

IN THE MATTER OF
PEABODY BARNES, INC.

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

Docket C-3142. Complaint, Aug. 15, 1984—Decision, Aug. 15, 1984

This consent order requires a Mansfield, Ohio manufacturer and seller of sump and sewage pumps and pump systems, among other things, to cease offering a warranty whose duration is measured from the date of manufacture, unless the warranty coverage extends for three years from the date of manufacture, or the company clearly discloses in the warranty, either the date the product was manufactured or an explanation as to how a customer can discover the date of manufacture. Any representation that a product's warranty coverage runs for a certain time is prohibited, unless the warranty will actually be in effect for that period. The order also requires respondent to treat every claim for warranty service made within 12 months of installation as timely, regardless of the product's date of manufacture, if the warranty document is not in compliance with this order; issue warranties that comply with the Magnuson-Moss Warranty Act; and send a notice explaining the revisions and changes in the company's warranty policy and documents to its dealers and distributors.

Appearances

For the Commission: *Rachel Miller and Christopher R. Brewster.*

For the respondent: *Stephen Greiner and Mitchell J. Auslander,*
New York City.

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 Peabody Barnes, Inc., a corporation ("respondent"), has violated the provisions of those 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:

I

PARAGRAPH 1. Respondent Peabody Barnes, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1651 North Main Street, Mansfield, Ohio.

PAR. 2. Respondent is and has been engaged in the manufacture, distribution, offering for sale and sale of sump pumps, sewage pumps, and other pumps and pump systems. Respondent causes and has caused these products to be shipped into more than 45 states for sale to the public. Respondent therefore maintains and has maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 3. In the course and conduct of its business, respondent offers and has offered warranties to retail purchasers. These warranties accompany each individual product item.

PAR. 4. These warranties typically, and by way of illustration, state, in pertinent part:

One Year Warranty- Peabody Barnes warrants each [type of product] for a period of one (1) year from the date of installation, or 18 months from the date of manufacture, whichever comes first. . . .

PAR. 5. Respondent disseminates and has disseminated, to distributors, dealers or others, materials describing its warranties as "one-year warranty" or "standard one-year warranty."

PAR. 6. Through the acts, practices, statements and representations alleged in Paragraphs Three through Five above, respondent represents and has represented, expressly or by implication, that respondent provides purchasers with a one-year warranty.

PAR. 7. In truth and in fact, a substantial number of respondent's products are and have been first sold at retail more than six months after manufacture, and a substantial number are and have been first sold at retail more than eighteen months after manufacture. Thus, since the warranty on a product expires eighteen months after manufacture, a substantial number of purchasers receive and have received less than a year of coverage under the warranty, or no coverage whatsoever.

PAR. 8. The statements, representations, acts, and practices alleged in Paragraphs Three through Seven above have and have had the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that those statements and representations are true and complete, and to induce a substantial number of

such persons to purchase respondent's products by reason of this erroneous and mistaken belief.

PAR. 9. The acts and practices of respondent alleged in Paragraphs Three through Eight above are all to the prejudice and injury of the public, and constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended.

II

The allegations of Paragraphs One through Nine above are incorporated by reference in this Part as though fully set forth below.

PAR. 10. In the course and conduct of its business, respondent is and has been a supplier of consumer products distributed in commerce, as "supplier," "consumer product," and "commerce" are defined in the Warranty Act. Respondent offers and has offered written warranties, as described in Paragraphs Three and Four above, to consumers on these consumer products, and therefore is and has been a warrantor, as "written warranty," "consumer," and "warrantor" are defined in that Act.

PAR. 11. Respondent fails and has failed to disclose the dates of manufacture of its products to retail purchasers or prospective purchasers.

PAR. 12. Respondent's failure to disclose the date of manufacture of an item, where the duration of respondent's warranty on the item may depend on that date, constitutes a failure to contain a statement of the duration of respondent's warranty on the item.

