

Complaint

123 F.T.C.

IN THE MATTER OF

BST ENTERPRISES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9276. Complaint, Sept. 27, 1995--Final Order, May 30, 1997*

This final order adopts the initial decision and order issued by the Administrative Law Judge which prohibits, among other things, the maker of ABS BrakeSafe Equipment and its president from using the term ABS in connection with their retrofitted brakes and from representing that their brakes: are an antilock braking system; will qualify a vehicle for an automobile insurance discount; comply with performance standards set by the Society of Automotive Engineers or the National Highway Traffic Safety Administration; or provide antilock benefits equivalent to those provided by genuine ABS systems. In addition, the order prohibits safety claims, unless the respondents possess competent and reliable scientific substantiation.

*Appearances*For the Commission: *Theodore Hoppock.*For the respondents: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BST Enterprises, Inc., a corporation, and Michael Woodruff, individually and as an officer and director of said corporation ("respondents"), 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. Respondent BST Enterprises, Inc., is a Nevada corporation, with its offices and principal place of business located at 3139 National Circle, Garland, Texas.

Respondent Michael Woodruff is or was at relevant times herein an officer and director of BST Enterprises, Inc. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His office and principal place of business is at 3139 National Circle, Garland, Texas.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold, and distributed certain after-market automotive products including ABS BrakeSafe, a device that is installed on a vehicle to improve its braking performance.

PAR. 3. The acts and practices of respondents 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. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for ABS BrakeSafe, including but not necessarily limited to the advertisements and promotional materials attached hereto as Exhibits A through D. Those advertisements and promotional materials contain the following statements and depictions:

(a) NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE

In just 30 minutes or less, your car, truck, motorhome, or motorcycle can be RETROFITTED with the anti-lock benefit braking of BrakeSafe!!

For over forty years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with the unmatched, non-skid action of hydraulic anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars and later on select domestic models.

But now you don't have to own a new high-priced car or truck to have the safety of BrakeSafe™.

And, since some insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to discounts on your yearly premium, it varies, but reductions as high as 10% are not unusual.

Don't just brake - BrakeSafe.

Unlike electronic ABS systems which react only in emergency or panic situations, BrakeSafe™ is pro-active - it's in continuous operation.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 30% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 80 on a graph, and the other short and straight, extending from 0 to 60 on the graph.]

* * * *

Shorter stopping distances are also realized, not just during panic stops or on wet roads.

* * * *

Here's How BrakeSafe™ Works

With conventional brakes, vehicles go into a skid when excess brake pressure is applied - usually the driver's response to an unexpected situation.

As brake pressure increases, one tire can begin to slow at a disproportionate rate to the others. The result, wheel lock-up and an immediate reduction in road adhesion. A skid or spin-out.

In contrast, BrakeSafe™ coordinates braking by modulating brake line pressure to all four wheels, controlling the rotational wheel lock-up before it occurs. . . .

* * * *

[Exhibit A]

(b) ABS BRAKESAFE™

Mechanical Safety Braking System With Anti-lock Benefits

PROTECT YOUR FAMILY, YOURSELF & OTHERS WITH MORE EFFICIENT STOPPING.

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

* * * *

What BrakeSafe™ offers:

* * * *

* With this system you will notice a Softer Pedal which minimizes premature lock-up and increases vehicle stability in emergency situations.

* Controlled stopping and positive steering control during panic stops and dangerous driving conditions make this BrakeSafe™ system especially attractive for motor homes, trailer pullers and commercial vehicles.

* * * *

* In summary, Safer Operation, Greater Control, and Reduced Break Wear more than justify the small investment.

Affordable Aerospace Technology

For years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with hydraulic anti-skid, anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars, and later on selected domestic models.

Insurance Discounts

Since insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to a discount on your yearly premium.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 20% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 85 on a graph, and the other short and straight, extending from 0 to 55 on the graph.]

* * * *

Does it work?

"We have tested and used it (BrakeSafe) in competition and it greatly enhances our stopping ability. Your product has allowed us to go much deeper into turns while avoiding wheel lockup."

Croydon Kemp CROCYCO RACING

". . . I had no choice but to apply maximum brakes at approximately 115 MPH. There was no lock up and no skip and the car stopped immediately. Had it not been for this system (BrakeSafe™), there would have been a major [sic] accident. . ."

Bob Beaucond NORTH COUNTY MUSTANG RACING TEAM

WARRANTY

. . . . BrakeSafe™ is in compliance with the Wheel Slip Brake Control System Road Test Code SAE J46, and National Highway Traffic Safety Administration. (DOT) 49 Code of the Federal Regulations CH. V (10-1-87) Edition 571.105-SA Anti-lock System.

[Exhibit B]

(c) PROTECT YOUR FAMILY

ABS BRAKESAFE™ (As used in the airline industry)

* Mechanical Safety Braking System with Anti-lock Benefits

* Safer, Skid Resistant Stopping

* Controls Premature Lock-up

* Shorter, Smoother Braking

* Efficiency in Emergencies

* * * *

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

[Exhibit C]

(d) THE ABS OF BRAKES

BrakeSafe is an enhanced braking system with ABS benefits. . . . Some of the many enhancements to conventional braking is that you normally stop straighter and shorter. . . . In independent testing, the BrakeSafe devices have proven [sic] to stop at least 20 percent shorter when traveling at 60 mph. . . . In some cases, your customers may also be offered decreased insurance premiums.

[Exhibit D]

PAR. 5. Through the use of the trade name ABS BrakeSafe and the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that ABS BrakeSafe is an antilock braking system.

