

Set Aside Order

105 F.T.C.

IN THE MATTER OF
AMERICAN MOTORS CORPORATION, ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3093. Consent Order, July 6, 1982—Set Aside Order, Feb. 14, 1985

This Order reopens the proceeding and grants the petitions of a utility vehicle manufacturer and its subsidiary to set aside the FTC Consent Order issued on July 6, 1982 (100 F.T.C. 229 (1982)), which requires them to attach to each new Jeep CJ a sticker warning that multipurpose vehicles handle differently from ordinary passenger cars and sudden sharp turns or abrupt maneuvers may result in loss of control; and to include additional safety disclosures in Owner's Manuals and Supplements. Petitioners' request that the Order be set aside was based on changes in law and fact and on public interest considerations. The manufacturers asserted that a new regulation promulgated by the National Highway Traffic Safety Administration ("NHTSA"), which became effective on September 1, 1984, covers the same subject matter as FTC's Order and makes the Order unnecessary. Further, while the regulation requires all manufacturers of utility vehicles to place a sticker on such vehicles and to disclose in their operating manuals information "to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when those vehicles are operated on paved roads," respondent is the only manufacturer of such vehicles subject to dual liability. After considering all arguments presented by petitioners, and noting that NHTSA, the federal agency with the specific statutory responsibility to regulate automobile traffic, has in effect a regulation, enforceable by the assessment of penalties, that adequately addresses the problem that led to issuance of the FTC Order, the Commission concluded that petitioners had adequately shown that changed conditions of law and fact and public interest considerations require that the Order be set aside. Accordingly, the Commission ordered the matter reopened and the consent order set aside.

ORDER REOPENING THE PROCEEDING AND SETTING ASIDE
CEASE AND DESIST ORDER

On September 13, 1984, American Motors Corporation and its wholly-owned subsidiary, Jeep Corporation, respondents in the captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rule of Practice to reopen the proceeding and set aside the Consent Order entered therein.

The Order, which was issued on July 6, 1982, requires, *inter alia*, that respondents affix a sticker to the instrument panel or windshield frame of each new Jeep CJ reading as follows:

This multipurpose vehicle handles and maneuvers differently from an ordinary passen-

may result in loss of control. Read driving guidelines in Owner's Manual and Supplement.

WEAR SEATBELTS AT ALL TIMES

The Order also requires respondents to disclose in the Owner's Manual for new Jeep CJ's and in an informational Supplement to the Owner's Manual the following:

Utility vehicles have higher ground clearance and narrower track to make them capable of performing in a wide variety of off-road applications. Specific design characteristics give them a higher center of gravity than ordinary cars. An advantage of the higher ground clearance is a better view of the road allowing you to anticipate problems. They are not designed for cornering at the same speeds as conventional 2WD vehicles any more than low-slung sports cars are designed to perform satisfactorily under off-road conditions. If at all possible, avoid sharp turning maneuvers. As with other vehicles of this type, failure to operate this vehicle correctly may result in loss of control or an accident.

The Order further mandates that respondents include the following statement in the introduction to the Supplement:

As with other vehicles of this type, failure to operate this vehicle correctly may result in loss of control or an accident. Be sure to read on-pavement and off-road driving guidelines which follow.

Petitioners' requests that the Order be set aside is based on changes in law and fact and on public interest considerations. The petition asserts that a new regulation of the National Highway Traffic Safety Administration ("NHTSA") became effective on September 1, 1984, which covers the same subject matter as the Commission's Order. 49 C.F.R. 575.105, *reprinted* in 49 FR 20016 (1984). NHTSA's regulation requires all manufacturers of utility vehicles to place a sticker on such vehicles and to disclose in their Operating Manuals information "to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when those vehicles are operated on paved roads." While the sticker and the disclosures required by the NHTSA regulation were patterned after those in the Commission's Order against petitioners, the language therein differs substantively from the exact language required by the Commission's Order. Violations of both the NHTSA regulation and the Commission's Order may subject petitioners to civil penalties.

Petitioners argue that the new regulation promulgated and implemented by NHTSA constitutes a change of law. The regulation covers the same subject matter as the Commission's Order, and NHTSA is the federal agency with specific statutory authority to regulate traffic

safety. See 15 U.S.C. 1381 (1982). "In short," petitioners' assert, "the NHTSA regulation has made the Order unnecessary."

As a changed condition of fact, petitioners argue that the new NHTSA regulation ensures that they will continue to make disclosures concerning the handling of utility vehicles. The regulation applies to all utility vehicles, and AMC is the only manufacturer of such vehicles subject to dual liability. Petitioners are, therefore, injured competitively. Furthermore, they contend that they have been placed in an untenable regulatory dilemma. If they comply with the NHTSA regulation, they are in violation of the Commission's Order, and compliance with the Order constitutes non-compliance with the NHTSA regulation. Penalties are assessable for violations of both the regulation and the Order.

Finally, petitioners contend that the public interest requires that the Order be set aside because inconsistent and overlapping regulatory schemes do not serve the goal of efficient government administration.

Under Section 5(b) of the Federal Trade Commission Act and Rule 2.51 of the Commission's Rules, the Commission must reopen the proceeding and consider altering, modifying or setting aside an Order if a respondent files a request showing that changed conditions of law or fact require the Order to be altered, modified or set aside, in whole or in part, or that the public interest so requires.

The National Highway Traffic Safety Administration, the federal agency with the specific statutory responsibility to regulate automobile traffic safety, has in effect a regulation, enforceable by the assessment of penalties, that adequately addresses the problem that led to the issuance of the Commission's Order. Therefore, the Commission has concluded that petitioners have adequately shown that changed conditions of law and fact and public interest considerations require that the Order be set aside.

Accordingly, *it is ordered*, that the proceeding in this matter be reopened and the Order set aside.

IN THE MATTER OF
SENTRONIC CONTROLS CORPORATION, ET AL.

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

Docket C-3150. Complaint, Feb. 21, 1985—Decision, Feb. 21, 1985

This Consent Order, among other things, requires three Chicago, Ill. corporations and three individuals engaged in the advertising, sale and distribution of an ultrasonic pest control product called the "Pest Sentry," to cease representing that the Pest Sentry or any other ultrasonic pest control device will eliminate cockroaches, rats, mice, and other such pests from a home or place of business; eliminate them within a specified period of time; prevent them from entering or remaining in an area where the product is being used; and serve as an effective alternative to the use of conventional pest control products. The Order further bars respondents from making any performance or effectiveness claims for ultrasonic pest control devices unless they possess and rely on competent and reliable substantiating evidence when making those claims.

Appearances

For the Commission: *Edwin Dosek.*

For the respondents: *Alvin Becker, Beerman, Swerdlow, Woloshin, Berezky & Berkson, 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 Sentronic Controls Corporation, a corporation, International Marketing & Manufacturing, Inc., a corporation, Unigraf, Inc. a corporation, Stanley Stewart and Anne K. Stewart, individually and as officers of said Sentronic Controls Corporation and of International Marketing & Manufacturing, Inc., and Richard Muller, individually and as an officer of said Sentronic Controls Corporation and of Unigraf, Inc., hereinafter sometimes referred to as respondents, have 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. Respondents Sentronic Controls Corporation (SCC) and International Marketing & Manufacturing, Inc. (IMM) are I