary for clarification excluded from, the warranty. For purposes of this paragraph, identification of products shall be by brand name, except, if respondent offers the identical warranty on all brands of a particular product it sells, then a statement to that effect will be sufficient identification of the products covered;

(b) A statement of what the warrantor will do in the event of a defect, malfunction or failure to comply with the written warranty, including the items or services the warrantor will pay for or provide, and where necessary for clarification, those which the warrantor will not pay for or provide; [3]

(c) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration. If the warranty runs concurrently with the warranty offered by the manufacturer, then that fact shall be disclosed in simple and readily understood language on the face of the warranty document;

(d) A statement in the following language:

This warranty is offered by [name of respondent]. Compare this with the warranty offered by the manufacturer.

This statement shall be the first paragraph of any warranty offered by respondent and shall be printed in boldface type;

(e) 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.

3. Failing to make available for the prospective buyer's review, prior to sale, the text of any written warranty offered or granted by the respondent.

4. Failing to make available for the prospective buyer's review, prior to sale, the text of any written warranties offered or granted by the manufacturers of consumer products sold by respondent.

5. Choosing to implement a binder system to satisfy the requirements of Paragraphs 3 and 4 above unless the binder system includes, at a minimum, one binder located in each department of the retail outlet, and such binder includes at least one copy of each written warranty applicable to consumer products sold in that particular department.

6. Choosing to implement a binder system to satisfy the requirements of Paragraphs 3 and 4 above unless, in implementing a binder system, respondent:

(a) provides the prospective buyer with ready access to such binder system;

(b) (1) displays the binders in a manner reasonably calculated to elicit the prospective buyer's attention or [4]

(2) (A) makes such binder available to prospective buyers upon request, and

(B) places signs reasonably calculated to elicit the prospective buyer's attention in prominent locations within each store, advising such prospective buyers of the availability of binders, including instructions for obtaining access;

(c) indexes such binders according to product; and

(d) clearly entitles such binders as "Warranties" or other similar title.

It is further ordered, That respondent:

A. Post a sign, with approximate minimum dimensions of two feet (length) by two feet (width), with the following information printed in black against a solid white background:

IMPORTANT!

Not all warranties are the same. You can see manufacturers' warranties and store warranties before you buy. Please ask.

B. Post the sign described in Paragraph A. above:

1135

Final Order

(1) In a manner reasonably calculated to elicit the prospective buyer's attention;

(2) For a period of not less than two years from the effective date of the order;

(3) In each department of its retail outlets that sells consumer products costing over \$15.00 and carrying a written warranty;

(4) In a uniform manner; and

(5) Printed as follows:

(i) 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. [5]

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

(iii) The next two phrases shall be printed on a separate line and in 24 point medium face type.

C. Deliver a copy of this order to cease and desist to all present and future salesperson, store managers and other representatives engaged in the direct sale of consumer products to consumers on behalf of respondent and secure a signed statement acknowledging receipt of this order from each such person.

D. Instruct, in writing, all present and future salesperson, store managers and other representatives engaged in the direct sale of consumer products to consumers on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act (15 U.S.C. 2301, *et seq.*), all present and future implementing Rules promulgated under the Act and the order, and secure a signed statement acknowledging receipt of the written instructions from each such person.

E. Institute a program of continuing surveillance to reveal whether respondent's salesmen, store managers, and other representatives engaged in the direct sale of consumer products to consumers are engaged in practices which violate this order.

F. Maintain, for a period of not less than three (3) years from the effective date of the order, complete business records, including but not limited to, records described in Paragraphs C. and D. above, 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.

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

Commissioner Bailey did not participate.

SYNOPSIS OF DETERMINATIONS FOR 15 U.S.C. 45 (m)(1)(B),
GEORGE'S RADIO AND TELEVISION COMPANY, INC., DOCKET NO.
9115

1. It is an unfair or deceptive act or practice and a violation of Section 103 of the Magnuson-Moss Warranty Act (15 U.S.C. 2303), and Section 5 of the Federal Trade Commission Act (15 USC 45) to offer or grant a written warranty on consumer products which cost the consumer more than \$10.00, if such warranty is not clearly and conspicuously designated exclusively as either a "full (statement of duration) warranty" or a "limited warranty".

