

IN THE MATTER OF

CHECKPOINT SYSTEMS, INC.

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

*Docket C-3796. Complaint,*¹ April 6, 1998--Decision, April 6, 1998*

This consent order prohibits, among other things, the New Jersey-based manufacturer of electronic article surveillance equipment from entering into any agreement that prohibits, restricts, impedes, interferes with, restrains, places limitations on, or advises against engaging in truthful, non-deceptive advertising, comparative advertising or promotional and sales activities. In addition, the consent order nullifies the agreement, between Sensormatic Electronics Corporation and Checkpoint Systems, Inc., to restrict advertising and promotional claims about each other's products or services.

Appearances

For the Commission: *William Lanning, Michael McNeely, and William Baer.*

For the respondent: *Frank Newell, Montgomery, McCracken, Walker & Rhoad, Philadelphia, PA.*

DECISION AND ORDER

The Federal Trade Commission ("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 Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

¹ * Complaint previously published at 125 FTC 587 (1998).

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 described 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 Checkpoint Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 101 Wolf Drive, Thorofare, New Jersey.

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

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondent*" means Checkpoint Systems, Inc.

B. "*Checkpoint Systems, Inc.*" means Checkpoint Systems, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Checkpoint Systems, Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. "*Sensormatic Electronics Corporation*" means Sensormatic Electronics Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Sensormatic Electronics Corporation, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

D. "*EAS system*" means electronic article surveillance equipment, including, but not limited to, sensors, deactivation equipment, labels or tags, source tags or labels, and any other component parts or related products.

II.

It is further ordered, That within three (3) days after the date this order becomes final, respondent shall declare null and void Section 4, the "Negative Advertising" provision, of the June 27, 1993 agreement between Sensormatic Electronics Corporation and respondent.

III.

It is further ordered, That respondent, directly or indirectly, or through any person, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any EAS system, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, or carrying out any agreement, either express or implied, that prohibits, restricts, impedes, interferes with, restrains, places limitations on, or advises against engaging in truthful, non-deceptive advertising, comparative advertising, and promotional and sales activities; and

B. Encouraging, advising, pressuring, assisting, inducing, or attempting to induce any non-governmental person or organization to engage in any action prohibited by this order.

IV.

It is further ordered, That respondent shall:

A. Within thirty (30) days of the date on which this order becomes final, provide a copy of this order to all of its directors and officers;

B. For a period of three (3) years from the date on which this order becomes final, and within ten (10) days after the date on which any person becomes a director or officer of respondent, provide a copy of this order to such person; and

C. Require each person to whom a copy of this order is furnished pursuant to subparagraphs IV.A and B of this order to sign and submit to its respective employer named as a respondent within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject the respondent to civil penalties for violation of the order.

V.

It is further ordered, That respondent shall:

A. Within sixty (60) days from the date on which this order becomes final, and annually thereafter for three (3) years on the anniversary of the date this order becomes final, and at such other times as the Commission may by written notice to the respondent require, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order;

B. For a period of three (3) years after the order becomes final, maintain and make available to the staff of the Federal Trade Commission for inspection and copying, upon reasonable notice, all records of communications with EAS competitors of respondent relating to any aspect of advertising, and records pertaining to any action taken in connection with any activity covered by parts II, III, IV, and V of this order; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this order.

VI.

It is further ordered, That this order shall terminate on April 6, 2018.

Commissioner Thompson and Commissioner Swindle not participating.

IN THE MATTER OF

ROGER J. CALLAHAN

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3797. Complaint, April 6, 1998--Decision, April 6, 1998*

This consent order prohibits, among other things, the California-based respondent from making claims, in radio and television infomercials, about Dr. Callahan's Addiction Breaking System and its ability to reduce an individual's compulsive desire to eat and any claims that the product cures addictions and compulsions, such as smoking, eating, and using alcohol or heroin. In addition, the consent order requires the respondent to pay \$50,000 in consumer redress.

Appearances

For the Commission: *Russell Damtoft, Mary Tortorice, Charluta Pagar, Theresa McGrew and C. Steven Baker.*

For the respondent: *Curtis W. Morris, Lamb, Morris and Lobello, San Dimas, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Roger J. Callahan, individually ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Roger J. Callahan has manufactured, advertised, offered for sale, sold, and distributed products to the public, including Dr. Callahan's Addiction Breaking System. Individually or in concert with others, he participated in the acts or practices alleged in this complaint. His principal office or place of business is 45350 Vista Santa Rosa, Indian Wells, California.

2. Respondent entered into an agreement with Mega Systems, Inc., a corporation which creates and distributes program-length radio and television commercials which run for 30 minutes or less and fit within normal radio and television broadcasting time slots. The television commercials were and are broadcast on network, independent and cable television stations throughout the United States. The radio commercials were and are broadcast on network and independent radio stations throughout the United States. In at least one of Mega Systems, Inc.'s program-length television commercials,