

IN THE MATTER OF

BUDGET RENT A CAR SYSTEMS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3674. Complaint, June 17, 1996--Decision, June 17, 1996*

This consent order prohibits, among other things, an Illinois-based corporation from failing to disclose, clearly and prominently, any representation relating to the renter's liability for loss of or damage to a rental vehicle, and from failing to post at each Budget rental location a sign, clearly and prominently, containing the disclosure statement. In addition, the consent order prohibits the respondent from misrepresenting: the obligation of the renter to make any payment as a result of loss of or damage to a rental vehicle; and the value of a vehicle that has been lost or damaged.

Appearances

For the Commission: *Randall Brook, Charles Harwood and Robert Schroeder.*

For the respondent: *Robert Aprati*, in-house counsel, Lisle, IL. and *Lisa Jose Fales, Collier, Shannon, Rill & Scott*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Budget Rent A Car Systems, Inc., a corporation ("respondent"), has 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. Respondent Budget Rent a Car Systems, Inc., is a Delaware corporation with its principal office and place of business located at 4225 Naperville Road, Lisle, Illinois.

PAR. 2. Respondent has advertised, offered for rent, and rented, directly and through franchisees, vehicles to consumers.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. In connection with the renting of vehicles, respondent has disseminated or caused to be disseminated promotional and informational material through advertisements, an 800-number that contains recorded messages, respondent's own telephone reservation system, third-party computerized reservation systems operated by airline and travel agency employees, and point of sale disclosures.

PAR. 5. Some of respondent's promotional and informational material including, but not limited to, the vehicle rental contract, brochure, and telephone script attached as Exhibits A - C, describe the renter's liability for loss of or damage to vehicles under various circumstances.

PAR. 6. In connection with the renting of vehicles, respondent has offered renters in most states a choice of either accepting or declining an option called the loss damage waiver ("LDW"). If a renter accepted LDW, respondent would add an additional fee to the total rental charge. In 1993 respondent typically charged renters approximately \$13 per day for LDW. LDW is not insurance but instead waives respondent's claim against the renters for damages in the event the vehicle is damaged or stolen during the pendency of the rental agreement.

PAR. 7. The renter's own vehicle insurance company or credit card issuer will often pay for loss of or damage to rental vehicles when a renter declines to purchase LDW. Respondent's informational materials, referred to in paragraph five, and numerous public sources of information, have made this fact known to potential renters.

PAR. 8. In numerous instances respondent has sought and obtained from renters who declined LDW and who have been involved in accidents as much as \$4,500 more than the vehicle's repair cost or market value. This charge is called "loss of turnback". "Turnback" is a sales incentive some manufacturers offer Budget. It occurs when the manufacturer, using a pre-negotiated formula, agrees to repurchase a used vehicle from Budget. The formula's repurchase price can be much higher than the car's market value. Respondent did not inform the renter about this potential extra charge for loss of turnback until respondent made a claim against the renter for loss or damage. Insurance companies and credit card issuers usually refuse to pay respondent's claim for loss of turnback because it exceeds the vehicle's cost of repairs or its fair market value.

PAR. 9. In the informational materials referred to in paragraph five, respondent has represented that renters were liable for loss of or

damage to the rental vehicle if they did not purchase LDW. Respondent failed to disclose that it might include, in a damage or loss claim against renters who decline LDW, as much as \$4,500 for loss of turnback. This fact would have been material to consumers' decisions to rent a vehicle from respondent and to purchase LDW. The failure to disclose this material fact, in light of the representations made, was, and is, a deceptive act or practice.

PAR. 10. In the informational materials referred to in paragraph five, respondent has represented that only two charges related to damages, a loss of use fee and the insurance policy deductible, might not be covered by the renter's vehicle insurance. Respondent failed to disclose that the renter's vehicle insurance would likely not cover a loss of turnback charge. This fact would have been material to consumers' decisions to rent a vehicle from respondent and to purchase LDW. The failure to disclose this material fact, in light of the representations made, was, and is, a deceptive act or practice.

PAR. 11. In numerous instances where vehicles were damaged, respondent has sent, or caused to be sent, written communications to renters who declined LDW demanding that they reimburse respondent for "loss of turnback."