2. It is an unfair or deceptive act or practice and a violation of the Rule on Disclosure of Written Consumer Product Warranty Terms and Conditions ("Warranty Disclosure Rule") (16 CFR 701) and Section 5 of the Federal Trade Commission Act to offer or grant a written warranty on consumer products which cost the consumer more than \$15.00 if such warranty fails to disclose, in a single document, in simple and readily understood language, the following items of information:

(a) A clear description and identification of products, parts, characteristics, components or properties covered by, and, where necessary for clarification, those excluded from, the warranty, as set forth in Section 701.3(a)(2) of the Warranty Disclosure Rule;

(b) A statement of what the warrantor will do in the event of a defect, malfunction or failure to comply with the written warranty, including the items or services the warrantor will pay for or provide, and where necessary for clarification, those which the warrantor will not pay for or provide, as set forth in Section 701.3(a)(3) of the Warranty Disclosure Rule;

(c) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration, as set forth in Section 701.3(a)(4) of the Warranty Disclosure Rule;

(d) 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," as set forth in Section 701.3(a)(9) of the Warranty Disclosure Rule.

3. It is an unfair or deceptive act or practice and a violation of Section 702.3(a)(1) of the Rule on Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule") (16 CFR 702.3(a)(1)) and Section 5 of the Federal Trade Commission Act to fail to make available for the prospective buyer's review, prior to sale, the text of any written warranty offered on consumer products which cost the consumer more than \$15.00.

4. It is an unfair or deceptive act or practice and a violation of Section 702.3(a)(1)(ii) of the Pre-Sale Rule (16 CFR 702.3(a)(1)(ii)) and Section 5 of the FTC Act to implement a binder system, in satisfying the obligation to make available for the prospective buyer's review, prior to sale, the text of the manufacturer's written warranty terms, unless the binder system includes, at a minimum, one binder located in each department of the retail outlet, and such binder includes at least one copy of

each written warranty applicable to consumer products sold in that particular department.

5. It is an unfair or deceptive act or practice and a violation of Section 702.3(a)(1)(ii) of the Pre-Sale Rule (16 CFR 702.3(a)(1)(ii)) and section 5 of the FTC Act to implement a binder system, in satisfying the obligation to make available for the prospective buyer's review, prior to sale, the text of the manufacturer's written warranty terms, unless the seller:

- (a) provides prospective buyers with ready access to such binder(s);
- (b) (1) displays such binder(s) in a manner reasonably calculated to elicit the prospective buyer's attention; or
- (2) (A) makes the binder(s) available to the prospective buyers on request; and
- (B) places signs reasonably calculated to elicit the prospective buyer's attention in prominent locations within the store, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access;
- (c) indexes such binder(s) according to product or warrantor; and
- (d) clearly entitles such binder(s) as "Warranties" or other similar title.

Complaint

94 F.T.C.

IN THE MATTER OF
JAYMAR-RUBY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2997. Complaint, Nov. 8, 1979—Decision, Nov. 8, 1979

This consent order, among other things, requires a Michigan City, Ind. manufacturer of wearing apparel and related accessories, to cease fixing, maintaining or compelling adherence to suggested resale prices and sale periods for its products. Respondent is prohibited from soliciting the identity of dealers who fail to conform to suggested prices; and from taking any adverse action against them. Additionally, respondent is prohibited from restricting the use of product trademarks or other identification in the advertising and sale of its products; and barred from suggesting retail prices and sales periods for its products for a period of two years.

Appearances

For the Commission: *Jeffrey Klurfeld* and *Karen E. Chandler*.

For the respondent: *Lee N. Abrams, Mayer, Brown & Platt*,
Chicago, Ill.

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 Jaymar-Ruby, Inc., 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 as follows:

For purposes of this complaint, the following definitions shall apply:

“Product” is defined as any item of wearing apparel or related accessory which is manufactured, offered for sale or sold by respondent.

“Dealer” is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

“Resale Price” is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any retail price suggested or established by respondent, any customary resale price or the retail price in effect at any dealer.

“Sale Period” is defined as any time during which any dealer