

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

back of a Bayley exposure suit so that, when inflated, the suit wearer's head and shoulders are elevated out of the water.

Bladder hose assembly means a two-piece tube used to orally inflate the flotation pillow.

2. Respondent BayleySuit, Inc. is a California corporation with its principal office and place of business at 900 S. Fortuna Boulevard, Fortuna, California.

3. Respondent is, and has been, engaged in the sale of substantial quantities of Bayley exposure suits.

4. In the course and conduct of its business, respondent has caused the exposure suits to be transported from its place of business in Fortuna, California to users and retailers located in various other States of the United States. Respondent maintains and at all times relevant herein has maintained a substantial course of trade in those products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. For the purpose of inducing the purchase of Bayley exposure suits, respondent has made or has caused to be made, in advertising and promotional materials, certain statements and representations about the Bayley exposure suits of which the following are typical:

YOU WANT THE BEST, SAFEST PROTECTION AVAILABLE, RIGHT?
INSURE YOUR SAFETY WITH QUALITY
MORE BUOYANCY
FLOTATION BLADDER (MORE FREEBOARD)

6. Through the use of these and other similar statements and representations, and by offering Bayley exposure suits for sale as a product fit for the purpose of improving the chance of survival in cold water, respondent has represented directly or by implication that Bayley exposure suits will consistently and safely support the head and shoulders out of the water, thereby substantially diminishing the likelihood of drowning.

7. In truth and in fact the Bayley exposure suits would not consistently and safely support the head and shoulders out of the water. Due to the design of the bladder hose assembly, the flotation pillow which provides the support for the head and shoulders would not consistently remain inflated in actual use, substantially increasing the likelihood of drowning. Therefore, these statements and representations were false, misleading, and deceptive.

8. Respondent's false statements and representations have had the capacity and tendency to mislead potential users into the mistaken belief that the statements and representations were true and to induce the purchase of such products by virtue of the said mistaken belief. Respondent has therefore engaged in unfair and deceptive acts

or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; 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 BayleySuit, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 900 S. Fortuna Blvd., in the City of Fortuna, State of California.

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 purposes of this Order, the following definitions shall apply:

Bayley exposure suit shall mean a suit manufactured before June 1, 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 back of a Bayley exposure suit so that, when inflated, the suit wearer's head and shoulders are elevated out of the water.

I.

It is ordered, That respondent BayleySuit, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, division, or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any Bayley exposure suit or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from representing, directly or by implication, that the product will ensure buoyancy or is safe to use unless such is the case.

II.

It is further ordered, That respondent, its successors and assigns shall:

A. Publish advertisements, send notices, and use its best efforts to locate and notify users that Bayley exposure suits need a safety modification of the bladder hose assembly on the flotation pillow;

B. Mail to each Bayley exposure suit user who requests it, a retrofit kit, accompanied by easily understandable modification instructions, sufficient to modify the bladder hose assembly in a manner approved by the U.S. Coast Guard;

C. If requests for modification kits have not been received by July 15, 1983 from the users of at least eighty percent of Bayley exposure suits:

1. Respondent shall use its best efforts to obtain directly from past and present dealers the names and addresses of all Bayley exposure suit retail purchasers. Respondent may obtain these names from dealers in whatever sequence and manner it chooses, but it will continue the process until the names and addresses of at least eighty percent of the above-described suit retail purchasers are obtained. This process shall be completed no later than November 30, 1983; and

2. After July 15, 1983, respondent shall, within 15 days of identification of any retail purchaser, send Attachments A and B by first class

mail to that retail purchaser at his or her last known address. "IMPORTANT SAFETY NOTICE" shall be conspicuously placed on the front of the envelope;

D. Within 10 days of the return of each mailing of Attachments A and B marked by the Post Office as undeliverable, respondent will search for the current address of the addressee of each returned mailing. This search shall include contacting relevant ship registries and listings, and fishermen's unions;

E. Within 10 days of locating a new address through the search required by II.D, remail Attachments A and B in the manner required by II.C.2 of this Order to each retail purchaser for whom a new address is found.

