

IN THE MATTER OF

FASTLINE PUBLICATIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3819. Complaint, July 28, 1998--Decision, July 28, 1998*

This consent order prohibits, among other things, the two corporations from restricting, regulating, or interfering with the advertising of prices or other terms or conditions of the sale for farm equipment or parts; from encouraging or assisting in any boycott or refusal to deal with the media regarding the advertising of prices, terms or conditions of sale for farm equipment or parts; and from agreeing or combining with any other person to prohibit, restrict or interfere with the advertising of prices, terms or conditions of sale for farm equipment or parts.

Participants

For the Commission: *Nicholas Franczyk, Evan Siegel, C. Steven Baker, William Baer, David Meyer, and Jonathan Baker.*

For the respondents: *John S. Reed, Reed, Weitkamp, Shell, Cox & Vice, Buckner, KY. and Ronald C. Smith, Stewart & Irwin, Indianapolis, IN.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Fastline Publications, Inc. ("Fastline"), and Mid-America Equipment Retailers Association ("Mid-America"), hereinafter sometimes referred to as respondents, have violated and are violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

A. "*Fastline*" means Fastline Publications, Inc., its directors, officers, employees, agents and representatives, predecessors,

successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Fastline, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Kentucky Retailers Association*" means the Kentucky Farm and Power Equipment Retailers Association, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by the Kentucky Retailers Association, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Mid-America*" means the Mid-America Equipment Retailers Association, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Mid-America, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

D. "*Person*" means any natural person, corporate entity, partnership, association, joint venture, government entity, trust, or other entity.

PAR. 2.A. Fastline is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business located at 4900 Fox Run Road, Buckner, Kentucky.

B. Fastline is engaged in the business of publishing and publishes, among other things, picture buying guides for new and used farm equipment under the name "Fastline." Farm equipment advertised in Fastline ranges from lawn mowers to heavy duty farm equipment such as tractors, plows, planters, cotton pickers, and combines. Fastline currently publishes 20 monthly editions of its farm equipment buying guides, serving 41 states. Thirteen editions are state-specific editions (e.g., "Fastline Kentucky Farm Edition"); and seven are regional editions (e.g., "Fastline Southeast Farm Edition" (covering Georgia, Florida, and Alabama)). Approximately 20,000 copies of each edition are distributed free of charge each month. Farm equipment dealers view the "Fastline Kentucky Farm Edition" as a key vehicle for advertising to farmers in Kentucky. Fastline's principal source of revenue is its advertisers who pay from a few hundred dollars per month per edition for a half page, black and white

advertisement, to more than a thousand dollars per month per edition for a two-page, full color advertisement.

PAR. 3.A. Mid-America is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana. Its principal office and place of business are located at 9800 Association Court, Indianapolis, Indiana. Mid-America was formed in 1992 through the merger of the Indiana Implement Dealers Association, Inc., and the Kentucky Retailers Association. At the time of the merger, the members of the Indiana Implement Dealers Association and the Kentucky Retailers Association became members of Mid-America.

B. Mid-America is a trade association organized in substantial part to represent the interests of its members. Mid-America has approximately 500 members, constituting approximately 90% of the farm equipment dealers in Indiana and Kentucky. Mid-America engages in substantial activities that further its members' pecuniary interests. By virtue of its purposes and activities, Mid-America is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

C. Most of Mid-America's members are farm equipment dealers engaged in the advertising, offering for sale, and sale of agri-business, outdoor power, farm, industrial and construction equipment and products or services in Indiana and Kentucky. Except to the extent that competition has been restrained as alleged herein, Mid-America's members have been and are now in competition among themselves and with other farm equipment dealers.

PAR. 4. The acts and practices of the respondents, including the acts and practices alleged herein, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 5.A. The Kentucky Retailers Association and members of the Kentucky Retailers Association have combined or conspired between and among themselves to restrain trade in the advertising, offering for sale, and sale of new farm equipment, by agreeing to cancel or agreeing to threaten to cancel advertising in the "Fastline Kentucky Farm Edition" in retaliation for Fastline publishing prices for new farm equipment.

