

Complaint

95 F.T.C.

IN THE MATTER OF
THE HARTZ MOUNTAIN CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(A) OF THE
CLAYTON ACT

Docket C-3008. Complaint, Jan. 31, 1980—Decision, Jan. 31, 1980

This consent order requires, among other things, a Harrison, N.J. manufacturer of pet supplies to cease entering into any agreement or arrangement having the tendency to fix resale prices for pet products, or restrict interbrand and intrabrand competition in the pet supply industry. The firm is specifically prohibited from entering into any exclusive or preferential dealing arrangements; and using price incentives, refusals to deal, and threats of termination to induce and maintain such arrangements. Respondent is further prohibited from engaging in price discrimination; restricting sales territories and allocating customers; disparaging financial status of competitors or disfavored distributors; suggesting resale prices for pet supplies; and refusing to deal with recalcitrant distributors. Respondent is additionally required to publish the terms of the order in the *Supermarket News*, and maintain specified records for a designated period.

Appearances

For the Commission: *Thomas D. Massie, Peggy H. Summers, William C. Holmes and Jerome S. Lamet.*

For the respondent: *Joshua F. Greenberg, Kaye, Scholer Fierman, Hays & Handler, New York City.*

COMPLAINT

The Federal Trade Commission having reason to believe that The Hartz Mountain Corporation has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. 13(a)) and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges as follows:

Definitions

1. As used in this complaint:

(a) "Pet supply" means a product that is utilized in the everyday maintenance, care and enjoyment of common household pets and includes, but is not limited to, such items as pesticidal collars,

shampoos, medicinals, rawhide and rubber chewing toys, leashes, feeding dishes, books, bird and small animal cages, cat litter, aquariums, aquarium pumps, heaters, filters and ornaments, dog and cat treats and biscuits, small animal treats, pet and wild bird seed, fish foods and aquarium remedies.

(b) "Manufacturer" means any person engaged in production, assembly or packaging of pet supplies or which causes production, assembly or packaging of pet supplies to be done for it. The term manufacturer shall not include any person engaged primarily as a retailer which uses its own trademark in connection with pet supplies.

(c) "Person" means any individual, partnership, firm, association, corporation or other legal business entity.

Respondent

2. The Hartz Mountain Corporation (hereinafter referred to as Hartz Mountain or respondent) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its offices and principal place of business located at 700 South Fourth St., Harrison, New Jersey.

Nature of Respondent's Business

3. Hartz Mountain is primarily engaged in the business of manufacturing, distributing and selling approximately 1200 pet supply items under the Hartz, Hartz Mountain, Delta and Longlife brand names. It is the largest manufacturer and distributor of pet supplies in the United States. It is also engaged in the business of distributing and selling live pets such as tropical fish, goldfish, birds, small mammals and reptiles. It has major pet supply manufacturing, warehousing and distribution facilities in Harrison, Bloomfield and Jersey City, New Jersey.

4. Hartz Mountain's total sales, including live pets, were approximately \$180,000,000 in 1975. Its sales of pet supplies accounted for approximately \$163,800,000 during that period.

5. Hartz Mountain distributes its brands of pet supplies to over 50,000 retail outlets primarily through a distribution system of independent service distributors, who are sometimes referred to as rack jobbers, and wholesale distributors, both of whom purchase and warehouse pet supplies for resale to retailers. In addition, service distributors usually provide services ancillary to the sale of pet supplies, such as setting up displays and fixtures, preticketing individual products with prices designated by a retailer, delivering to individual retail outlets, stocking the displays or fixtures with less than

Complaint

95 F.T.C.

case lots, setting up promotions and floor displays, cleaning and otherwise maintaining the displays or fixtures, and removing damaged, shopworn and slow moving pet supplies. In a number of instances, Hartz Mountain sells directly to retailers, either by shipping merchandise directly to the retailer from its New Jersey facilities or through one of its branches located in various parts of the United States; its principal method of distribution, however, is through service distributors.

6. Hartz Mountain maintains a sales force whose personnel are located throughout the United States. These sales personnel call on distributors and retailers carrying Hartz Mountain's brands of pet supplies, regardless of whether such customers purchase directly from respondent or from one of its distributors, for the purpose of introducing new pet supply products, offering suggestions and advice on merchandising respondent's products, advising such distributors and retailers of promotions that are or will be available, and resolving problems and maintaining relations with such customers. In addition, respondent's sales personnel actively solicit new accounts.