PAR. 12. By demanding reimbursement for loss of turnback, respondent has represented, directly or by implication, that the signed rental contract entitled it to collect this charge.

PAR. 13. In truth and in fact, the signed rental contract did not entitle respondent to collect loss of turnback. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. In numerous instances where vehicles were stolen or declared "totaled," respondent has charged renters who declined LDW for loss based on "Budget book value" or "net vehicle cost."

PAR. 15. In charging a renter for loss based on the "Budget book value" or "net vehicle cost" when a vehicle was stolen or declared a total loss, respondent has represented, directly or by implication, that it was charging the fair market value of the vehicle.

PAR. 16. In truth and in fact, respondent was not charging the fair market value of the vehicle. Instead, it was charging the value that included loss of turnback. Therefore, the representation set forth in paragraph fifteen was, and is, false and misleading.

PAR. 17. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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Complaint

EXHIBIT A

Budget  Card Truck A

EXHIBIT A

CREDIT IDENTIFICATION OR BILLING INSTRUCTIONS		RENTAL LOCATION		RENTAL COUNTRY	
CREDIT CARD/DIRECT BILL NO. P.O. NO. EXP. DATE		CITY		STATE	
APPROVAL DATE, METHOD, NEW CAR TYPE, COLOR, RETURN DATE		CITY		STATE	
RENTER		CITY		STATE	
RESIDENCE		CITY		STATE	
ZIP STATE ZIP		CITY		STATE	
HOME PHONE		CITY		STATE	
JOB REFERENCE NO.		CITY		STATE	
LICENSE NO. EXP. DATE STATE		CITY		STATE	
COMPANY		CITY		STATE	
COMPANY PHONE NO. CORPORATE RATE NO.		CITY		STATE	
LOCAL CONTACT/PHONE NO.		CITY		STATE	
ADDITIONAL DRIVER JOB		CITY		STATE	
LICENSE NO. EXP. DATE STATE		CITY		STATE	
REMARKS		CITY		STATE	
DUE BACK		CITY		STATE	
AUTHORIZED RETURN		CITY		STATE	
RENTER'S INITIAL		CITY		STATE	
LOSS DAMAGE WAIVER (LDW) - Renter agrees before to accept or decline the optional LDW at the rate shown for each day or fraction thereof. If Renter declines LDW, Renter will be responsible for the FULL VALUE for replacement within 30 days of any loss of or damage to the vehicle, including loss of use and related expenses, regardless of fault, except as provided in Paragraph 7 on the reverse side. If Renter accepts LDW, Renter will not be responsible for such loss or damage, except as provided in Paragraphs 8 and 9 on the reverse side. LDW is NOT INSURANCE. INSURANCE, OWNERS INSURANCE AND CO-INSURANCE ARE NOT REQUIRED BY SUCH WAIVER. RENTER SHOULD CHECK WHETHER INSURANCE TO COVER THE LOSS OF OR DAMAGE TO THE VEHICLE DUE TO THEFT, VANDALISM OR COLLISION DAMAGE.		ATTENTION: - DAILY RATE IS BASED ON 24 HOUR DAY. UNIFORM CHARGE. - DISCOUNT RATES ONLY FOR UNIFORM PERIOD. - RATES DO NOT INCLUDE TAXES, NO SERVICE CHARGE. ☐ RENTER AGREES TO PURCHASE OPTION FREE PARKING OR OTHER SERVICE.		RENTAL AGREEMENT NO. SUB TOTAL	
RENTAL AGREEMENT NO. SUB TOTAL		BILLING TYPE/AMOUNT LESS DEPOSIT		NET DUE RENTER	

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EXHIBIT A

The Renter agrees to adhere to the following terms and conditions:

VEHICLE: The vehicle, which includes the title, equipment, accessories, and other items, shall be used only for the purpose of the rental agreement. There is no warranty of any kind, express or implied, as to the merchantability or fitness for any particular purpose of any vehicle delivered by this agreement.

VEHICLE RETURN: Renter will return the vehicle to the location specified in the rental agreement.

REPOSSESSION OF VEHICLE: If the Renter fails to return the vehicle to the location specified in the rental agreement, the lessor may repossess the vehicle at any time and place without notice. The lessor may also sue the Renter for the full value of the vehicle.