PAR. 13. The statement of duration of a warranty is information which is necessary, in light of all the circumstances, to make the warranty not misleading to a reasonable individual exercising due care.

PAR. 14. Respondent's warranty, which fails to contain a statement of duration as alleged in Paragraphs Eleven through Thirteen above, is a "deceptive warranty" as defined in Section 110(c)(2)(A)(ii) of the Warranty Act.

PAR. 15. As alleged in Paragraphs Six and Seven above, respondent's warranty represents that its duration is one year, a representation which is false in a substantial number of cases. The warranty thus contains a representation which is false or which would, in light of all the circumstances, mislead a reasonable individual exercising due care. The warranty is therefore a "deceptive warranty" as defined in Section 110(c)(2)(A)(i) of the Warranty Act.

PAR. 16. As alleged in Paragraphs Four through Seven above, the term of respondent's warranty limiting its duration to eighteen

months from date of manufacture causes the warranty to expire prior to the first retail sale of the warranted product in a substantial number of cases. The term thus so limits the scope and application of the warranty as to deceive a reasonable individual. The warranty is therefore a "deceptive warranty" as defined in Section 110(c)(2)(B) of the Warranty Act.

PAR. 17. Pursuant to Sections 110(c)(1) and 110(b) of the Warranty Act, respondent's deceptive warranty, as alleged in Paragraphs Fourteen through Sixteen above, violates Section 5(a)(1) of the Federal Trade Commission Act, as amended.

PAR. 18. Respondent's failure, as alleged in Paragraphs Eleven and Twelve above, to disclose the durations of those written warranties offered to consumers on consumer products manufactured after December 31, 1976, and actually costing consumers more than \$15, is and has been in violation of Section 701.3(a)(4) of the rule on Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 CFR Part 701, implementing Section 102(a) of the Warranty Act. Pursuant to Section 110(b) of that Warranty Act, respondent's failure to disclose the duration of those written warranties also is and has been in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended.

PAR. 19. In written warranty documents provided to consumers on consumer products manufactured after December 31, 1976, and actually costing consumers more than \$15, respondent fails and has failed to make the disclosures required by and set forth in Sections 701.3(a)(8) and 701.3(a)(9) of the rule on Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 CFR 701, implementing Section 102(a) of the Warranty Act. These failures are and have been in violation of the Warranty Act, and, pursuant to Section 110(b) of that Act, in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended.

PAR. 20. In written warranty documents provided to consumers on consumer products manufactured after July 4, 1975, respondent includes and has included the following term:

The company makes no additional warranties, expressed or implied, of merchantability or fitness. . . .

This statement constitutes a disclaimer of implied warranties in violation of Section 108 of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, in violation of Section 5(a)(1) 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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act and the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said 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 Peabody Barnes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1651 North Main Street, in the City of Mansfield, State of Ohio.

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 Peabody Barnes, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering for

sale, sale or distribution of any pump or pump system in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Offering on any such pump or pump system a warranty whose duration is measured from date of manufacture, unless:

1. The period measured from date of manufacture is at least 36 months, and
2. Respondent discloses clearly and conspicuously in the warranty document either:

- a. The date of manufacture of the item warranted, or
- b. An explanation of how a customer can discover the date of manufacture from a simple visual inspection of the item, exclusive of packaging.

B. Representing, directly or by implication, that a warranty on any such pump or pump system runs for a certain period (*e.g.*, by calling it a one-year warranty), unless the warranty on that item will actually be in effect for that period (beginning on the date of sale or installation of the item, unless the representation clearly and conspicuously states otherwise).

II

It is further ordered, That respondent, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering for sale, sale or distribution of any pump or pump system in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall treat every claim for warranty service made within 12 months of installation as timely, regardless of the date of manufacture, for any such pump or pump system sold by respondent prior to the date of service of this order with a warranty document not in compliance with this order.

III

The definitions contained in Section 101 of the Magnuson-Moss Warranty Act (15 U.S.C. 2301) shall apply to the terms used in this Part.