Commerce

7. The pet supplies manufactured and distributed by respondent have been and are being sold by Hartz Mountain to purchasers thereof located throughout the several States of the United States and in the District of Columbia. Respondent has caused and is causing such pet supplies to be transported and shipped from the various places of manufacture and warehousing to purchasers thereof who are located in states other than the state where such pet supplies have been and are being manufactured and warehoused. At all times relevant herein, Hartz Mountain was engaged in or its business affected commerce as "commerce" is defined in the Federal Trade Commission Act (15 U.S.C. 44), and was engaged in commerce as "commerce" is defined in the Clayton Act, as amended (15 U.S.C. 12).

8. Except to the extent that competition has been hindered, frustrated and restrained as set forth hereafter, Hartz Mountain has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, distribution and sale of pet supplies in and affecting "commerce" as that term is defined in the Federal Trade Commission Act and in "commerce" as that term is defined in the Clayton Act, as amended.

COUNT I

9. The allegations contained in Paragraphs 1 through 8 are incorporated by reference in Count I as if fully written herein.

Nature of the Violation

10. In the course and conduct of its business in and affecting commerce Hartz Mountain has:

(a) Engaged in a course of conduct to hinder, frustrate and restrain the distribution of competitive brands of pet supplies by certain distributors and retailers. In furtherance of such course of conduct it has:

(1) Entered into and enforced agreements, understandings or arrangements with certain distributors and retailers whereunder such distributors and retailers would refrain from the purchase of pet supply products of manufacturers other than Hartz Mountain;

(2) Granted special rebates, discounts, guaranteed or subsidized profits, and other monetary incentives and modifications in price to certain retailers as an inducement for such retailers to refrain from the purchase of pet supply products from competitors of Hartz Mountain; and

(b) Knowingly made or caused to be made false reports and statements concerning the financial status of certain distributors and competitors, including statements indicating that such distributors or competitors were about to go out of the pet supply business.

Effects

11. The aforesaid acts and practices of the respondent have the tendency to or the actual effect of:

(a) Hindering, frustrating and restraining the ability of competitors to gain distribution of their brands of pet supplies; and

(b) Impairing the credibility and business reputation of certain competitors, thereby impairing their ability to compete with respondent.

Violation Alleged

12. The acts and practices of the respondent as set forth in Paragraph 10 above constitute unfair methods of competition and restrain trade in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

13. The allegations contained in Paragraphs 1 through 8 are incorporated by reference in Count II as if fully written herein.

Nature of the Violation

14. In the course and conduct of its business in and affecting commerce Hartz Mountain has engaged in a course of conduct to limit the freedom of certain of its distributors to resell its products. In furtherance of such course of conduct Hartz Mountain has:

(a) Entered into and enforced contracts, agreements, understandings or arrangements with certain of its distributors requiring that they resell respondent's products only on a service basis. Such distributors are required to provide, replenish, clean and remove respondent's products at the point of display, over and above the actual sale of such products. Such distributors are precluded from selling respondent's products to retailers who wish to purchase such products without receiving such ancillary services.

(b) Entered into and enforced agreements, understandings or arrangements with certain distributors forbidding such distributors from soliciting or selling to retailers who purchase respondent's products from another distributor.

Effects

15. The aforesaid acts and practices of the respondent have the tendency to or the actual effect of:

(a) Depriving certain distributors of their freedom to solicit customers and to tailor their sales to the desires and needs of such customers; and

(b) Allocating customers among certain distributors and eliminating intrabrand competition in the resale of respondent's products by distributors thereof, and depriving retailers and consumers of the benefits of competition between such distributors.

Violation Alleged

16. The acts and practices of the respondent as set forth in Paragraph 14 above constitute unfair methods of competition and restrain trade in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

17. The allegations contained in Paragraphs 1 through 8 are incorporated by reference in Count III as if fully written herein.

Nature of the Violation

18. In the course and conduct of its business in and affecting commerce Hartz Mountain has engaged in a course of conduct, the purpose or effect of which has been to fix, control, establish and maintain the prices at which its products are promoted, offered for sale and sold by certain distributors. In furtherance of such course of conduct Hartz Mountain has:

(a) Entered into and enforced agreements, understandings or arrangements with certain distributors requiring that they sell at prices established or suggested by respondent for its products;

(b) Refused to sell or threatened to refuse to sell to certain distributors who have failed to, or have been suspected of failing to, sell at prices established or suggested by respondent for its products; and

(c) Negotiated directly with certain retailers the wholesale prices to be charged to such retailers by distributors for respondent's products.