AUTHORIZED DRIVERS: Only the Renter and the Authorized Drivers named in the rental agreement are authorized to operate the vehicle. Any other person operating the vehicle without the Renter's written consent is an unauthorized driver. The Renter agrees to indemnify the lessor for any loss or damage caused by an unauthorized driver.

USE RESTRICTIONS: Renter and Authorized Drivers agree that the vehicle will not be used or operated by anyone:

- Who is an unauthorized driver; or
- In a willful or wanton manner; or
- While intoxicated or under the influence of drugs or other substances which would impair driving ability; or
- For any felony including transportation of drugs or contraband; or
- To tow or push anything, to carry persons or property for hire, or to engage in a speed contest; or
- If obtained by fraud or misrepresentation; or
- Outside the continental United States; or
- Off regularly maintained roadways; or
- To carry hazardous or explosive substances; or
- To transport weight in excess of Vehicle's maximum payload capacity; or
- Where insufficient clearance of height or width exists; or
- Who does not know how to operate a stick shift driven vehicle; or
- Improper loading; or
- Who leaves the Vehicle and fails to remove the keys or close and lock all doors, windows and the trunk and the Vehicle is stolen.

ABILITY INSURANCE: THERE IS NO LIMITATION OF ANY OF THE USE RESTRICTIONS IN PARAGRAPH 5 ABOVE. Renter and Authorized Drivers agree to accept the coverage provided with the vehicle. If the Renter is not satisfied with the coverage provided with the vehicle, the Renter may purchase additional coverage from the lessor. The lessor will provide the Renter with a copy of the insurance policy and a description of the coverage provided. The Renter agrees to pay the cost of any additional coverage purchased from the lessor.

VEHICLE DAMAGE: The Renter agrees to pay for any damage to the vehicle caused by the Renter or the Authorized Drivers. The lessor will provide the Renter with a copy of the damage waiver and a description of the coverage provided. The Renter agrees to pay the cost of any damage waiver purchased from the lessor.

ACCIDENTAL FIRE, THEFT OR VANDALISM: The Renter agrees to pay for any loss or damage to the vehicle caused by fire, theft, or vandalism. The lessor will provide the Renter with a copy of the loss damage waiver and a description of the coverage provided. The Renter agrees to pay the cost of any loss damage waiver purchased from the lessor.

RESPONSIBILITY FOR LOSS OF OR DAMAGE TO THE VEHICLE: If Renter declines optional LOSS DAMAGE WAIVER (LDW), Renter is responsible for the FULL VALUE or lesser amount indicated on reverse side of any loss of or damage, including loss of or damage

due to collision, vandalism and theft, and loss of use and expenses, to the Vehicle, regardless of fault, except as provided in Paragraph 7.

If Renter or any Authorized Driver purchases LDW, the use restriction in Paragraph 5. Renter will be responsible for the FULL VALUE or lesser amount indicated on reverse of such loss of or damage (except as provided in Paragraph 7), including actual and consequential damages, costs and fees, and LDW will be void.

DAMAGED VEHICLE: If the Renter or any Authorized Driver returns a damaged vehicle, the lessor may repossess the vehicle at any time and place without notice. The lessor may also sue the Renter for the full value of the vehicle.

REFUELING SERVICE CHARGE: If the Renter or any Authorized Driver returns a vehicle with less than a full tank of gas, the lessor may charge the Renter for the cost of refueling the vehicle. The lessor will provide the Renter with a copy of the refueling service charge and a description of the coverage provided. The Renter agrees to pay the cost of any refueling service charge purchased from the lessor.

RENTER RESPONSIBILITY FOR PROPERTY: Renter is responsible for the loss of or damage to any property in the vehicle. The lessor will provide the Renter with a copy of the property damage waiver and a description of the coverage provided. The Renter agrees to pay the cost of any property damage waiver purchased from the lessor.

FAILURE TO RETURN VEHICLE: If the Renter or any Authorized Driver fails to return the vehicle to the location specified in the rental agreement, the lessor may repossess the vehicle at any time and place without notice. The lessor may also sue the Renter for the full value of the vehicle.

VEHICLE REPAIRS: Renter will not permit any repair or replacement of any part of the vehicle without the prior consent of the lessor. Renter agrees to pay for any repair or replacement of any part of the vehicle. The lessor will provide the Renter with a copy of the vehicle repair waiver and a description of the coverage provided. The Renter agrees to pay the cost of any vehicle repair waiver purchased from the lessor.