PAR. 6. In truth and if fact, ABS BrakeSafe is not an antilock braking system. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that:

(a) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

(d) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;

(e) Tests prove that ABS BrakeSafe reduces stopping distances by at least 20% when the vehicle's brakes are applied at a speed of 60 mph;

(f) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Testimonials from consumers appearing in the advertisements and promotional materials for ABS BrakeSafe reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 8. In truth and in fact:

(a) ABS BrakeSafe does not prevent or substantially reduce wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will not qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe does not comply with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46 ("SAE J46"). SAE J46 sets forth a test procedure for evaluating the performance of antilock brake systems, but contains no performance standard. Moreover, ABS BrakeSafe has not been subjected to the testing set forth in SAE J46;

(d) ABS BrakeSafe does not comply with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration. The provision referred to establishes only a definition pertaining to antilock braking systems, and ABS BrakeSafe does not meet that definition;

(e) Tests do not prove that ABS BrakeSafe reduces stopping distances by at least 20% when the vehicle's brakes are applied at a speed of 60 mph;

(f) ABS BrakeSafe does not provide antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Testimonials from consumers appearing in the advertisements and promotional materials for ABS BrakeSafe do not reflect the typical or ordinary experience of members of the public who have used the product.

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

PAR. 9. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that:

(a) In emergency stopping situations, a vehicle equipped with ABS BrakeSafe will stop in a shorter distance than a vehicle that is not equipped with the device; and

(b) Installation of ABS BrakeSafe will make operation of a vehicle safer than a vehicle that is not equipped with the device.

PAR. 10. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs five, seven, and nine, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 11. In truth and in fact, at the time they made the representations set forth in paragraph five, seven, and nine, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. The acts and practices of respondents 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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EXHIBIT A

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In just 30 minutes or less, your car/truck/masterbong in motion can be RETROFITTED with the anti lock bogeyfit.

For over forty years, the aerospace and aviation industries have equipped military fighter jets and state of the art airliners with the most advanced non-skid action of hydraulic anti locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars and later on select domestic models.

But now you don't have to own a new high priced car or truck to have the safety of BrakeSafe.

And, since some insurance companies support this type of safety product, your BrakeSafe installation certificate may entitle you to discounts on your yearly premium; if varies, but reductions as high as 10% are not unusual.

Don't just brake

BrakeSafe

Unlike electronic ABS systems which react only in emergency or panic situations, BrakeSafe is proactive - it's in continuous operation. In addition, this all-mechanical system is unique in its patented remote-mount design, allowing simple installation and a choice of both mounting and placement options.



While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe has been found to reduce stopping distances up to 40% when aggressively decelerating from 60 to 0 mph.

After installation, most drivers say they find their brakes feel "more comfortable" and that less foot pressure is required to bring the vehicle to a safer stop. Shorter stopping distances are also realized, not just during panic stops or on wet roads. And with the unit's pre-active action, brake wear is also significantly reduced because pressure is applied more evenly and efficiently each time the driver depresses the brakes.

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Here's How BrakeSafe Works

With conventional brakes, vehicles go into a skid when excess brake pressure is applied - usually the driver's response to an unexpected situation.

As brake pressure increases, one tire can begin to slow at a disproportionate rate to the others. The result: wheel lock-up and an immediate reduction in road adhesion. A skid or spin-out.

In contrast, **BrakeSafe** coordinates braking by modulating brake line pressure to all four wheels, controlling the rotational wheel lock-up before it occurs. It's almost like a hydraulic "shock

absorber" for your brakes, but one it absorbs excess brake pressure before it ever reaches the wheels. (Pressure is created when ABS BrakeSafe is assembled, permanently charged and sealed, affecting a dynamic seal between the diaphragm and its chamber.)

Installed on your vehicle's existing brake lines, one unit controls the front brakes; another the rear brakes.

It works equally well on both drum or disc brakes and there are no complex sensors, wires or pumps and BrakeSafe is automatically regulated to your vehicle's application and various load factors.

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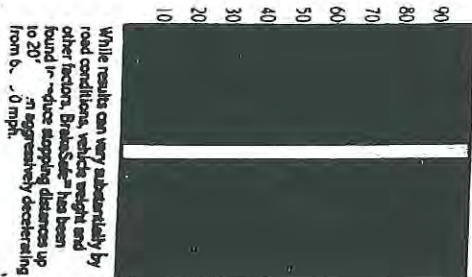
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EXHIBIT B

EXHIBIT B

**HOW BRAKESAFE™ WORKS**

BrakeSafe™ is an accumulator that equalizes brake shoe and/or pad pressure against the drums and rotors. Braking is coordinated by modulating brake line pressure to all four wheels simultaneously, assisting in control of the rotational wheel lock-up before it occurs. It's similar to having a hydraulic "shock absorber" for your brakes: it absorbs excess brake pressure before it ever reaches the wheels.



While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 20% in aggressively decelerating from 60-0 mph.

Adjustability for Weight Differences

A unique and unparalleled BrakeSafe™ feature is its Adjustability for handling significant vehicle weight differences. Each BrakeSafe™ unit is preset for the standard weight factor of most vehicles, but can be adjusted prior to installation for more efficient braking, e.g. if the vehicle is very light, like many of today's small and foreign vehicles; or exceptionally heavy, such as limousines, motor homes or larger trucks. This adjustment can only be performed by a qualified technician.

Does it work?

"We have tested and used it (BrakeSafe) in competition and it greatly enhances our stopping ability. Your product has allowed us to go much deeper into turns while avoiding wheel lockup."

Croydon Kemp

CROCCO RACING

"...I had no choice but to apply maximum brakes at approximately 115 MPH. There was no lock up and no skip and the car stopped immediately. Had it not been for this system (BrakeSafe™), there would have been a major accident..."

Bob Beaumont

NORTH COUNTY MUSTANG RACING TEAM

WARRANTY

BrakeSafe™ carries its own warranty for as long as the purchaser owns the vehicle. The Limited Warranty will be void if the units are transferred to a second vehicle.

BrakeSafe™ is in compliance with the Wheel Slip Brake Control System Road Test Code SAE J46, and National Highway Traffic Safety Administration (DOT) 49 Code of the Federal Regulations CMV 101-147 Edition 571.105-SA Anti-lock System.

©Copyright 1991 - ABS BrakeSafe™ All Rights Reserved



Mechanical Safety Braking System with
Anti-lock Benefits

PROTECT YOUR FAMILY,
YOURSELF & OTHERS WITH
MORE EFFICIENT STOPPING.