III.

It is further ordered, That respondent maintain complete records of the nature of its compliance with this Order including:

1. The names, addresses, and dates of mailing of all notices required by this Order, and
2. The names, addresses, and dates of mailing of all modification kits required to be sent by this Order.

IV.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the respondent such as dissolution, merger, 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 within 60 days after service upon it of this Order, respondent shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this Order.

Decision and Order

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ATTACHMENT A

[COMPANY LETTERHEAD]

** VERY IMPORTANT **

SAFETY HAZARD NOTICE

Dear BayleySuit Customer:

According to our records, you purchased a Bayley Exposure Suit made between August 1977 and June 1980.

We wish to inform you that a *safety hazard* may exist in some models of our exposure suits manufactured before June 1980. BayleySuit has received reports that in some suits made before June 1980, the bladder hose assembly, which inflates the suit's flotation pillow, has separated. This separation would prevent inflation of the flotation pillow, which when inflated helps keep the head and shoulders above water.

We have developed a free modification kit to fix this problem and eliminate the safety hazard. To see if your suit needs this modification, look inside the suit for a white label that looks like this:

Exposure Suit
BayleySuit, Inc.
900 S. Fortuna Blvd.
Fortuna, CA 95540

Model: 7-01-04
Serial: 1-23-45
Date: 1-15-78

If the date shows that your suit was made before June 1980, please fill out and mail in the enclosed card or call us collect at (707) 725-3391. We will send you a *free*, easy to use kit for modifying the bladder hose.

While examining your suit for the manufacturing date, we recommend that you use this opportunity to give your suit an overall examination.

1. Work all zippers and re-wax them with the paraffin provided. Store the suit with the front entry zip *open*, so your suit will be easier to put on.
2. Check for water damage, mildew, etc. Has the suit been stored in a dry place? Dry thoroughly, inside and out, before storage.
3. Inflate the flotation pillow to 3/4 capacity. Be sure you know how to use it.
4. Give the suit a general inspection to assure it is in good working order.
5. Try the suit on . . . Do a practice drill. Be sure you are familiar with the suit.

These simple checks will ensure that your suit is safe and useful.

We sincerely appreciate your cooperation, and look forward to serving you in the future. If you have any questions or concerns, do not hesitate to contact us.

Sincerely,

BAYLEYSUIT, INC.
Susan Forbes
President

Enclosures

ATTACHMENT B

Customer Response Card

December, 1982

I have received your information on the modification kit available for my Bayley Exposure Suit. Please send the kit to the address below.

Name _____

Address _____

Exposure Suit Serial # _____

Date of Manufacture _____

F/V or Company Sold to: _____

of Kits needed _____

BayleySuit, Inc.

P.O. BOX 487

FORTUNA, CALIFORNIA 95540

IN THE MATTER OF
WASHINGTON, D.C., DERMATOLOGICAL SOCIETY

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

Docket C-3118. Complaint, Oct. 5, 1983—Decision, Oct. 5, 1983

This consent order requires a Washington, D.C. medical society, among other things, to cease inhibiting competition by restricting or advising member dermatologists against the truthful advertising of their fees and services; and by declaring such activities unethical. The society must remove from its Principals of Professional Conduct, constitution and bylaws, any provision which is inconsistent with the prohibitions contained in the order; and publish revised versions of these documents. The order also requires that the society take no formal action against a person charged with violating an ethical standard without first providing that person with reasonable notice of the allegations and a hearing, as well as written findings and conclusions concerning the allegations. Further, for a period of 5 years, the society must provide each new member with a copy of the complaint and order in this matter.

Appearances

For the Commission: *Jill M. Frumin.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Washington, D.C., Dermatological Society is a corporation formed pursuant to the laws of District of Columbia with its mailing address at George Washington University Medical School, c/o Department of Dermatology, 2150 Pennsylvania Avenue, N.W., Washington, D.C.

PAR. 2. Respondent is a professional association of physicians who limit their practice to dermatology, and who are Diplomates of the American Board of Dermatology. Respondent has approximately one