MISCELLANEOUS: The Renter agrees to indemnify the lessor for any loss or damage caused by the Renter or the Authorized Drivers. The lessor will provide the Renter with a copy of the miscellaneous waiver and a description of the coverage provided. The Renter agrees to pay the cost of any miscellaneous waiver purchased from the lessor.

EXHIBIT B

Exhibit B

Budget

LOSS DAMAGE
WAIVER (LDW)



EXHIBIT B

QUESTIONS FREQUENTLY ASKED CONCERNING THE LOSS DAMAGE WAIVER OPTION

WHAT EXACTLY IS LDW?

Simply stated, it's an easy way to make it possible that you may never have to pay a cent out of your own pocket if the vehicle you rent is stolen, vandalized or damaged in an accident.

WHY DOES BUDGET OFFER LDW?

It's another way we make sure your experience with Budget is a totally enjoyable one. LDW is another service that lets us do that. Although it's optional, we think the security LDW provides makes it well worth while. One it's up to you to return your vehicle in the same condition it was in at the start of the rental, except for normal wear and tear and damage caused by accidental fire or acts of nature. Unfortunately, events do occur. And the last thing you need to worry about when you rent a vehicle is paying for its loss or damage. With LDW, you don't have to give it a second thought. You're relieved of all financial responsibility for loss or damage to the vehicle so long as you have not violated the terms of the Rental Agreement you signed.

HOW MUCH DOES LDW COST?

The daily charge for LDW is stated on the front of the Rental Agreement. If you accept LDW, this charge will be added to your rental for each rental day during the rental period.

WON'T MY OWN INSURANCE COVER ME?

Maybe. It all depends on where you live and what kind of policy you have. Some policies exclude rental vehicles. Or cover rental vehicles only when your vehicle is out of service and the rental is used as

a replacement. Other policies charge an additional premium for coverage of rental vehicles. Only your insurance agent can tell you for sure what kind of coverage you have. But remember, even if you're covered and something happens to the rental vehicle, you're responsible for any amount your insurance company doesn't pay.

WHAT HAPPENS IF I REJECT LDW?

In the event of an accident or loss, you may end up paying a lot more than you bargained for. Even if your insurance covers your rental, you may have to pay your deductible. You may be faced with an increased premium because you filed a claim. And, of course, if your insurance doesn't cover you, you're responsible for the full value of any loss or damage to the vehicle, plus additional costs.

WHAT DO I GET IF I ACCEPT LDW?

You'll get the peace of mind of knowing that we'll pay for the full value of any loss or damage, so long as you do not violate the terms of the Rental Agreement you signed. Again, the choice is entirely yours. But when you consider the frustration and money LDW may save you, we're sure you'll agree that accepting is a wise choice, indeed.

Under the terms of the Rental Agreement, in the event of loss or damage to the vehicle, you're responsible for the full value of such loss or damage, plus costs. The only exceptions are accidental fire or acts of nature, however, you must not breach any provision of the rental agreement. When you accept the optional LDW from Budget, you may be fully relieved of this responsibility.

EXHIBIT C

INTRODUCTION

Thank you for calling 1-800-RENT SMART. If you are calling for brochures please write to:

Budget Rent Smart
8700 W. Bradley Rd.
Milwaukee, WI 53224

This toll-free service has been developed by Budget Rent a Car to help you make smart rental decisions, save money, and add value to your vacation or business trip. If you are calling from a touch-tone phone, please press "1" now. If you are calling from a rotary phone, please wait and Budget service representative will be happy to take your call.

1-800 RENT SMART

INTRODUCTION:

Thank you for calling 1 - 800 - RENT SMART. This toll-free service has been developed by Budget Rent a Car to help you make smart rental decisions, save money, and add value to your vacation or business trip.

If you are calling from a touch-tone phone, please press "1" now. If you are calling from a rotary phone, please wait and a Budget service representative will be happy to take your call.