Los Angeles Times Photo

NOW YOU CAN BRAKESAFE™
NO MATTER WHAT YOU DRIVE

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EXHIBIT B

You Now Have an Opportunity to Add a Marvelous New Safety System to Your Vehicle

What BrakeSafe™ offers:

- BrakeSafe™ enhances most braking systems by providing uniform friction during the rotation of each drum or rotor.
- With this system you will notice a Softer Pedal which minimizes premature lock-up and increases vehicle stability in emergency situations.
- Controlled stopping and positive steering control during panic stops and dangerous driving conditions make this BrakeSafe™ system especially attractive for motor homes, trailer pullers and commercial vehicles.
- The need for less pedal effort creates lower rotor temperatures resulting in the extended life of standard braking units.
- This system does not alter your existing brake system. If the BrakeSafe™ units should fail, your original braking system will continue to operate in its normal manner.
- In summary, Softer Operation, Greater Control, and Reduced Brake Wear more than justify the small investment.

Affordable Aerospace Technology

For years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with hydraulic anti-skid, anti-locking brake systems. In the late 1980's electronic variations were offered on expensive European luxury cars, and later on selected domestic models.



Insurance Discounts

Since insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to a discount on your yearly premium.

In less than an hour your vehicle can be retro-fitted with this safety system

This all-mechanical system is unique in its patent-pending, remote mount design, allowing simple installation and choice of both mounting and placement options. A complete installation and information video is included with each kit.

Remote Mounting Design creates simple installation on almost any vehicle.



How can any system that reduces brake pressure stop a car faster on a dry road?

The key is wheel slip. To engineers, that's a measure of kinetic friction of a tire and the road surface. More static vs. kinetic friction exhibits static friction or zero slip. A smoothly rolling tire exhibits kinetic friction or 100% slip. A locked tire in full skid exhibits kinetic friction or 100% slip. The most efficient, quietest braking occurs just at the verge of lockup - at about 5% or 10% slip. And that's the friction point BrakeSafe™ aims to maintain. With any more pressure, you're locked and skidding. With any less, you're adding stopping distance. So while drivers shouldn't expect to never "leave rubber" in a high-speed braking situation, they should find that the tire's "footprint" will be straight and shorter.

What can I expect on snow and ice?

You should see a marked improvement in braking effectiveness as long as tires have the ability to retain cohesion with the road surface - which is often the case in pure snow. However, ABS or any other system can prevent skidding or shorten stopping when tires have no cohesion, such as on ice.

Will BrakeSafe™ Improve the performance of worn brakes?

Possibly, but not to the extent it will improve a brake system in good condition. No ABS system can cure brakes that are inherently unsafe. That's why it's important for installers to inspect the existing brake system and tires carefully before installing BrakeSafe™. Worn brakes or tires contaminated with brake fluid, even improper tire inflation can all impede the ability of BrakeSafe™ to stop cars shorter and safer. [Note: all types of brake fluid are acceptable for use with BrakeSafe™.]

So it won't interrupt the manufacturer's warranty on the original brakes?

No, because manufacturers recognize that BrakeSafe™ is a replacement brake system per se. It simply an enhancement for existing brakes.

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EXHIBIT C

EXHIBIT C

PROTECT YOUR FAMILY.

(As used in the airline industry)



- Mechanical Safety Braking System with Anti-lock Benefits
- Safer, Skid Resistant Stopping
- Controls Premature Lock-up
- Shorter, Smoother Braking
- Efficiency in Emergencies
- Extends Life of Brake Parts
- Fits Most Vehicles
- Lifetime Warranty

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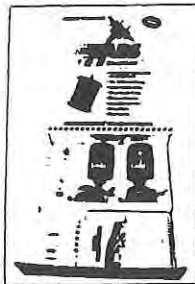
NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

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EXHIBIT D

EXHIBIT D

New Products Section • New Products Section**THE ABS
OF BRAKES**

BrakeSafe is an enhanced braking system with ABS benefits. One of the unique features of BrakeSafe is the units automatically adjust to the weight and unique personality of your vehicle. BrakeSafe is engine-mounted, it installs anywhere under the hood. Some of the many enhance-

ments to conventional braking is that you normally stop straighter and shorter. The life of most brake parts are greatly increased, thereby saving dollars as well as lives. In independent testing, the BrakeSafe devices have proven to stop at least 20 percent shorter when traveling at 60 mph. If BrakeSafe should discontinue operating, it reverts to the original braking system. In some cases, your customers may also be offered decreased insurance premiums. BST is also offering Motorcycle BrakeSafe units and will be offering retrofit air bags (SRS) for most vehicles in 1993.

BST Enterprises Inc.
4711 E. Falcon Dr., 3rd Fl.
Mesa, Ariz. 85205
800/257-8720
Fax 602/924-8166
Circle 312 on Service Card

DEFAULT JUDGMENT AGAINST RESPONDENTS
BST ENTERPRISES, INC., AND MICHAEL WOODRUFF

I. INTRODUCTION

Complaint counsel have moved, pursuant to Sections 3.12(c) and 3.38(b)(5) of the Rules of Practice, for the entry of a default judgment against respondents in Docket 9276, BST Enterprises, Inc. ("BST") and Michael Woodruff.

The motion is based on the failure of respondents BST and Woodruff to answer the complaint in this matter or to respond to various discovery requests served upon them, and the failure of Woodruff to appear at a deposition in response to a subpoena.

II. BACKGROUND

*A. Respondents Were Properly Served With
The Complaint and Notice Order*

Beginning on approximately October 6, 1995, the U.S. Postal Service made repeated, unsuccessful efforts to get respondents to claim the registered mail package containing the Commission's complaint and notice order in this matter. Thereafter, on November 21, 1995, an investigative assistant in the Commission's Dallas Regional Office hand-delivered to BST's corporate offices, at 3139 National Circle, Garland, Texas, an additional copy of the complaint and notice order, as well as complaint counsel's first set of interrogatories and first *subpoena duces tecum* to respondents, motion to consolidate, and other pleadings and orders issued prior to that date.¹

Respondents were located at this address at the time the complaint was issued, and they received the pleadings. The address, 3139 National Circle, was then currently used on BST's stationery and other BST documents. The FTC investigator who delivered the pleadings to this address noted that the building entrance bore the trade name of the BST braking product, BrakeSafe. Moreover, employees present at BST's offices on November 21 confirmed that

¹ See Spears Declaration and Griggs Declaration, dated November 22, 1995, and filed with the Secretary's Office on November 28, 1995 (Attachments 1 and 2 to complaint counsel's motion); Complaint Counsel's Response to Respondent BST's Motion for Thirty Day Extension to Submit Documents, at footnote 1, filed December 15, 1995 (Attachment 3 to complaint counsel's motion). Accompanying the complaint was the standard Secretary's letter informing respondents of the need to file an answer within the time set by the Commission's Rules. (Attachment 1, ¶2 to complaint counsel's motion).