Effects

19. The aforesaid acts and practices of the respondent have the tendency to or the actual effect of fixing, maintaining and stabilizing the prices at which respondent's products are sold by certain distributors to retailers.

Violation Alleged

20. The acts and practices of the respondent as set forth in Paragraph 18 above constitute unfair methods of competition and restrain trade in violation of Section 5 of the Federal Trade Commission Act.

Count IV

21. The allegations contained in Paragraphs 1 through 8 are incorporated by reference in Count IV as if fully written herein.

Nature of the Violation

22. In the course and conduct of its business in commerce Hartz Mountain has:

(a) Discriminated in price in the sale of pet supplies of like grade and quality by granting discounts, rebates and other reductions in price to some distributors while not offering or granting such reductions in price to competing distributors; and

(b) Discriminated in price, directly and indirectly, in the sale of pet supplies of like grade and quality by granting discounts, rebates and other reductions in price to some retail customers while not offering or granting such reductions in price to competing retail customers.

Effects

23. The aforesaid acts and practices of the respondent have the effect of:

(a) Substantially lessening competition or tending to create a monopoly in the manufacture, distribution and sale of pet supplies; and

(b) Injuring, destroying or preventing competition with Hartz Mountain or with distributors and retail customers who receive the benefits of such discrimination in price.

Violation Alleged

24. The acts and practices of the respondent as set forth in Paragraph 22 above constitute unlawful discrimination in price in violation of subsection 2(a) of the Clayton Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act and the Clayton Act, as amended; and

The respondent 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 that complaint should issue stating its charges in that respect, and having thereafter 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Hartz Mountain Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 700 South Fourth St., Harrison, New Jersey.

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

For the purposes of this order the following definitions shall apply:

A. "Pet supply" means a product that is utilized in the everyday maintenance, care and enjoyment of common household pets and includes, but is not limited to, such items as pesticidal collars, shampoos, medicinals, rawhide and rubber chewing toys, leashes, feeding dishes, books, bird and small animal cages, cat litter, aquariums, aquariums pumps, heaters, filters and ornaments, dog and cat treats and biscuits, small animal treats, pet and wild bird seed, fish foods and aquarium remedies.

B. "Manufacturer" means any person engaged in production, assembly or packaging of pet supplies or which causes production, assembly or packaging of pet supplies to be done for it. The term manufacturer shall not include any person engaged primarily as a retailer which uses its own trademark in connection with pet supplies.

C. "Distributor" means any person which sells pet supplies for its own account to retailers.

D. "Service distributor" means a distributor which provides a retailer with service ancillary to the sale of pet supplies.

E. "Service" means setting up displays and fixtures, marking individual products with prices designated by a retailer, delivering to

individual retail outlets, stocking the displays or fixtures with less than case lots, setting up promotions and floor displays, cleaning and otherwise maintaining displays and fixtures, and removing damaged, shopworn and slow moving pet supplies.

F. "Retailer" means any person which sells pet supplies primarily for its own account to consumers.

G. "Consumer" means any person who uses pet supplies on a noncommercial basis.

H. "Person" means any individual, partnership, firm, association, corporation or other legal or business entity (other than a corporation in which The Hartz Mountain Corporation owns or controls 50% or more of the outstanding shares of stock representing the right to vote for the election of directors).

I. "United States" means the States of the United States of America, its territories or possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

J. "General marketing area" means the most recent available Nielsen Station Index Designated Market Area.

I

It is ordered, That The Hartz Mountain Corporation (hereinafter referred to as Hartz Mountain), its successors and assigns, and its officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale or sale of any pet supply in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Entering into or enforcing any condition, agreement or understanding with any distributor or retailer that such distributor or retailer must refrain from the purchase of any pet supply of any manufacturer other than Hartz Mountain.

2. Charging or offering to charge a price to a distributor or retailer, granting or offering to grant to a distributor or retailer any discount from or rebate upon such price, or paying or offering to pay anything of value to or for the benefit of a distributor or retailer, on the condition, agreement or understanding with such distributor or retailer that such distributor or retailer must refrain from the purchase of any pet supply of any manufacturer other than Hartz Mountain.