MENU:

- For information on LOSS DAMAGE WAIVER, press "1"
- For information on PERSONAL ACCIDENT INSURANCE or PERSONAL EFFECTS COVERAGE, press "2".
- For information on SUPPLEMENTAL LIABILITY INSURANCE, press "3".
- For information on REFUELING SERVICE OPTIONS, press "4".
- For information on RETURN POLICIES, press "5".
- For information on METHODS OF PAYMENT, press "6".
- For information on CAR RENTAL PRICING, press "7".
- For information on AGE RESTRICTIONS, press "8".
- For information on the BUDGET GUARANTEE, press "9".
- For more information or to make a reservation, consult your travel agent or press "0" now.

LOSS DAMAGE WAIVER

The optional Loss Damage Waiver (LDW) offered by car rental companies is not insurance. It's an option car rental companies offer renters to waive their financial responsibility in the event the car is damaged or stolen while on rent. Budget recommends that you decide whether or not you need LDW before you pick up your car and, if you don't need it, don't buy it. Here's some basic information you need to know in order to make the smart choice.

If you're renting for business, you probably don't need LDW. Check with your corporate travel arranger and follow their guidelines and recommendations.

If you're renting for personal reasons, check your own automobile insurance policy. Many policies do cover rental cars, but - if you decline - the LDW and rely on your own insurance, you would probably still be responsible for paying your usual deductible. Also, "loss of use" fees are not normally covered by personal auto insurance policies. Loss of use means reimbursing the car rental company for the revenue it's lost by having the car out of service while repairs are being made.

Some credit cards offer protection if you use their card to pay for your rental. If your credit card offers coverage, check to see if it offers primary coverage, which initially pays for loss or damage up to set limits, or secondary coverage, which pays only after the primary coverage - such as your auto policy - pays.

At most Budget locations, the cost of LDW is \$12.99 a day. If you accept the LDW, \$12.99 will be added to your total rental cost for each rental day.

To continue to hear more about LDW, press "1" now.

If you accept LDW, and comply with the terms of the rental agreement, you're relieved of all financial responsibility for loss or damage to the car, including collision, theft and vandalism during the rental.

If you decline LDW, you may be responsible for up to the full value of the car if it is damaged, vandalized or stolen during the rental. You may also be responsible for paying "loss of use" charges.

LDW is not available in all states and certain restrictions may apply in some states. Specific information on availability of the optional LDW can be obtained when making a reservation.

Remember to check out your options in advance, and - if you don't need LDW - don't buy it.

For more information or to make a reservation, consult your travel agent or press "0" now.

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 Seattle 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 general counsel, 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a 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 Budget Rent A Car Systems, Inc., is a Delaware corporation with its principal office and place of business located at 4225 Naperville Road, Lisle, Illinois.

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

DEFINITIONS

For purposes of this order:

A. "*Turnback*" means any preset price, premium, bonus, or formula that could result in respondent receiving more than the vehicle's fair market value upon repurchase by the vehicle's original vendor, financier, or their designee.

B. "*Fair market value*" means the vehicle's price as listed in an industry-wide and generally accepted publication or directory of used car values, or the resale price received in a commercially reasonable sale.

C. "*LDW*" means any option that respondent offers that limits or eliminates a renter's liability to respondent for loss of or damage to the respondent's vehicle during the pendency of the rental agreement.

D. "*Insurance*" means the renter's own standard vehicle insurance, and any alternative, supplemental, or secondary coverage the renter possesses that provides coverage for rented vehicles including, but not limited to, the coverage currently furnished by many credit card companies.

I.

It is ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the promoting, offering for rental, or rental of any vehicle, in or for any rental location where it seeks loss of turnback or turnback value in any form for vehicles rented in that location, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, does forthwith cease and desist from:

A. Failing to disclose, clearly and prominently, in connection with any representation relating to the renter's liability for loss of or damage to a rental vehicle, including any representation about LDW, that in the event of loss of or damage to a vehicle for which LDW was declined, respondent may charge the renter between \$x and \$y [specify range of dollar amounts Budget may seek] more than the cost of repairs or the fair market value of the vehicle, that many insurance companies will not pay this charge, and that the renter will have to pay it. This paragraph applies specifically to, but is not limited to, Budget's rental contracts and to any representation relating to the price or terms of LDW made through respondent's inputs in the "company-specific location" part of third-party, computerized

reservation systems, such as "Apollo," "PARS," "Sabre," or "System One."