BST operated out of the location and led FTC personnel to respondent Woodruff's private office. *See* Spears Declaration; Griggs Declaration. Most importantly, respondents' opposition to the motion to consolidate, and their partial responses to complaint counsel's first subpoena and first set of interrogatories, although incomplete, are irrefutable evidence of the fact that respondents received the complaint and notice order.²

B. Respondents Failed to Comply With Duly Issued Subpoenas

In addition to their failure to answer the complaint, respondents BST and Woodruff have disobeyed my order that they respond to complaint counsel's November 17, 1995 *subpoena duces tecum* by January 5, 1996. On December 18, 1995, I issued an order requiring respondents to produce all documents responsive to complaint counsel's November 11, 1995 *subpoena duces tecum* by January 5, 1996. Respondents have yet to turn over such documents.³ Moreover, it is apparent that respondents' failure to comply with my December 18 order is due to their unwillingness to defend this action and not to an inability to do so. Respondents have neither attempted to discuss the subpoena return with complaint counsel nor filed a motion to quash it.

BST and Woodruff also failed to respond to complaint counsel's February 6, 1996 requests for admissions, or to respond to complaint counsel's motion for partial summary judgment as to the advertising claims made by them. On May 22, 1996, I entered a partial summary decision against respondents BST and Woodruff ruling that respondents made each of the claims alleged in the complaint. My findings of fact were based in part upon the failure of respondents to answer the February 6 request for admissions. *See* Rule 3.32(b) (matters deemed admitted unless replied to within ten days of service).

² *See* BST's Answer to Motion to Consolidate (stamped Dec. 15, 1995) (Attachment 4 to complaint counsel's motion); November 17, 1995 *Subpoena duces tecum* to BST and BST's December 22, 1995 Partial Response thereto (Attachment 5 to complaint counsel's motion); November 17, 1995 Interrogatories to BST and BST's December 26, 1995 Partial Responses thereto (Attachment 6 to complaint counsel's motion). *See also*, BST's request for a thirty day extension on the subpoena return (stamped Dec. 15, 1995) (Attachment 7 to complaint counsel's motion). These are all of the pleadings respondents have submitted in this proceeding. None of these pleadings dispute respondents' receipt of the complaint or other documents.

³ *See* Order Granting Extension of Time to BST, D. 9276 (Dec. 18, 1995) (Attachment 8 to complaint counsel's motion); Hoppock Declaration (Attachment 9 to complaint counsel's motion) (complaint counsel never received the documents ordered to be turned over by January 5, 1996).

Finally, Woodruff failed to appear for deposition pursuant to a subpoena issued by me on June 4, 1996. In light of respondents' failure to respond to the outstanding discovery requests, complaint counsel had intended to depose respondent Woodruff, individually and as an officer of BST Enterprises, as to all issues to be adjudicated in this case. Complaint counsel have substantial proof that, despite Woodruff's ongoing efforts to evade service in this proceeding, the subpoena was successfully served upon him.⁴ Woodruff not only failed to appear at his deposition; he also neglected to contact complaint counsel either before or after the date of deposition to attempt to comply with the subpoena.

III. DEFAULT JUDGMENT IS APPROPRIATE UNDER RULES 3.12(c)
AND 3.38(b)(5) OF THE COMMISSION'S RULES OF PRACTICE

Default judgment against respondents BST and Woodruff is appropriate under both Rules 3.12(c) and 3.38(b)(5) of the Commission's Rules of Practice.

Rule 3.12(c) provides that the failure of a respondent to file an answer to a complaint:

authorize[s] the Administrative Law Judge, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

Respondents BST and Woodruff failed to answer the complaint in this action, despite the fact they clearly were served with the complaint and notice order almost one year ago. A default order is, therefore, appropriate. *See Griffin Systems, Inc.*, 1993 FTC LEXIS

⁴ Since the complaint was issued, respondents BST and Woodruff have changed addresses several times without notifying complaint counsel, me, or the Secretary's Office. Despite this fact, complaint counsel have attempted to serve all pleadings to respondents' most current known address.

In May 1996, complaint counsel learned from the U.S. Postal Service that respondents had changed their address to a post office box in Dallas, Texas at zip code 75355. Hoping to effect personal service of a *subpoena ad testificandum* upon Woodruff, complaint counsel obtained the street address given by him in registering for the post office box. When it was determined that Woodruff did not reside at this address, an employee of the Commission's Dallas Regional Office hand-delivered a *subpoena ad testificandum* to the station manager for zip code 75355 for placement in respondent Woodruff's post office box. (*See Elliott Declaration*) (Attachment 10 to complaint counsel's motion). The station manager's sworn declaration states that the subpoena was picked up from the post office box the following day. (*See Brown Declaration*) (Attachment 11 to complaint counsel's motion). Accordingly, Woodruff was properly served with the *subpoena ad testificandum*.

Moreover, Woodruff and BST Enterprises continue to accept mail at this address. (*See Teague Declaration*) (Attachment 12 to complaint counsel's motion). On June 7, 1996, the same date that the subpoena was picked up, respondents renewed the post office box. At that time Woodruff changed his street address to 3131 National Circle, Garland, Texas – evidently just doors down from BST's former corporate address of 3139 National Circle. (*See Teague Declaration*).