3. Refusing to sell any pet supply to any distributor or retailer because such distributor or retailer has refused to enter into any contract, agreement or understanding that such distributor or retailer

Decision and Order

4. Entering into any agreement with any distributor, existing or new locations, *provided, however*, that Hartz Mountain shall not ship for the account of any distributor, or must refrain from expanding its distribution to any location other than a warehouse of such distributor, in any manner that may be disparaging to Hartz Mountain shall: (5) That Hartz Mountain shall: (5) years, commencing on the date of its p

It is further ordered, That Hartz Mountain shall, for a period of five (5) years, commencing with the date of sale to any person engaged primarily as distributor or manufacturer of any pet supplies at its usual place of business in the State of New York, which requests a contract, agreement or other arrangement with Hartz Mountain, refrain from selling, offering for sale or otherwise disposing of any part or all of its pet supplies at its usual place of business in the State of New York, through any other distributor or manufacturer of any pet supply, except such distributor or manufacturer who is authorized by Hartz Mountain in writing to do so.

For a pet supplies located in the United States who is a service retailer pursuant to a continuing contract with Hartz Mountain; (b) which understands on the date of service of this order (a) which neither owned nor controlled by nor is an agent for a manufacturer of pet supplies; (c) which has not brought a pending suit nor is threatening in writing to bring suit against Hartz Mountain; and (d) satisfies Hartz Mountain's reasonable credit, minimum quantity standards, which minimum quantity and delivery standards are available on request in writing to any such retailer provided, however, that nothing in this order shall require Hartz Mountain from terminating a contract solely because it does not violate this order.

7. For a period of five (5) years, commencing with the date of service of this order, establish and maintain a file of all records referring or relating to Hartz Mountain's refusal to sell any pet supply to any prospective distributor or retailer located in the United States whose request in writing is received at the principal office of Hartz Mountain, which file shall contain a record of a written communication to each such prospective distributor or retailer explaining the reason for Hartz Mountain's refusal to sell and which file shall be made available for Federal Trade Commission inspection on reasonable

notice; and, annually, for a period of five (5) years, commencing with the date of service of this order, submit a report to the Federal Trade Commission listing the names and addresses of all such prospective distributors or retailers to whom Hartz Mountain has refused to sell during the preceding year, a description of the reason for each such refusal, and the date of each such refusal.

II

It is further ordered, That Hartz Mountain, its successors and assigns, and its officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale or sale of any pet supply in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Entering into or enforcing any contract, agreement or understanding with any distributor requiring that such distributor provide service in connection with any pet supply sold by it to retailers that have not requested such service, *provided, however*, that nothing in this order shall be construed to prevent Hartz Mountain from (a) requiring any distributor to sell to any retailer or to service and display Hartz Mountain pet supplies in the manner and quantity designated by such retailer, unless otherwise advised by such retailer, (b) requiring any distributor to maintain reasonable facilities, including warehouse facilities, trucks and service personnel so that service ancillary to the sale of pet supplies can be performed if requested by a retailer, or (c) refusing to sell pet supplies to any distributor which does not sell to, service and display Hartz Mountain pet supplies in the manner and quantity so designated by a retailer, unless otherwise advised by such retailer.

2. Entering into or enforcing any contract, agreement or understanding with any distributor that such distributor must not resell or offer to resell any pet supply purchased from Hartz Mountain to one or more designated persons or outside one or more geographic areas.

3. Refusing to sell any pet supply to any distributor because such distributor will not agree that it must not resell or offer to resell any pet supply purchased from Hartz Mountain to one or more designated persons or outside one or more geographic areas.

III

It is further ordered, That Hartz Mountain, its successors and assigns, and its officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division

or other device, in connection with offering for sale or sale of any pet supply in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

1. Requiring any distributor to sell, offer to sell or promote any pet supply at a price fixed, established, maintained or suggested by Hartz Mountain.

2. Refusing to sell any pet supply to any distributor because such distributor will not sell, offer to sell or promote any pet supply at a price fixed, established, maintained or suggested by Hartz Mountain.

3. Suggesting in writing to any distributor or retailer any price at which any distributor may or will sell, offer to sell or promote any pet supply, *provided, however*, that if subsequent to three (3) years after the date of service of this order Hartz Mountain makes any such price suggestion, each such suggestion must include a clear and conspicuous statement that such price is suggested only.

4. For a period of three (3) years, commencing with the date of service of this order, suggesting orally to any retailer the price at which any distributor may sell or resell, offer to sell or promote any pet supply unless any such suggestion directed to a retailer is accompanied by a clear statement that such price is suggested only for informational purposes and that the distributor is free to sell at whatever price it may choose, and is accompanied by a list of all of Hartz Mountain's service distributors with warehouse facilities in the general marketing area of the retailer.

