

Complaint

111 F.T.C.

IN THE MATTER OF

JS&A GROUP, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3248. Complaint, Feb. 24, 1989—Decision, Feb. 24, 1989

This consent order prohibits, among other things, the Northbrook, Ill. corporation from falsely claiming that any product has been independently investigated or evaluated. Respondent is also prohibited from misrepresenting that a paid advertisement is an independent consumer or news program.

Appearances

For the Commission: *Toby M. Levin.*

For the respondents: *Daniel C. Smith, Arent, Fox, Kintner,
Plotkin & Kahn, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that JS&A Group, Inc., a corporation, and Joseph Sugarman, individually and as an officer of said corporation, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1.

- (a) JS&A Group, Inc., is an Illinois corporation.
- (b) JS&A Group, Inc. has its principal office and place of business at One JS&A Plaza, Northbrook, Illinois.
- (c) Joseph Sugarman is President of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office and place of business is the same as that of the corporation.
- (d) The aforementioned respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents have advertised, offered for sale, sold and distributed sunglasses and other products to the public.

PAR. 3. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for their sunglasses. These advertisements have been published in magazines and broadcasted on television across state lines in or affecting commerce, for the purpose of inducing purchases of such sunglasses by members of the public.

PAR. 4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Typical of respondents' advertisements, but not necessarily inclusive thereof, is the advertisement attached hereto as Exhibit A and the "Consumer Challenge" program. Specifically, the aforesaid advertisements contain the following statements:

(a) "Consumer Challenge" TV show picks BluBlocker sunglasses as target for investigative report and ends up with surprise." (Exhibit A)

(b) "We were upset. Our advertisement for BluBlocker high resolution sunglasses was selected to be exposed by the new commercial TV production, Consumer Challenge. Is this advertisement about a major new product breakthrough or a real rip-off?" asked the show's host Jonathan Goldsmith. 'We're going to find out.' If you've ever watched 60 Minutes or 20/20 you could understand our fear. We were running the risk of Consumer Challenge taking a great product and ruining it on the air. Sales could plummet and our product could be destroyed by some clever editor or a jealous producer. But we were totally wrong." (Exhibit A)

(c) "Obviously we are very proud of our achievement with the Consumer Challenge TV show. Whenever you can convey a very positive image of your product on a commercial TV production, it is very encouraging." (Exhibit A)

(d) "Welcome to 'Consumer Challenge', hosted by Jonathan Goldsmith, the show that examines popular new products for you, the consumer, with investigative reporters Don Hale and Catherine Grant. Here's your host, Jonathan Goldsmith.

On today's 'Consumer Challenge' we investigate BluBlockers—a new product innovation or consumer rip-off? (Consumer Challenge)

(e) "We interrupt this program for a special announcement. This program is unable to handle the number of calls requesting the sunglasses featured in this program. If you are interested in obtaining the BluBlocker sunglasses, you may call the manufacturer directly at the number shown here." (Consumer Challenge)

(f) "Thanks for such a thorough job on your investigation of this topic. Remember, if you didn't get the ordering information, please stay tuned and it will be shown on the screen at the end of the show.... Look for our next "Consumer Challenge", the show that challenges the products of our time to make you a better, more informed consumer in the future." (Consumer Challenge)

PAR. 6. Through the use of the statements referred to in paragraph five, and other statements in advertisements not specifically set forth herein, respondents have represented, directly or by implication, that:

(a) "Consumer Challenge" is an independent consumer program such as "60 Minutes" or "20/20," that conducts independent and objective investigations of consumer products like BluBlockers.

(b) The producers and investigative reporters of "Consumer Challenge" conducted an independent and objective investigation of BluBlockers without receiving any reimbursement or other financial benefit, directly or indirectly, from its marketers, JS&A Group, Inc., or its agents.

PAR. 7. In truth and in fact:

(a) "Consumer Challenge" is not an independent consumer program such as "60 Minutes" or "20/20," that conducts independent and objective investigations of consumer products like BluBlockers. It was created by Joseph Sugarman and produced at the request of JS&A Group, Inc., and Joseph Sugarman for the sole purpose of selling BluBlockers.

