

Complaint

102 F.T.C.

IN THE MATTER OF

FOOTE, CONE & BELDING ADVERTISING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3116. Complaint, Sept. 30, 1983—Decision, Sept. 30, 1983*

This consent order requires a Chicago, Ill. advertising agency affiliated with Amana Refrigeration, Inc., among other things, to cease representing that only Amana microwave ovens passed independent laboratory testing conducted in 1980 and that Amana microwave ovens rated "best quality" in a 1980 consumer survey. The order prohibits misrepresentations concerning the purpose, content or conclusion of any test or survey and requires the agency to maintain accurate records which substantiate and/or contradict any claim made for products covered by this order. Further, the agency must have a reasonable basis for all future quality, safety or comparative performance representations made for microwave ovens.

Appearances

For the Commission: *Andrew Sacks* and *Joel Winston*.

For the respondent: *Elroy H. Wolff* and *Philip J. Carihfield*, *Sidley & Austin*, Washington, D.C.

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 Foote, Cone & Belding Advertising, 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 in that respect as follows:

PARAGRAPH 1. Respondent Foote, Cone, & Belding Advertising, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located in Chicago, Illinois.

PAR. 2. Respondent is now and at all times relevant to this complaint has been an advertising agency of Amana Refrigeration, Inc.

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of advertising and promo-

tional material, including but not limited to the advertising referred to herein, to promote the sale of Amana microwave ovens.

PAR. 4. Respondent's dissemination of advertisements for Amana microwave ovens mentioned herein constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, and for the purpose of promoting sale and distribution of Amana microwave ovens, and other consumer products, respondent has prepared, disseminated and caused the dissemination of advertising in national magazines and newspapers distributed by mail and across state lines, and in radio broadcasts transmitted by radio stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines.

PAR. 6. Typical statements and representations in said advertisements, and promotional materials, prepared and disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements attached hereto as Exhibits A, B, C and D.

PAR. 7. Through the use of the statements and representations referred to in Paragraph Six and other representations contained in advertisements not specifically set forth herein, respondent has represented, and now represents directly or by implication, the following claims:

1. An independent laboratory tested Amana microwave ovens and ovens of five other manufacturers in four of the tests required for exemption from displaying a warning label. Only the Amana ovens passed all four tests.

2. A survey of microwave oven owners found that owners of nine other brands of microwave ovens rated Amana ovens "best quality."

PAR. 8. In truth and in fact the direct or implied representations found in Paragraph Seven are false, for the following reasons:

1. The independent laboratory tested ovens of six manufacturers in addition to Amana. Ovens of one other manufacturer—Panasonic—passed all of the tests.

2. The survey relied upon did not find that owners of nine other brands of microwave ovens rated Amana "best quality" more often than they rated their own brand "best quality". As many or more owners of all other brands for which the data were tabulated rated their own brand "best quality". The vast majority of owners of other brands did not rate Amana "best quality" in the survey. In addition, the data relied upon reported results for owners of only four other brands of microwave ovens.

PAR. 9. At the time respondent made the representations alleged in

Paragraph Seven, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 10. Through the use of the advertisements referred to in Paragraph Six, and other advertisements not specifically set forth herein, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representations set forth in Paragraph Seven at the time of the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations, and respondent knew or should have known that it did not possess and rely upon a reasonable basis at the time of dissemination. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 11. As the representations referred to above are false, and respondent knew or should have known that they were false at the time of their dissemination, such representations are deceptive, misleading, and unfair.

PAR. 12. The use by respondent of the aforesaid false, unfair, or deceptive statements, representations, acts, and practices, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements, representations, acts, and practices, have had the capacity and tendency both to mislead consumers into the erroneous and mistaken belief that said statements and representations are true and complete and to induce such persons to purchase Amana microwave ovens by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts or practices of respondent, herein alleged as aforesaid, were and are all to the prejudice and injury of the public and of Amana Refrigeration, Inc.'s competitors, and constituted and now constitute unfair or deceptive acts and practices in or affecting commerce and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended.

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EXHIBIT A



CLIENT	AMANA REFRIGERATION INC.	DATE	11/14/80
PRODUCT	RADARANGE	NUMBER	AMC0B21
TITLE	"TORTURE TEST"	AS PRODUCED	LENGTH (OR SPACE) :25/:05 RADIO

0-1149

(SFX: CRASH OF STEEL BALL) That was a 5-pound steel ball dropped onto the door of the Amana Radarange. One of the safety tests established by the U. S. Government. Voluntary tests that microwave ovens have to pass to be exempt from displaying the safety warning label. An independent lab put 6 major brands of microwave ovens through 4 of the tests. (SFX: CRASH) Only Amana passed all 4. The Amana Radarange. Built better than it has to be. The Amana Way.