Provided, however, that if respondent uses a "short-form" rental contract or other document or electronic form of agreement that makes it impractical to place the required disclosure within the document or form, respondent shall devise other means to ensure that each renter receives the substance of the disclosure before entering into the rental agreement. The other means could include, but are not limited to, a separate disclosure document to be signed or initialed by the renter.

B. Failing to post at each Budget rental location a sign or placard clearly and prominently containing the following language:

If you decline LDW and the rental car is damaged or stolen, we may charge you between \$x and \$y [specify range of dollar amounts Budget may seek] more than the cost of repairs or the fair market value of the vehicle. Many insurance companies will not pay this. If yours doesn't, you will have to pay it.

The sign or placard shall be of a size, and posted in a manner, reasonably calculated to elicit prospective renters' attention.

C. Failing to disclose, in a clear and prominent manner in any communication seeking payment of any charge for loss of or damage to a rental vehicle, any part of the charge that is attributable to loss of turnback including, but not limited to, instances where the vehicle is totaled or stolen and respondent is seeking compensation based in whole or part on any turnback amount. This disclosure shall include an explanation of what loss of turnback means and how it was calculated.

II.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the promoting, offering for rental, or rental of any vehicle, in or for any rental location where it seeks loss of turnback or turnback value in any form for vehicles rented in that location, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, does forthwith cease and desist from misrepresenting, in any manner, directly or by implication:

- (1) The obligation of the renter to make any payment as the result of the loss of or damage to a rental vehicle; and
- (2) The value of a vehicle that has been lost or damaged.

III.

It is further ordered, That no provision of this order is intended to preempt any state law, regulation, or administrative interpretation that may limit or prevent respondent from collecting loss of turnback from a renter.

IV.

It is further ordered, That respondent shall pay into an interest-bearing escrow account designated by the Commission, under the control of the Commission's designated agent, the sum of \$75,000 on or before five days from the date of service of this order. This shall fully satisfy all monetary claims asserted by the Commission in the complaint filed herein against this respondent and shall be used to provide redress to consumers who made a payment to respondent and to pay any attendant expenses of administration. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury. No portion of respondent's payment shall be deemed a payment of any fine, penalty, or punitive assessment. Respondent shall be notified as to how funds are disbursed but shall have no right to contest the manner of distribution chosen by the Commission.

V.

It is further ordered, That respondent shall, for three years from the date of service upon it of this order, distribute, or cause to be distributed, a copy of this order to all present and future division, regional, branch, and subrogation managers who have management responsibilities relating to the collection of collision or theft damages from renters.

VI.

It is further ordered, That respondent shall, for three years from the date of service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with this order.

VII.

It is further ordered, That respondent shall, for 10 years from the date of service of this order, notify the FTC in writing at least 30 days prior to the effective date of any proposed change in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other changes in the corporation that may affect compliance obligations arising out of this order.

VIII.

It is further ordered, That respondent shall, within 60 days from the date of service 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.

IX.

It is further ordered, That this order will terminate on June 17, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years; and

B. This order if the complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if the complaint is dismissed or a federal court rules that the respondent did not violate any provision of the

order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date the complaint is filed and the later of the deadline for appealing the dismissal or ruling and the date the dismissal or ruling is upheld on appeal.

IN THE MATTER OF

NORDICTRACK, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3675. Complaint, June 17, 1996--Decision, June 17, 1996*

This consent order prohibits, among other things, a Minnesota-based manufacturer of exercise equipment from misrepresenting the benefits, efficacy, or performance of such products in promoting weight loss or weight maintenance, and requires the respondent to possess reliable evidence to substantiate such claims in the future.

Appearances

For the Commission: *Kerry O'Brien, Linda Badger and Jeffrey Klurfeld.*

For the respondent: *Pamela Deese, Robins, Kaplan, Miller & Ciresi, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that NordicTrack, Inc., a corporation ("respondent"), has 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. Respondent NordicTrack, Inc. is a Minnesota corporation, with its principal office or place of business at 104 Peavey Road, Chaska, Minnesota.

PAR. 2. Respondent has manufactured, advertised, labelled, offered for sale, sold, and distributed various exercise equipment to consumers, including its cross-country ski exercisers.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for its cross-country ski exerciser,