(b) The producers and investigative reporters of "Consumer Challenge" did not conduct an independent and objective investigation of BluBlockers without receiving any reimbursement or other financial benefit, directly or indirectly, from its marketers, JS&A Group, Inc., or its agents. They were paid by Marketing Resources Network, the production company, on behalf of JS&A Group, Inc. and Joseph Sugarman for producing and acting in the advertisement.

Therefore, the representations set forth in paragraph six were, and are, false and misleading.

PAR. 8. The dissemination of the aforesaid false and misleading representations by respondents, as alleged in this complaint, constitutes unfair and deceptive acts or practices in or affecting commerce and the making of false advertisements in violation of sections 5(a) and 12 of the Federal Trade Commission Act.

Commissioner Machol not participating.

EXHIBIT A



Super Surprise

Consumer Challenge TV show picks BluBlocker sunglasses as target for investigative report and ends up with surprise.

The sunglasses in question.



"Is it a breakthrough or a rip off?" We knew they were serious.

By Joseph Sugarman

We were upset. Our advertisement for BluBlocker high resolution sunglasses was selected to be exposed by the new commercial TV production, Consumer Challenge.

"Is this advertisement about a major new product breakthrough or a real rip off?" asked the show's host, Jonathan Goldsmith. "We're going to find out."

If you've ever watched 60 Minutes or 20/20 you could understand our fear. We were running the risk of Consumer Challenge taking a great product and ruining it on the air. Sales could plummet and our product could be destroyed by some clever editor or a jealous producer. But we were totally wrong.

TOTAL PRAISE

By the end of the show, the entire staff praised the product in one of the best commercial endorsements any product could ever receive. Said one of the reporters, Don Hale, "We had a difficult time finding anybody who would even consider knocking the product. Everybody liked it. Our entire staff wears them now."

This praise is only the beginning of what has been an outpouring of endorsements for the product. During the show, the reporters interviewed Keith Hernandez, star first baseman of the New York Mets who reported that it was his favorite pair.

"We interviewed movie stars, famous football players, baseball players and hundreds of customers. I have never found a product that had such universal appeal," said Kathy Graf, another reporter on the show.

BluBlocker sunglasses are one of the best selling new concepts in sunglass technology. The lenses on BluBlockers filter out both blue and UV light to produce one of the most pleasing visual effects ever created for any pair of sunglasses. And for good reason.

Ozone is slowly being depleted from our atmosphere by pollution. Without sufficient ozone to fully protect us, ultra violet or UV light is causing a dramatic increase in both skin cancer and eye diseases such as cataracts. "This is not a case of a small increase. It's very dramatic," stated one of the interviewees.

Sunglasses are not the answer either. In fact, it was concluded that some sunglasses could be dangerous because they caused your pupils to open wider and allow more of the UV light to enter your eyes.

FILTERS OUT BLUE

BluBlockers not only block out the dangerous UV light from the atmosphere but filter out the blue light as well. Blue focuses slightly in front of the retina which is the focusing screen in your eye. By eliminating the blue, everything appears to be in sharper focus, clearer and creates almost an enhanced 3-dimensional appearance. The results are impressive.

You see better, clearer and with greater resolution. Tom Brakfield, a famous wildlife photographer was sitting on the front steps of his cabin when he noticed a mountain in the background that he hadn't observed before. "Because of BluBlocker's high resolution, I've been able to see objects I never even knew existed."

Dave Johnson, the number 2 ranked USA decathlon champion wears BluBlockers when he performs all 10 of his events including the high jump, the pole vault and the javelin throw. "BluBlockers make me feel more relaxed and give me a definite edge over my competition. I actually experience the optical perfection in the lenses."

GREATEST ASSET

The optical perfection is the greatest asset in BluBlocker sunglasses. Each lens is made of Malenium 89— one of the strongest yet finest lens materials possible for high resolution and clarity. Anybody can produce a lens that approaches the BluBlocker quality, but nobody takes the care that the BluBlocker organization takes in their lenses.