167 (Order Granting Default Judgment Against Robert W. Boughton), *affirmed*, *Boughton v. FTC*, unreported (11th Cir. 1996);⁵ *American Tractor Trailer Training, Inc.*, 86 FTC 654, 663-64 (1975); *Joseph Richard Horvath t/a Sew Rite*, 85 FTC 1081, 1085 (1975); *Robertson Investment Co.*, 83 FTC 1717, 1721-22 (1974).

Commission Rule 3.38(b)(5) provides that if a party fails to comply with a subpoena, or with an order for the production of documents or the answering of interrogatories, the Administrative Law Judge may rule that a "decision of the proceeding be rendered against the party." Respondents BST and Woodruff failed to comply with my order requiring the production of documents and failed to appear for testimony pursuant to subpoena.

In a recent Commission action against RustEvader Corp., the ALJ struck RustEvader's answer, pursuant to Rule 3.38(b)(5), on the grounds that the corporate respondent had failed to comply with the ALJ's order directing it to answer discovery requests. The ALJ then held that the entry of default judgment was appropriate under both Rule 3.12(c) and 3.38(b) where the corporate respondent generally had failed to respond to discovery as to all aspects of the litigation. *See RustEvader Corp.*, Docket No. 9274 (Initial Decision) (May 24, 1996) (Timony, ALJ). A default judgment is also appropriate here since respondents BST and Woodruff have failed to answer the complaint, failed to appear for testimony pursuant to subpoena, and failed to comply with a subpoena or my order for the production of certain documents relevant to the central issues for adjudication in this case.

Commission Rules 3.12(c) and 3.38(b)(5) are modeled closely after Rules 37 and 55(b) of the Federal Rules of Civil Procedure. Under Rule 55(b) default judgment is available "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend [the lawsuit]. . . ." Under Rule 37, a court may issue "an order rendering a judgment by default" if a party disobeys a discovery order, fails to attend its own deposition, fails to serve answers to interrogatories, or fails to respond to a request for inspection. The federal rules provide for default judgment in order to allow the courts to manage their dockets efficiently and effectively.

⁵ The circuit court's unpublished opinion is included as Attachment 14 to complaint counsel's motion. Both the ALJ and the circuit court found that the entry of a default judgment against the respondent for failure to answer the complaint was appropriate under Rule 3.12(c) where the complaint was properly served upon a post office box, respondent's only known address. In this instance, service was made at respondents' place of business, which unquestionably is appropriate under Rule 3.12(c).

Merrill Lynch Mort. Corp. v. Narayan, 908 F.2d 246, 252 (7th Cir. 1990). As the Supreme Court has stated:

The most severe in the spectrum of sanctions must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.

National Hockey League v. Met. Hockey Club, Inc., 427 U.S. 639, 643 (1976).

The federal courts frequently enter default judgments, pursuant to Rule 55(b), as a result of a party's failure to answer the complaint. For instance, in *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282 (D.C. Minn. 1985), the court held that Fed. R. Civ. P. 55(b) does not require a hearing before the entry of default where a defendant has failed to answer the complaint:

If the court determines that a defendant is in default, the factual allegations of the complaint will be taken as true. This rule applies to cases seeking equitable as well as legal relief.

FTC v. Kitco of Nevada, Inc., 612 F. Supp. at 1297 (citations omitted).

The federal courts also frequently enter default judgments pursuant to Rule 37 where, as here, the defendant has failed to comply with duly served subpoenas or other discovery requests. In *FTC v. Packers Brand Meats, Inc.*, 562 F.2d 9, 10 (8th Cir. 1977), the defendant, after nearly six months, had failed to respond to the lower court's order to show cause why it should not be required to testify or produce documents pursuant to a subpoena issued by the FTC ALJ. The appellate court held that the district court was "fully justified" in entering a default where the defendant's failure to comply did not constitute either good faith mistake or excusable neglect.

Similarly, the appellate court in *U.S. v. DiMucci*, 879 F.2d 1488 (7th Cir. 1989), held that the district court did not abuse its discretion in entering default where:

Defendants' repeated failure to comply with discovery, to obey court orders regarding the same, and to appear for their depositions clearly constitute contumacious conduct which seriously hampered [plaintiff's] trial preparation.

U.S. v. DiMucci, 879 F.2d at 1494.

A default judgment is appropriate and necessary to ensure the functioning of the judicial process when a defendant's actions or inactions amount to willful misconduct. "A defendant cannot be permitted to avoid or delay a plaintiff's right to judicial resolution of a dispute by ignoring the proceeding." *Frank Keevan & Son v. Collier Steel Pipe & Tube*, 107 F.R.D. 665, 670 (1985). See also *Home Port Rentals, Inc. v. Ruben*, 957 F.2d 126, 133 (4th Cir.), cert. denied 113 S. Ct. 70 (1992) (The district court was justified in entering default where defendant: failed to cooperate in discovery matters; refused to submit to depositions; and failed to participate in the prosecution and defense of the matter); *Crocker National Bank v. M.F. Securities (Bahamas)*, 104 F.R.D. 123, 127 (1985) ("As a result of defendants' willful failure to comply with the court's order to appear for deposition, this court is authorized in issuing an order rendering judgment by default against defendants."); *Minnesota Min. & Mfg. Co. v. ECO Chem., Inc.*, 757 F.2d 1256, 1261 (Fed. Cir. 1985) (district court did not abuse its discretion in entering default where the defendant repeatedly had engaged in dilatory tactics).

For the reasons given above,

It is ordered, That respondents BST Enterprises, Inc., and Michael Woodruff be, and they hereby are, found in default of this proceeding; and

It is further ordered, That because of respondents' default, and pursuant to Sections 3.12(c) and 3.38(b)(5) of the Rules of Practice, the following initial decision be, and it hereby is, entered.

INITIAL DECISION

BY LEWIS F. PARKER, ADMINISTRATIVE LAW JUDGE

OCTOBER 16, 1996

I. FINDINGS OF FACT

1. Respondent BST Enterprises, Inc., is a Nevada corporation, with its offices and principal place of business located at 3131 National Circle, Garland, Texas.

2. Respondent Michael Woodruff is an officer and director of BST Enterprises, Inc. His office and principal place of business is at 3131 National Circle, Garland, Texas, and he also receives mail at Post Office Box 551355, Dallas, Texas.