:05 DEALER TAG

LH/31A/1110.4

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EXHIBIT B

FCB
CHICAGO

CLIENT	AMANA REFRIGERATION INC.	DATE	11.14/80
PRODUCT	RADARANGE	NUMBER	AMCE22
TITLE	"TORTURE TEST" AS PRODUCED	LENGTH (OR SPACE)	:50/:10 RADIO

P80-1149

(SFX: CRASH OF STEEL BALL) That was a 5-pound steel ball being dropped onto the door of the Amana Radarange. And that's just one of the safety tests established by the U. S. Government. Voluntary tests that microwave ovens have to pass to be exempt from displaying the safety warning label. An independent lab put 6 major brands of microwave ovens through 4 of the tests. They slammed the steel ball at the front of the oven doors. (SFX: CRASH) They opened the doors, and slammed the ball into the seal of the ovens. (SFX: CRASH) They slammed it into the seal of the doors. (SFX: CRASH) And with up to 125 pounds of force, they closed the doors onto a steel rod. (SFX: CRASH) Only Amana passed all 4 tests. Only the Amana Radarange is built tough enough to take it. It's built better than it has to be. (SFX: CRASH) That's the Amana Way.

LH/31B/1110.4

EXHIBIT C

ONLY ONE MICROWAVE OVEN IS BUILT BETTER THAN IT HAS TO BE.

The Amana Radarange microwave oven. For years we've been telling you it's built better. Here's one more way we can prove it.

Four times in the last five years, we submitted our "RR" series of Radarange ovens to a U.S. Government safety test program. Every time we've passed every test. We're still the only microwave oven manufacturer that has. So we're still the only one exempt from displaying the Government's safety-warning label.

We volunteered to take these tests. But not all manufacturers have.

We wanted to know how some of the other ovens compared to our Radarange oven. So we asked an independent lab to test them—at our expense.

The test lab pitted five other major brands against our Amana Radarange. And then conducted four of the Government's most abusive impact tests.

For the first test, they slammed a five-pound steel ball into the front of the doors.

For the second test, they opened the doors, and slammed the ball into the inside seal of the ovens.

For the third, they slammed it into the seal of the doors.

And for the fourth test, they nosed the doors, with up to 125 pounds of force, into a steel rod.

The result? Only Amana passed all four tests.

We know that, in reality, no microwave oven would ever encounter such abuse. Yet we build our Radarange oven tough enough to take it.

We build it with our patented choke-seal door. That way, even if the door and seal are severely damaged, the choke-seal will keep the microwave energy inside the oven, where it belongs.

In short, we build the Amana Radarange better than it has to be. Because that's The Amana Way.

To see the Amana Radarange, see your Amana retailer.

Or for more information, write to:

Amana Refrigeration, Inc.,
Dept. 576, Amana, Iowa 52204.

It doesn't say **Amana**.
It says **Radarange**.

THE AMANA® RADARANGE®

Every part of every product we make is backed by a century-old tradition of fine craftsmanship.

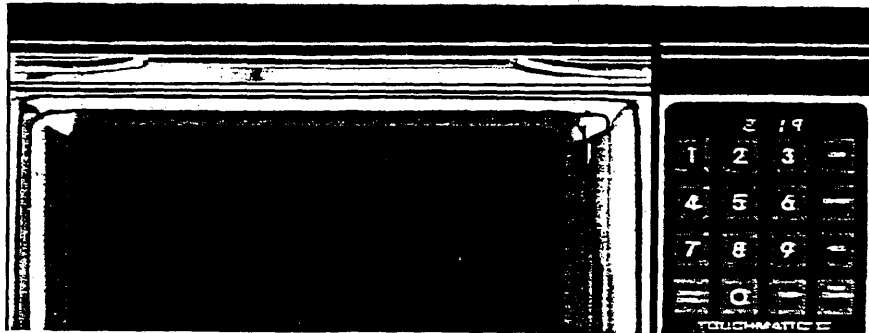


EXHIBIT D

EVEN OWNERS OF THE NINE OTHER LEADING MICROWAVE OVENS RATED AMANA BEST QUALITY.

*Appliance Manufacturer** magazine recently asked microwave oven owners to list the "best quality" brand of microwave oven. You'll be interested to know that more oven owners rated Amana "best quality" than any other brand.

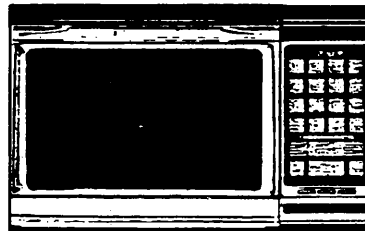
Among Amana owners, 97% said they received the quality they expected from their ovens. And that's the highest indicator of satisfaction in the survey.

Of course, this is just proof of what you already know: quality produces satisfied customers.