JS&A offers three models of BluBlockers. One is an modified high-tech aluminum pair with a flexible spring hinge. The second is a polarized version using the aluminum frame and hinge and the third is our precision plastic pair without the spring hinge. All three models utilize the same quality, high resolution BluBlocker lenses and come complete with padded carrying case and a

one year no-nonsense limited warranty. All three are designed to fit both men and women with almost any sized face and all models look identical. There is also a high quality clip-on model that fits over prescription lenses.

EXPERIENCE THE MIRACLE

I urge you to order a pair during our 30-day trial period. When you receive them see how light they are. Then experience the miracle of BluBlockers. Put them on. Everything will suddenly appear clearer, sharper and with an enhanced 3 dimensional look. You will notice a dramatic difference immediately—especially in sunlight.

If, for any reason, you are not pleased in any way with your pair, no problem. I give you up to 30-days to return them in the reusable carton that comes with each pair for a prompt and courteous refund.

If anything happens to your pair during the first year of use, return it to me for a prompt replacement. You won't find that type of warranty on any other pair of sunglasses.

Obviously we are very proud of our achievement with the Consumer Challenge TV show. Whenever you can convey a very positive image of your product on a commercial TV production, it is very encouraging. If you have a chance, catch Consumer Challenge in your area. Check local time and listings. But don't let any more time go by before you buy your first pair of BluBlockers. Order a pair, at no obligation, today.

To order, credit card holders call toll free and ask for product by number shown below or send a check plus \$3 for delivery.

Polarized Deluxe (0032YY9).....	\$99.95
Aluminum Deluxe (0029YY9).....	69.95
Clip-On Model (0028YY9).....	29.95
Precision Plastic (0031YY9).....	39.95

JS&A
ORDER TOLL-FREE
IN HKS. TWIST CASE
800 356-6000
IN MICHIGAN & ALASKA 800-331-1000
TOLL-FREE SHIPPING BY CREDIT CARD ONLY

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 considered the matter and having thereupon 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 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent JS&A Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at One JS&A Plaza, in the City of Northbrook, State of Illinois.

Respondent Joseph Sugarman is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondents JS&A Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, and Joseph Sugarman, individually and as officer of the said corporation, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any sunglass or any other product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or indirectly, that such product has been independently investigated or evaluated.

B. Misrepresenting, directly or indirectly, that an advertisement is an independent consumer or news program and not a paid advertisement.

C. For a period of ten (10) years from the date of service of this order, failing to disclose clearly and prominently in any program length advertisement that the program is an advertisement or commercial. Such fact shall be disclosed at the beginning of the program. In addition, such fact shall be disclosed each time during the program that ordering instructions are given, or at the end of the program if no ordering instructions are given, provided however, that such additional disclosures need not appear more than twice during any half hour period of the program. For purposes of this order, "program length advertisement" shall mean any video advertisement that ends fifteen minutes or more after it begins.

II.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

III.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions.

IV.

It is further ordered, That respondents shall, within sixty (60) days after service of this order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Machol not participating.

IN THE MATTER OF

CLEVELAND AUTOMOBILE DEALERS' ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3247. Complaint, Mar. 2, 1989—Decision, Mar. 2, 1989*

This consent order prohibits, among other things, the Cleveland Automobile Dealers' Association (CADA) from limiting its members' hours, from maintaining any policy concerning hours of operation, and from encouraging members to influence each other as to their hours. The consent order requires respondent to advertise in the newspaper that dealers' hours are no longer restricted and also change its Articles of Incorporation or other policy statements to reflect the consent order.

Appearances

For the Commission: *Mark D. Kindt* and *Steven W. Balster*.

For the respondent: *Paul P. Eyre, Baker & Hostetler*, Cleveland, Oh.

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 Cleveland Automobile Dealers' Association, a corporation, hereinafter sometimes referred to as "respondent," has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cleveland Automobile Dealers' Association is a corporation formed pursuant to the laws of the State of Ohio, with its office and principal place of business located at Suite 300, The Lincoln Building, 1367 East 6th Street, Cleveland, Ohio.

PAR. 2. For purposes of this complaint, (a) a "dealer" is any natural person, corporate entity, partnership, association, joint venture, trust, or any other organization or entity that receives on consignment or purchases new motor vehicles for sale to the public; (b) a "member" or