3. Respondent Michael Woodruff, individually or in concert with others, formulates, directs, and controls the acts and practices of the corporate respondent.

4. Respondents have manufactured, advertised, offered for sale, sold, and distributed certain after-market automotive products including ABS BrakeSafe, a device that is installed on a vehicle to improve its braking performance.

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

6. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for ABS BrakeSafe, including but not necessarily limited to Exhibits A through D attached to the complaint. These advertisements and promotional materials contain the following statements and depictions:

(a) NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

In just 30 minutes or less, your car, truck, motorhome or motorcycle can be RETROFITTED with the anti-lock benefit braking of BrakeSafe!!

For over forty years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with the unmatched, non-skid action of hydraulic anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars and later on select domestic models.

But now you don't have to own a new high-priced car or truck to have the safety of BrakeSafe™.

And, since some insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to discounts on your yearly premium; it varies, but reductions as high as 10% are not unusual.

Don't just brake - BrakeSafe.

Unlike electronic ABS systems which react only in emergency or panic situations, BrakeSafe™ is pro-active - it's in continuous operation.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 30% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 80 on a graph, and the other short and straight, extending from 0 to 60 on the graph.]

* * * *

Shorter stopping distances are also realized, not just during panic stops or on wet roads.

* * * *

Here's How BrakeSafe™ Works

With conventional brakes, vehicles go into a skid when excess brake pressure is applied - usually the driver's response to an unexpected situation.

As brake pressure increases, one tire can begin to slow at a disproportionate rate to the others. The result: wheel lock-up and an immediate reduction in road adhesion. A skid or spin-out.

In contrast, BrakeSafe™ coordinates braking by modulating brake line pressure to all four wheels, controlling the rotational wheel lock-up before it occurs. . . .

* * * *

[Complaint Exhibit A]

(b) ABS BRAKESAFE™

Mechanical Safety Braking System With Anti-lock Benefits

PROTECT YOUR FAMILY, YOURSELF & OTHERS WITH MORE EFFICIENT STOPPING.

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

* * * *

What BrakeSafe™ offers:

* * * *

* With this system you will notice a Softer Pedal which minimizes premature lock-up and increases vehicle stability in emergency situations.

* Controlled stopping and positive steering control during panic stops and dangerous driving conditions make this BrakeSafe™ system especially attractive for motor homes, trailer pullers and commercial vehicles.

* * * *

* In summary, Safer Operation, Greater Control, and Reduced Break Wear more than justify the small investment.

Affordable Aerospace Technology

For years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with hydraulic anti-skid, anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars, and later on selected domestic models.

Insurance Discounts

Since insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to a discount on your yearly premium.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 20% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 85 on a graph, and the other short and straight, extending from 0 to 55 on the graph.]

* * * *

Does it work?

"We have tested and used it (BrakeSafe) in competition and it greatly enhances our stopping ability. Your product has allowed us to go much deeper into turns while avoiding wheel lockup."

Croydon Kemp CROCYCO RACING

". . . I had no choice but to apply maximum brakes at approximately 115 MPH. There was no lock up and no skip and the car stopped immediately. Had it not been for this system (BrakeSafe™), there would have been a major [sic] accident. . ."

Bob Beaucond NORTH COUNTY MUSTANG RACING TEAM

WARRANTY

. . . . BrakeSafe™ is in compliance with the Wheel Slip Brake Control System Road Test Code SAE J46, and National Highway Traffic Safety Administration. (DOT) 49 Code of the Federal Regulations CH. V (10-1-87) Edition 571.105-SA Anti-lock System.

[Complaint Exhibit B]

(c) PROTECT YOUR FAMILY

ABS BRAKESAFE™ (As used in the airline industry)

* Mechanical Safety Braking System with Anti-lock Benefits

* Safer, Skid Resistant Stopping

* Controls Premature Lock-up

* Shorter, Smoother Braking

* Efficiency in Emergencies

* * * *

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

[Complaint Exhibit C]

(d) THE ABS OF BRAKES

BrakeSafe is an enhanced braking system with ABS benefits. . . . Some of the many enhancements to conventional braking is that you normally stop straighter and shorter. . . . In independent testing, the BrakeSafe devices have proven [sic] to stop at least 20 percent shorter when travelling at 60 mph. . . . In some cases, your customers may also be offered decreased insurance premiums.

[Complaint Exhibit D]

7. On May 22, 1996, a Partial Summary Decision was issued in which, *inter alia*, respondents' advertising claims were discussed and analyzed at length. Thus, it has previously been found that respondents' ads, logos and promotional material make and have made the claim that the ABS BrakeSafe braking device is an antilock braking system. (Partial Summary Decision, at p. 27) (May 22, 1996).

8. In truth and in fact, ABS BrakeSafe is not an antilock braking system. Therefore, respondents' representation set forth in finding 7 was, and is, false and misleading.

9. As was detailed in the Partial Summary Decision, respondents' ads, logos and promotional material make and have made the claims that:

(a) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

(d) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration⁶;

⁶ This finding was articulated in my May 28, 1996 order clarifying the May 22, 1996 Partial Summary Decision.

(e) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(f) Consumer testimonials appearing in their ads and promotional materials reflect the typical or ordinary experience of members of the public who have used the ABS BrakeSafe device.

(g) Tests prove that ABS BrakeSafe will reduce stopping distance when compared with vehicles not furnished with the braking device.

(Partial Summary Decision, at pp. 27-28) (May 22, 1996).

10. In truth and in fact:

(a) ABS BrakeSafe does not prevent or substantially reduce wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will not qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe does not comply with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46 ("SAE J46"). SAE J46 sets forth a test procedure for evaluating the performance of antilock brake systems, but contains no performance standard. Moreover, ABS BrakeSafe has not been subjected to the testing set forth in SAE J46;

(d) ABS BrakeSafe does not comply with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration. The provision referred to establishes only a definition pertaining to antilock braking systems, and ABS BrakeSafe does not meet that definition;

(e) ABS BrakeSafe does not provide antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems;

(f) Testimonials from consumers appearing in the advertisements and promotional materials for ABS BrakeSafe do not reflect the typical or ordinary experience of members of the public who have used the product; and

(g) Tests do not prove that ABS BrakeSafe will reduce stopping distance when compared with vehicles not furnished with the braking device.