And quality is what The Amana Way is all about.

For more information, write to: Amana Refrigeration, Inc., Dept. 470, Amana, Iowa 52204.

IF IT DOESN'T SAY **Amana.**
IT'S NOT A *Radarange*
MICROWAVE OVEN



*Appliance Manufacturer, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Foote, Cone & Belding, Advertising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 401 N. Michigan Avenue, in the City of Chicago, State of Illinois.

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

I

It is ordered, That respondent Foote, Cone & Belding Advertising, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertis-

ing, offering for sale, sale, or distribution of any Amana microwave oven or Amana combination microwave and convection oven for consumer or commercial use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

A. Representing, directly or by implication, that only Amana ovens passed independent testing conducted by an independent laboratory in 1980.

B. Representing, directly or by implication, that in a 1980 consumer survey, owners of nine other brands of microwave ovens rated Amana "best quality."

II

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of any product specified in Part II(C) of this Order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any survey, opinion research, or test.

B. Failing to maintain records:

1. Of all materials that were relied upon in disseminating any representation covered by this order, insofar as the text of such representation is prepared, authorized, or approved by any person who is an officer or employee of respondent, or of any division, subdivision or subsidiary of respondent.

2. Of all test reports, studies, surveys, or demonstrations in its possession or control that contradict any representation made by respondent that is covered by this Order.

Such records shall be retained by respondent for three years from the date that the representations to which they pertain are last disseminated, and may be inspected by the staff of the Commission upon reasonable notice.

C. Part II of this Order shall apply to the following products for consumer use: all microwave ovens; all other ranges, cooktops, or ovens; all refrigerators, freezers, or combination refrigerator/freezers; all garbage compactors; all clothes washers and dryers; all air

conditioners; all heating equipment and heat pumps; and all dehumidifiers.

III

A. *It is further ordered*, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any microwave oven, or combination microwave and convection oven, for consumer use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from representing, directly or by implication, the quality and/or safety of any such product, or from comparing any such product as to quality and/or safety to any product or products of one or more competitors, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of reliable and competent evidence that substantiates such representation.

B. To the extent the evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" for purposes of Part III(A) only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

Provided, however, That in circumstances where the scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area was not directly or indirectly prepared, controlled, or conducted by respondent, it shall be an affirmative defense to an alleged violation of Part III of this Order for Respondent to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that it had a reasonable basis in accordance with Part III of this Order. Such expert judgment shall be in writing signed by a person qualified by education or experience to render the opinion. Such opinion shall describe the contents of such evidence upon which the opinion is based.

Provided further, That nothing in this Order shall be deemed to deny or limit respondent with respect to any right, defense, or other affirmative defense to which respondent otherwise may be entitled by law in a compliance action or any other action.

IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in 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.

V

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its operating divisions.

VI

It is further ordered, That respondent shall, within sixty (60) days after this Order takes effect, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VII

It is further ordered, That this Order shall take effect on the day that an order of the Commission to cease and desist in *Amana Refrigeration, Inc.*, Docket 9162 [102 F.T.C. 1262 (1983)], has become final and effective, and this Order shall be effective only for such period of time as the Order in Docket 9162 is effective.

IN THE MATTER OF

BAYLEYSUIT, INC.

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

Docket C-3117. Complaint, Sept. 30, 1983—Decision, Sept. 30, 1983

This consent order requires the Fortuna, Calif. manufacturer of the "Bayley exposure suit," among other things, to publish advertisements, send notices, and use its best efforts to locate and notify users of the suits that the bladder hose assembly used to inflate the flotation pillow requires a safety modification. The manufacturer must send to each BayleySuit user who requests it, a retrofit kit, together with understandable instructions to permit easy repair of the suit. If, by July 15, 1983, 80% of BayleySuit users have not requested a retrofit kit, the manufacturer must search dealer records, ship registries and listings, and the rolls of fishermen's unions to obtain the names and addresses of retail purchasers, so they can be notified by letter of the safety hazard and provided with a repair kit request card. Further, the order prohibits false representations concerning the buoyancy or safety of the Bayley exposure suit or any other product.

Appearances

For the Commission: *Dennis D. McFeely.*

For the respondent: *Richard D. Warren, Landels, Ripley & Diamond, San Francisco, Calif.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BayleySuit, Inc. has violated Section 5 of the Federal Trade Commission Act and that an action is in the public interest, therefore issues this complaint and alleges:

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

Bayley exposure suit means a suit manufactured before June, 1980 by BayleySuit, Inc., with a flotation pillow attached, made of flexible buoyant material completely enclosing the body (except for the face) and designed for emergency use to increase the chance of survival in cold water.

User means any business or individual who owns or possesses a Bayley exposure suit for any purpose other than resale.

Flotation pillow means an inflatable bladder attached to the upper