

IN THE MATTER OF

COOPER RAND CORPORATION

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

Docket C-3250. Complaint, Apr. 18, 1989—Decision, Apr. 18, 1989

This consent order prohibits, among other things, a New York marketer of consumer products from representing that any lighter-to-lighter charger will restart a discharged battery instantly or as quickly as jumper cables, or from making any other performance claim for the product, unless respondent can substantiate such claims. In addition, the order requires respondent to prominently disclose in each advertisement and in the product instruction insert, either a statement concerning the product's limitations or the specific length of time needed to recharge a battery.

Appearances

For the Commission: *Allen Hile.*

For the respondent: *William R. Hansen, Nims, Howes, Collison & Isner, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Cooper Rand Corporation, hereinafter 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 as follows:

PARAGRAPH 1. Cooper Rand Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its office and principal place of business located at 45 West 25th Street, New York, New York.

PAR. 2. Respondent is now and for sometime in the past has been engaged in the marketing, distribution, advertising, offering for sale, and selling to the public of "Auto Starter" and other lighter-to-lighter

chargers, which are devices to be used to recharge the battery in a disabled vehicle by connection to an operating vehicle through the cigarette lighter receptacles of both vehicles.

PAR. 3. In the course and conduct of its business, respondent causes, and in the past has caused, the Auto Starter and other lighter-to-lighter chargers to be offered and sold from its place of business to purchasers located in various States of the United States and the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a substantial course of trade in said products in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, as amended.

PAR. 4. In the further course and conduct of its aforesaid business, respondent has at all times mentioned herein made numerous statements in writing, in various product packaging and promotional materials and instruction sheets prepared and/or disseminated by respondent for use in selling respondent's products. Illustrative and typical, but not inclusive, of the statements employed as aforesaid are the following:

"[S]tart your car without jumper cables . . . instantly!"

"[The Auto Starter lighter-to-lighter charger] replaces jumper cables."

"[Using the Auto Starter] you'll be back on the road in just minutes."

"[Using the Auto Starter] in just a few minutes you will be ready to go . . ."

"When the power monitor light goes on, the disabled car is ready to start."

PAR. 5. Through the use of the statements referred to in paragraph four, and others contained in product packaging and promotional materials, instruction sheets, and advertisements not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that:

(a) Lighter-to-lighter chargers can or will restart a vehicle disabled by a discharged battery as quickly as jumper cables;

(b) Lighter-to-lighter chargers can instantly restart a vehicle disabled by a discharged battery; and

(c) Illumination of the lighter-to-lighter charger's power monitor light indicates that the disabled vehicle is ready to restart.

PAR. 6. In truth and in fact:

(a) Lighter-to-lighter chargers cannot restart a disabled vehicle as quickly as jumper cables. Lighter-to-lighter chargers take significant-

ly longer than jumper cables to restart a vehicle, even under the most favorable circumstances.

(b) Lighter-to-lighter chargers cannot restart a vehicle disabled by a discharged battery instantly.

(c) Illumination of the lighter-to-lighter charger's power monitor light is not an accurate indicator that a disabled vehicle is ready to start.

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

PAR. 7. Through the use of the statements referred to in paragraph four, and others not specifically set forth herein, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph five it possessed and relied upon a reasonable basis for those representations.

PAR. 8. In truth and in fact, at the time respondent made the representations set forth in paragraph five, it did not possess and rely upon a reasonable basis for them. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) 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, Cooper Rand Corporation, and the respondent having been furnished thereafter with a copy of a 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 attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all of the jurisdictional facts set forth in the aforesaid 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 thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that the 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. Cooper Rand Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 45 West 25th Street, New York, New York.

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 the purpose of this order, "*lighter-to-lighter charger*" means any device to be used to recharge the battery in a disabled vehicle by connection to an operating vehicle through the cigarette lighter receptacles of both vehicles.

I.

It is ordered, That respondent, Cooper Rand 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 marketing, advertising, offering for sale, sale, or distribution of the Auto Starter or any other lighter-to-lighter charger in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

- a. That any such lighter-to-lighter charger can or will restart a vehicle disabled by a discharged battery as quickly as jumper cables;
- b. That any such lighter-to-lighter charger can or will instantly restart a vehicle disabled by a discharged batter; or

c. Any performance characteristic of any lighter-to-lighter charger unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence which substantiates such representation; provided, however, that to the extent such evidence consists of any test, experiment, analysis, research, study or other evidence based on the expertise of professionals in a relevant area, such evidence shall be "competent and reliable" for purposes of this paragraph only if the test, experiment, analysis, research, study, or other evidence is conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondent, Cooper Rand 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 marketing, advertising, offering for sale, sale or distribution of the Auto Starter or any other lighter-to-lighter charger in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith and for a period of five (5) years from the effective date of service of this order cease and desist from failing to disclose clearly and prominently in each solicitation for the sale of such lighter-to-lighter charger, on a hang tag affixed to each such lighter-to-lighter charger, and in the product instruction insert either

(a) The following information expressed in the exact language set forth below in ten point or larger bold face Helvetica type:

This product will not instantly start your car. Unlike a jumper cable, it must first recharge your battery. Also, older batteries or colder temperatures may significantly increase the amount of time needed to restart your car.

or

(b) The specific length of time required to recharge a battery in a given state of discharge, accompanied by a statement disclosing whether the specified time is a maximum, minimum, typical, or other such time, and that older batteries or colder temperatures may increase charging times.