Therefore, respondents' representations as set forth in finding 9 were, and are, false and misleading.

11. As was detailed in the Partial Summary Decision, respondents' ads, logos and promotional material make and have made the claims that:

(a) In emergency stopping situations, a vehicle equipped with ABS BrakeSafe will stop in a shorter distance than a vehicle that is not equipped with the device; and

(b) Installation of ABS BrakeSafe will make operation of a vehicle safer than a vehicle that is not equipped with the device.

(Partial Summary Decision, at p. 28) (May 22, 1996).

12. As was detailed in the Partial Summary Decision, respondents' ads, logos and promotional material make and have made the claim that at the time respondents made the representations set forth in findings 7, 9, and 11, they possessed and relied upon a reasonable basis that substantiated such representations.

13. In truth and in fact, at the time respondents made the representations set forth in findings 7, 9, and 11, they did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representations set forth in finding 12 were, and are, false and misleading.

II. CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

2. The acts and practices of respondents as described in findings 1 through 13 above constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

3. The following order is necessary and appropriate under applicable legal precedent and the facts of this case.

III. ORDER

DEFINITIONS

For the purposes of this order:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that have been 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; and

2. "*Purchasers for resale*" shall mean all purchasers of ABS BrakeSafe for resale to the public, including but not limited to franchisees, wholesalers, distributors, retailers, installers, and jobbers.

I.

It is ordered, That respondents, BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of ABS BrakeSafe or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the initials or term ABS in conjunction with or as part of the name for such product or the product logo.

II.

It is further ordered, That respondents, BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of ABS BrakeSafe or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product:

A. Is an antilock braking system;

B. Prevents or substantially reduces wheel lock-up, skidding, or loss of steering control in emergency stopping situations;

C. Will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

D. Complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

E. Complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;

F. Has been proven in tests to reduce stopping distances by at least 20% when the vehicle's brakes are applied at a speed of 60 mph; or

G. Provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems.

III.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. In emergency stopping situations, a vehicle equipped with the system, accessory, or device will stop in a shorter distance than a vehicle that is not equipped with the system, accessory, or device; or

B. Installation of the system, accessory, or device will make operation of a vehicle safer than a vehicle that is not equipped with the system, accessory, or device;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication:

A. The contents, validity, results, conclusions, or interpretations of any test or study;

B. The compliance of any such product with any standard, definition, regulation, or any other provision of any governmental entity or unit, or of any other organization;

C. The availability of insurance benefits or discounts arising from the use of such product; or

D. That any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product represents the typical or ordinary experience of members of the public who use the product, unless:

(1) Such representation is true, or

(2) Respondents disclose clearly, prominently, and in close proximity to the endorsement or testimonial either:

(a) What the generally expected results would be for users of such product, or

(b) The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

V.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling,

advertising, promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, or any other system, accessory, or device designed to be used in, on, or in conjunction with any motor vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the absolute or comparative attributes, efficacy, performance, safety, or benefits of such system, accessory, or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VI.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and Michael Woodruff shall:

A. Within forty-five (45) days after the date of service of this order, compile a current mailing list containing the names and last known addresses of all purchasers of ABS BrakeSafe since January 1, 1990. Respondents shall compile the list by:

1. Searching their own files for the names and addresses of such purchasers; and

2. Using their best efforts to identify any other such purchasers, including but not limited to sending by first class certified mail, return receipt requested, within five (5) days after the date of service of this order, to all of the purchasers for resale with which respondents have done business since January 1, 1990, an exact copy of the notice attached hereto as Appendix A. The mailing shall not include any other documents. In the event that any such purchaser for resale fails to provide any names or addresses of purchasers in its possession, respondents shall provide the names and addresses of all such purchasers for resale to the Federal Trade Commission within forty-five (45) days after the date of service of this order.

3. In addition, respondents shall retain a National Change of Address System ("NCOA") licensee to update this list by processing the list through the NCOA database.

B. Within sixty (60) days after the date of service of this order, send by first class mail, postage prepaid, to the last address known to respondents of each purchaser of ABS BrakeSafe identified on the mailing list compiled pursuant to subparagraph A of this Part, an exact copy of the notice attached hereto as Appendix B. The mailing shall not include any other documents. The envelope enclosing the notice shall have printed thereon in a prominent fashion the phrases "FORWARDING AND RETURN POSTAGE GUARANTEED" and "IMPORTANT NOTICE--U.S. GOVERNMENT ORDER ABOUT ABS BRAKESAFE BRAKING DEVICE."

C. Send the mailing described in subparagraph B of this Part to any person or organization not on the mailing list prescribed in subparagraph A of this Part about whom respondents later receive information indicating that the person or organization is likely to have been a purchaser of ABS BrakeSafe, and to any purchaser whose notification letter is returned by the U.S. Postal Service as undeliverable and for whom respondents thereafter obtain a corrected address. The mailing required by this subpart shall be made within ten (10) days of respondents' receipt of a corrected address or information identifying each such purchaser.

D. In the event respondents receive any information that, subsequent to its receipt of Appendix A, any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order, immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisement or promotional material.

E. Terminate within ten (10) days the use of any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use any advertisement or promotional material that contains any representation prohibited by this order after receipt of the notice required by subparagraph A of this Part.

VII.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and Michael Woodruff shall for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. The list compiled pursuant to subparagraph A of Part VI of this order;

B. Copies of all notification letters sent to purchasers pursuant to subparagraphs B and C of Part VI of this order;

C. Copies of notification letters sent to purchasers for resale pursuant to subparagraphs A and D of Part VI of this order, and all other communications with purchasers for resale relating to the notices required by Part VI of this order.

VIII.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors or assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

IX.

It is further ordered, That respondent BST Enterprises, Inc., its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, provide a copy of this order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of ten (10) years from the date of service of this order, provide a copy of this order to each of respondent's future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order, within three (3) days after the person assumes his or her position.