It is further ordered, That respondent, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other de-

vice, in connection with the offering for sale, sale or distribution of any consumer product in or affecting commerce, do forthwith cease and desist from:

A. In any written warranty, disclaiming any implied warranty, or modifying any implied warranty in a manner prohibited by Section 108 of the Magnuson-Moss Warranty Act (15 U.S.C. 2308);

B. In any written warranty to which the rule on Disclosure of Written Consumer Product Warranty Terms and Conditions (16 CFR 701) applies, failing to make all disclosures required by that rule, in the manner and form specified therein, and as that rule may be amended, including, but not limited to, all disclosures required by Sections 701.3(a)(8) and 701.3(a)(9) of that rule.

IV

It is further ordered, That, within 30 days after the date of service of this order respondent shall provide notice in writing to all current dealers and distributors of any of respondent's products who are known to respondent, as follows:

A. An explanation of revisions in the current warranty documents made to comply with Parts I.A., III.A, and III.B of this order. In regard to Part III.A of this order, the notice shall briefly explain that respondent's warranty no longer contains a disclaimer of implied warranties; that respondent recognizes that in some cases customers may have rights in addition to those in the written warranty; and that if a dealer or distributor believes a situation may call for assistance beyond the written warranty terms, or if a customer requests such assistance, the matter should be referred to respondent for its consideration.

B. A statement that respondent will honor valid warranty claims for one year after installation, regardless of date of manufacture, for any product distributed prior to the date of service of this order with an unrevised warranty document.

C. An instruction that dealers and distributors refrain from stating or implying that respondent's warranty on any pump or pump system runs for a certain period (*e.g.*, by calling it a one-year warranty), unless the warranty on the item will actually be in effect for that period (beginning on the date of sale or installation of the item, unless the representation clearly and conspicuously states otherwise).

V

It is further ordered, That respondent shall distribute a copy of this order to all of respondent's divisions and to all present and future personnel, agents or representatives of respondent having responsibilities with respect to the subject matter of this order.

VI

It is further ordered, That respondent shall 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.

VII

It is further ordered, That respondent 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.

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8907. Final Order, Jan. 10, 1975—Modifying Order, Aug. 16, 1984

This order reopens the proceeding and modifies the Commission's 1975 Cease and Desist Order which barred a motor vehicle manufacturer and its advertising agency [85 F.T.C. 27] from making superior handling claims for any automobile, unless the claims were substantiated by scientific tests. In response to petitions from both respondents, the Modifying Order redefines the term "handling" as it relates to the control of a moving automobile; adds a paragraph defining the phrase "vehicle handling characteristics;" clarifies the definition of the scientific tests required for substantiating comparative claims; and permits respondents to make superiority claims regarding one or more specifically identified vehicle handling characteristics without having to raise substantiation requirements for other handling characteristics.

ORDER REOPENING PROCEEDING AND MODIFYING
CEASE AND DESIST ORDER

On April 19, 1984 General Motors Corporation [hereinafter G.M.C.], a respondent in the above captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the above-captioned proceeding and modify the order entered therein (85 F.T.C. 32). On May 7, 1984 Campbell-Ewald Company, an advertising agency for G.M.C. and also a respondent in the above matter, filed a petition to reopen and modify the order entered against Campbell-Ewald (85 F.T.C. 35).

The order, which was entered in 1975, prohibits the respondents from representing that any automobile is superior in handling to any other automobile or all other automobiles unless respondents have a reasonable basis for such representations. Handling is defined in terms of the response of the vehicle:

- (a) under conditions where rapid steering inputs in evasive or emergency maneuvers are necessary;
- (b) under cornering conditions at speeds in excess of 30 miles per hour in which levels of lateral acceleration in excess of .2g are attained; and
- (c) in gusty crosswinds, on rough roads and under severe steering-braking conditions.

Respondents now seek to modify the order by, inter alia, substitut-