III.

It is further ordered, That respondent, Cooper Rand Corporation, its successors and assigns, shall, within fifteen (15) days after the date of service of this Order, using lists of names and addresses of purchasers of lighter-to-lighter chargers Cooper Rand has compiled from its own files, and from the files of each credit card issuing company or other company through which Cooper Rand Corporation sold or distributed lighter-to-lighter chargers to the public, send by first class mail to each of the approximately 131,000 purchasers of a lighter-to-lighter charger whose name and address appears on such lists a 4" by 6" postcard containing only the exact language as set forth in Appendix A, attached hereto and incorporated herein by reference, and clearly stamped on the front in at least twelve (12) point type with the words "IMPORTANT PRODUCT INFORMATION."

IV.

It is further ordered, That Cooper Rand Corporation, its successors and assigns, shall distribute a copy of this Order to each present and future officer, employee, agent and representative having sales, advertising, or policy making responsibilities for any lighter-to-lighter charger and secure from each such person a signed statement acknowledging receipt of said order.

V.

It is further ordered, That respondent, Cooper Rand Corporation, its successors and assigns, shall maintain for at least three years and make available to the FTC with reasonable notice for inspection records showing the names and addresses of all owners to whom the notice required by Part III of this order is sent.

VI.

It is further ordered, That respondent, Cooper Rand Corporation, its successors and assigns, shall maintain for at least three years and upon request make available to the Federal Trade Commission for inspection and copying:

(a) The originals of signed statements required by Part IV of this order;

(b) All materials relied upon to substantiate any representation covered by this order;

(c) All test reports, studies, data or other materials and other documents or information in respondent's possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation;

(d) Records showing the name and address of any consumer who contacts respondent pursuant to the notice provided by Part III of this order, and the total number of such contacts; and

(e) Records showing any action respondent takes in response to any such consumer contact in response to the notice provided by Part III of this order, and the total number of such actions.

VII.

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.

VIII.

It is further ordered, That respondent shall, within ninety (90) 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.

APPENDIX A

Dear Customer:

Our records show that some time ago you purchased a lighter-to-lighter auto battery charger distributed by Cooper Rand Corporation.

We want you to be aware that lighter-to-lighter chargers cannot restart a disabled vehicle as quickly as jumper cables can. This is because they work by recharging a battery rather than by providing a brief "jolt" of energy to restart your vehicle, as jumper cables do.

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Also, longer charging time is needed with low outdoor temperatures, older batteries, and batteries in poor condition. If a battery is too old or its condition is too poor, it may not accept a charge.

Cooper Rand is concerned that our customers accurately understand the use of this product. We trust that the above information will clarify the proper use of your lighter-to-lighter charger.

Sincerely,

Michael Flood, Vice President
Cooper Rand Corporation

IN THE MATTER OF

LENOX, INCORPORATED

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE
CLAYTON AND THE FEDERAL TRADE COMMISSION ACTS*Docket 8718. Consent Order, June 24, 1970—Set Aside Order, April 19, 1989*

The Federal Trade Commission has set aside a portion of the 1970 consent order with Lenox, Inc., (77 FTC 860), thus removing the provisions that prohibited respondent from terminating dealers after receiving complaints from other dealers and that required the respondent to reinstate dealers terminated for discounting prices or for transshipping products.

ORDER GRANTING IN PART AND DENYING IN PART
REQUEST TO REOPEN AND SET ASIDE ORDER

On December 20, 1988, Lenox, Incorporated ("Lenox"), filed a "Request of Lenox, Incorporated to Vacate Final Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. In the Request, Lenox asks the Commission to reopen the proceeding and set aside the cease and desist order entered by the Commission on June 24, 1970 (77 FTC 860) and modified by the Commission on July 12, 1982 (100 FTC 259). Lenox alleges that setting aside the order is warranted by changed conditions of fact and law and the public interest. Request at 2. The Request was placed on the public record for thirty days, pursuant to Section 2.51(c) of the Commission's Rules, and two comments were received. On February 24, 1989, Lenox submitted an affidavit responding to one of the public comments.

The Commission has carefully considered Lenox's Request, the public comments and Lenox's response to one comment and has concluded that Lenox has not made a satisfactory showing that changed conditions of fact or law or the public interest require that the order be set aside in its entirety. The order prohibits Lenox from agreeing with its dealers with respect to resale prices and in essence requires compliance with Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Lenox has not shown changed circumstances that eliminate the need for the order. Lenox also has not shown that it is unduly burdened by an order that merely requires