X.

It is further ordered, That respondent BST Enterprises, Inc., its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a 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 under this order.

XI.

It is further ordered, That respondent Michael Woodruff shall, for a period of ten (10) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XII.

It is further ordered, That this order will terminate twenty years from the date of its issuance, 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;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

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

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

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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 such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XIII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, 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.

APPENDIX A

[BST Enterprises, Inc. letterhead]

Dear ABS BrakeSafe Reseller:

Our records indicate that you are or have been a distributor or retailer of the ABS BrakeSafe, a brake product. This letter is to advise you that the Federal Trade Commission recently obtained an order against BST Enterprises, Inc. regarding certain claims made for the ABS BrakeSafe device. Under that order, we are required to notify our distributors, wholesalers and others who have sold ABS BrakeSafe to stop using or distributing advertisements or promotional materials containing these claims. We are also asking for your assistance in compiling a list of ABS BrakeSafe purchasers, so that we may contact them directly. Please read this letter in its entirety and comply with all parts.

The FTC's Decision and Order

The Federal Trade Commission has determined that the following claims made for the ABS BrakeSafe device in BST Enterprises' advertisements, logos and promotional material are FALSE and MISLEADING:

- (a) ABS BrakeSafe is an antilock braking system.
- (b) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;
- (c) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;
- (d) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;
- (e) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;
- (f) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Tests prove that ABS BrakeSafe will reduce stopping distances by at least 20% when the vehicle's brakes are applied at 60 mph.

The FTC Order requires BST Enterprises, Inc. to cease and desist from making these false claims for the ABS BrakeSafe device.

In addition, the FTC Order requires BST Enterprises, Inc. to cease and desist from making claims that ABS BrakeSafe will shorten stopping distances in emergency stopping situations or make a vehicle safer, unless at the time of making such representation it possesses competent and reliable scientific evidence substantiating the representation.

We need your assistance in complying with this order.

Please immediately send us the names and last known addresses of all persons or businesses, including other resellers, to whom you have sold an ABS BrakeSafe since January 1, 1990. We need this list in order to provide the notification required by the FTC Order. If you do not provide this information, we are required to provide your name and address to the FTC.

Please stop using the ABS BrakeSafe promotional materials currently in your possession. These materials may contain claims that the FTC has determined to be false or unsubstantiated. You also should avoid making any of the representations as described in this letter. Under the FTC Order, we must stop doing business with you if you continue to use the prohibited materials or make the prohibited representations.

If you have any questions, you may call Sydney Knight of the Federal Trade Commission at (202) 326-2162. Thank you for your cooperation.

Very truly yours,

Michael Woodruff
President
BST Enterprises, Inc.

APPENDIX B

[BST Enterprises, Inc. letterhead]

Dear ABS BrakeSafe Customer:

Our records indicate that you previously purchased an ABS BrakeSafe for your vehicle. This letter is to advise you that the Federal Trade Commission ("FTC") recently obtained an order against BST Enterprises, Inc. regarding certain claims made for ABS BrakeSafe. Please read this letter in its entirety.

The FTC's Decision and Order

The Federal Trade Commission has determined that the following claims made for the ABS BrakeSafe device in BST Enterprises, Inc.'s advertisements, logos and promotional material are FALSE and MISLEADING:

- (a) ABS BrakeSafe is an antilock braking system.
- (b) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

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(c) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(d) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

(e) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;

(f) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Tests prove that ABS BrakeSafe will reduce stopping distances by at least 20% when the vehicle's brakes are applied at the speed of 60 mph.

The FTC Order requires BST Enterprises, Inc. to cease and desist from making these false claims for the ABS BrakeSafe device.

In addition, the FTC Order requires BST Enterprises, Inc. to cease and desist from making claims that ABS BrakeSafe will shorten stopping distances in emergency situations or make a vehicle safer, unless at the time of making such representation it possesses competent and reliable scientific evidence substantiating the representation.

If you have any questions, you may call Sydney Knight of the Federal Trade Commission at (202) 326-2162. Thank you for your cooperation.

Very truly yours,

Michael Woodruff
President
BST Enterprises, Inc.

FINAL ORDER

The Administrative Law Judge filed his Initial Decision in this matter on October 16, 1996, and entered a Default Judgment against the respondents. An appropriate order against the respondents to remedy the violations was appended to the Initial Decision and Default Judgment. Service of the Initial Decision and Default Judgment was completed on March 27, 1997. Neither the respondents nor complaint counsel filed an appeal.

The Commission having determined that this matter should not be placed on its docket for review and that the Initial Decision and the order therein shall become effective as provided in Section 3.51(a) of the Commission's Rules of Practice, 16 CFR 3.51(a).

It is ordered, That the Initial Decision and the Order therein shall become the Final Order and Opinion of the Commission on the date of issuance of this order.

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9189. Complaint,* Dec. 20, 1984--Decision, June 3, 1997*

This consent order prohibits each dealer, among other things, from agreeing with any other Detroit area dealer or dealer association to establish, maintain or adhere to any hours of operation, or requesting or encouraging any dealer or dealer association to maintain any hours of operation; prohibits each from exchanging information with any dealer or dealer association concerning hours of operation except in certain circumstances; and limits a minimum weekly hours-of-operation requirement to the time during which the dealers were already in compliance.

Appearances

For the Commission: *Ernest Nagata, Willard Tom and William Baer.*

For the respondents: *Lawrence Raniszeski, Colombo & Colombo, Bloomfield Hills, MI. John Youngblood, Abbott, Nicholson, Quilter, Esshaki & Youngblood, Detroit, MI. and Kenneth Wilson, Stringari, Fritz, Kreger, Ahearn, Goodnow, Bennett & Hunsinger, Detroit, MI.*

DECISION AND ORDER

The Federal Trade Commission having issued its two count complaint charging the respondents named in the complaint issued in this matter on December 20, 1984, with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondents identified in Attachment A to this order, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order for Count I of the complaint, an admission by the identified respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only, and waivers and other provisions as required by the Commission's Rules; and

* Complaint previously published at 108 FTC 193.