5. For a period of three (3) years, commencing with the date of service of this order, suggesting orally to any distributor who buys directly from Hartz Mountain the price at which such distributor may sell or resell, offer to sell or promote any pet supply to a retailer, *provided, however*, that any price suggestion made to a retailer in conformance with the preceding paragraph may be orally reported to a distributor if all distributors whose names appear on the submitted list are so informed, and *provided, further* that any oral price suggestion is accompanied by a clear statement that prices are provided only for informational purposes and that the distributor is free to resell at whatever price it may choose.

IV

It is further ordered, That Hartz Mountain, its successors and assigns, and its officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the sale of any pet supply in

commerce, as "commerce" is defined in the Clayton Act, as amended, shall forthwith cease and desist from:

For a period of ten (10) years, commencing with the date of service of this order, discriminating, directly or indirectly, in the price of Hartz Mountain's pet supplies of like grade and quality by selling any such pet supply to any purchaser (who is not a manufacturer) at a net price lower than the net price charged to any other purchaser competing with the former purchaser in the resale of any such pet supply, unless Hartz Mountain has, in fact, made such lower net price functionally available to all such competing purchasers.

It is further ordered, That nothing in this order shall be construed to prevent any of the following which Hartz Mountain may raise as defenses to be proved by it in any enforcement action brought to enforce Part IV of this order: price discrimination which makes only due allowance for differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which such pet supplies are sold or delivered to such purchasers, or which is made in good faith to meet an equally low price of a competitor, or where the purchaser is an agency of the United States of America; nor shall anything in this order be construed to prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the pet supply concerned, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process or sales in good faith in discontinuance of business in the pet supply concerned; and *provided further* that nothing in this order shall be construed to prevent Hartz Mountain from asserting any other defenses available to it under the law to a charge of price discrimination; and *provided further* that for a period of ten (10) years, commencing with the date of service of this order, Hartz Mountain shall maintain a separate file at its principal office containing accurate documentation of: (a) each published price of Hartz Mountain for the sale by it of a pet supply, showing the period during which such published price was in effect; and (b) each variation in price in which Hartz Mountain sells any pet supply at a net price other than that prescribed in the applicable published price, showing the net price charged to such purchaser and the justification for such variation from the published price. Such file shall be made available for Federal Trade Commission inspection on reasonable notice.

V

It is further ordered, That:

1. This order shall not apply to activities outside the United States which do not directly affect the foreign or domestic commerce of the United States.

2. Nothing in this order shall be construed to prevent Hartz Mountain itself from selling pet supplies as a service distributor or otherwise to any retailer.

VI

It is further ordered, That Hartz Mountain shall:

1. Provide a copy of this order to its officers, directors, sales representatives and all distributors and retailers located in the United States who buy Hartz Mountain brand or Delta brand pet supplies directly from Hartz Mountain. Within sixty (60) days of the date of service of this order, Hartz Mountain shall cause to be published in *Supermarket News* the provisions of this order or shall provide a copy of this order to current subscribers of *Supermarket News*. For a period of five (5) years, commencing with the date of service of this order, all new distributors and retailers located in the United States who buy pet supplies directly from Hartz Mountain are to be furnished a copy of this order.

2. Notify the Commission at least thirty (30) days prior to any proposed change in Hartz Mountain which may affect compliance obligations arising out of the order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other such change.

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

Complaint

95 F.T.C.

IN THE MATTER OF

NOLAN'S R.V. CENTER, INC.

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

Docket C-3009. Complaint, Feb. 5, 1980—Decision, Feb. 5, 1980

This consent order requires, among other things, a Denver, Colo. retailer of motor homes, campers, and travel trailers to cease failing to place inside each vehicle it offers for sale, all applicable written warranties; and a sign giving the location of such warranties, and stressing the importance of comparing warranty terms before making a purchase. The firm is required to instruct its employees as to their specific obligations and duties under federal law, and to institute a surveillance program designed to detect violators of the order.

Appearances

For the Commission: *F. Kelly Smith, Jr. and Brenda V. Johnson.*

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 (1979)) (effective January 1, 1977) ("Pre-Sale Rule") duly promulgated on December 31, 1975 pursuant to Title I, Section 109 of the Warranty Act (15 U.S.C. 2309 (1976)) (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 Nolan's R.V. Center, Inc., hereinafter sometimes referred to as respondent, has 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 Nolan's R.V. Center, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

* Not reproduced herein for reasons of economy.