

IN THE MATTER OF

NOBODY BEATS THE WIZ, INC.

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

Docket C-3329. Complaint, May 7, 1991—Decision, May 7, 1991

This consent order prohibits, among other things, a New Jersey retailer of consumer electronic goods from violating the Pre-Sale Availability Rule, promulgated under the Magnuson-Moss Warranty Act, requiring warranty disclosures. Respondent also is required to instruct all current and future Wiz retail-store managers engaged in the sale of consumer products as to their obligations and duties under the Act.

Appearances

For the Commission: *Alice Au and Michael J. Bloom.*

For the respondent: *Robin J. Cass, Schekter, Rishty & Goldstein,*
New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act and Rule 702, 16 CFR 702, promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Nobody Beats the Wiz, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Rule 702 promulgated under the Magnuson-Moss Warranty 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 charge in that respect as follows:

PARAGRAPH 1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act Pub. Law No. 93-637, 15 U.S.C. 2301 (Supp. 1975) and in Rule 702, 16 CFR 702.1 promulgated thereunder, shall apply to the terms used in this complaint.

PAR. 2. Respondent Nobody Beats the Wiz, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of New York, with its principal office and place of business located at 1300 Federal Boulevard, Carteret, New Jersey.

PAR. 3. Respondent is now and has been engaged in the operation of a chain of consumer electronic retail stores in the metropolitan New York City area, including the five boroughs of New York City, Long Island, Westchester County and New Jersey. In the operation of its retail stores, respondent is now and has been distributing, advertising, offering for sale and selling, among other items, electronic appliances, including but not limited to televisions, video cassette recorders, stereo equipment, video cameras and microwave ovens which are consumer products. Therefore, respondent is both a supplier and seller of consumer products.

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

PAR. 5. In the ordinary course and conduct of its aforesaid business, respondent regularly sells or offers for sale consumer products for purposes other than resale or use in the ordinary course of the buyer's business. Therefore, respondent is a seller of consumer products.

PAR. 6. On or after March 12, 1987, respondent, in the ordinary course of its aforesaid business as a seller of consumer products actually costing more than \$15.00 and manufactured on or after January 1, 1977, has failed to make the texts of written warranties readily available for examination by prospective buyers prior to sale through utilization of one or both of the following methods required by 16 CFR 702.3(a), as amended:

1. Displaying the text of the warranty in close proximity to the warranted product;

2. Furnishing the text of the warranty upon request prior to sale and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

PAR. 7. Respondent's failure to comply with the provisions of 16 CFR 702, as amended, constituted and now constitutes a violation of the Magnuson-Moss Warranty Act and, pursuant to a Section 110(b) thereof, an unfair or deceptive practice under Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

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 New York 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 has 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, making the following jurisdictional findings, and enters the following order:

(1) Respondent Nobody Beats the Wiz, Inc., 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 at 1300 Federal Boulevard, Carteret, New Jersey.

(2) The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and the respondent, and the proceeding is in the public interest.

ORDER

The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, Pub. Law 93-637, 15 U.S.C. 2301, and in Rule 702, 16 CFR 702.1, promulgated thereunder, shall apply to the terms of this order.

I.

It is ordered, That respondent Nobody Beats the Wiz, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale or offering for sale of any consumer product in or affecting commerce, do forthwith cease and desist from failing to make a text of any written warranty on a consumer product actually costing more than \$15.00 readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in 16 CFR 702.3(a), as amended.

II.

It is further ordered, That respondent shall, within thirty (30) days of the date of service of this order, deliver to each current retail store manager and assistant manager engaged in the sale of consumer products on behalf of respondent, a copy of this order to cease and desist.

III.

It is further ordered, That respondent shall, within thirty (30) days of the date of service of this order, instruct all current retail store managers and assistant managers engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this order.

IV.

It is further ordered, That respondent shall instruct all future retail store managers and assistant managers who will be engaged in the sale of consumer products on behalf of respondent, before they assume said responsibilities for respondent, as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this order.

V.

It is further ordered, That respondent shall, within thirty (30) days of the date of service of this order, develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

VI.

It is further ordered, That respondent shall, for a period of not less than two (2) years from the date of service of the order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondent to its retail store managers and assistant managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this order; (ii) copies of signs posted by respondent in its retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and (iii) copies of the text of written warranties made readily available by respondent's retail store outlets for examination by prospective buyers on request.

VII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any 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 that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That respondent shall, within sixty (60) days after service of this order on it, 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
THE TORRINGTON COMPANY, ET AL.

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

Docket C-3330. Complaint, May 10, 1991—Decision, May 10, 1991

This consent order prohibits, among other things, two producers of needle rollers, The Torrington Company, of Connecticut, and Universal Bearings, Inc., of Indiana, from implementing or otherwise providing for any consolidation of the business or assets of the entity to be acquired and the acquiring entity prior to the consummation of any proposed acquisition.

Appearances

For the Commission: *Casey R. Triggs* and *Steven A. Newborn*.

For the respondents: *Joseph F. Tringali, Simpson, Thatcher & Bartlett*, New York, N.Y. *James H. Neu, Kizer & Neu*, Plymouth, IN.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (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 Torrington Company ("Torrington"), a corporation, and Universal Bearings, Inc. ("Universal"), a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5 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, hereby issues its complaint stating its charges in that respect as follows:

RESPONDENTS

PARAGRAPH 1. Respondent Torrington is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 59 Field Street, Torrington, Connecticut.

PAR. 2. Respondent Universal is a corporation organized, existing and doing business under and by virtue of the laws of the State of