B. The Kentucky Retailers Association, Fastline, and members of the Kentucky Retailers Association have combined or conspired between and among themselves to restrain trade in the advertising, offering for sale, and sale of new farm equipment, by agreeing not to advertise prices for new farm equipment in the "Fastline Kentucky Farm Edition."

C. Mid-America, Fastline, and members of Mid-America have combined or conspired between and among themselves to restrain trade in the advertising, offering for sale, and sale of new farm equipment, by agreeing not to advertise prices for new farm equipment in the "Fastline Kentucky Farm Edition."

PAR. 6. The Kentucky Retailers Association, members of the Kentucky Retailers Association, Mid-America, members of Mid-America, and Fastline have engaged in various acts and practices in furtherance of this combination or conspiracy, including, among other things:

A. In or about February 1991, the Kentucky Retailers Association and at least some of the Kentucky Retailers Association's members withdrew or otherwise canceled, or urged other members to withdraw or otherwise cancel, advertisements in the "Fastline Kentucky Farm Edition" in retaliation for Fastline publishing advertisements that included prices for new equipment;

B. In or about February 1992: (1) the Kentucky Retailers Association and at least some member of the Kentucky Retailers Association threatened to withdraw or otherwise cancel advertisements in the "Fastline Kentucky Farm Edition" if Fastline continued to publish advertisements that included prices for new equipment; and (2) as a result, Fastline, the Kentucky Retailers Association, and the members of the Kentucky Retailers Association agreed not to advertise prices for new farm equipment in the "Fastline Kentucky Farm Edition"; and

C. In or about June 1993: (1) Mid-America and members of Mid-America urged Fastline to abstain from publishing prices for new equipment and parts in all Fastline farm equipment buying guides; and (2) as a result, Fastline, Mid-America, and the members of Mid-America agreed not to advertise prices for new farm equipment in the "Fastline Kentucky Farm Edition."

PAR. 7. The acts and practices of the respondents, as described in paragraphs five and six, have had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to deprive consumers of the benefits of competition in one or more of the following ways, among others:

A. By reducing and restraining price competition among farm equipment dealers for new farm equipment;

B. By depriving consumers of truthful and nondeceptive price information concerning farm equipment dealers' products; and

C. By depriving consumers of the benefits of competition among farm equipment dealers in the advertising, offering for sale, and sale of new farm equipment.

PAR. 8. The aforesaid acts and practices of the respondents are to the prejudice and injury of the public and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The acts and practices of the respondents, as herein alleged, are continuing and will continue or recur in the absence of the relief requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents

have 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, and no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Fastline Publications, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business located at 4900 Fox Run Road, Buckner, Kentucky.

2. Respondent Mid-America Equipment Retailers Association is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 9800 Association Court, Indianapolis, Indiana.

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

4. The Federal Trade Commission has jurisdiction of the subject matter in this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, for purposes of this order, the following definitions shall apply:

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

B. "*Mid-America*" means Mid-America Equipment Retailers Association, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Mid-America, and the respective

directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Person*" means any natural person, corporation, partnership, unincorporated association, or other entity.

D. "*Fastline Farm*" means the Fastline buying guide for new and used farm equipment and parts. "Fastline Farm Edition" means each separate edition (*e.g.*, "Fastline Kentucky Farm Edition") of Fastline Farm.

E. "*Commission*" means the Federal Trade Commission.

II.

It is further ordered, That Mid-America, directly or indirectly, or through any corporate or other device, in or in connection with its activities as a trade association, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, shall forthwith cease and desist from:

A. Prohibiting, restricting, regulating, impeding, declaring unethical, or interfering with the advertising of prices or other terms or conditions of sale for farm equipment or parts by any person.

B. Carrying out, participating in, inducing, suggesting, urging, encouraging, or assisting in any boycott or threatened boycott of, or concerted refusal to deal with, any newspaper, periodical, publication, television station, radio station or other medium (including, but not limited to, the internet) regarding the advertising of prices or other terms or conditions of sale for farm equipment or parts.

III.

It is further ordered, That Fastline, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, shall forthwith cease and desist from agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination with any other person to prohibit, restrict, regulate, impede, or interfere with the advertising of prices or other terms or conditions of sale for farm equipment or parts by any person.

Provided, however, that nothing contained in this order shall prohibit Fastline from formulating, adopting, disseminating to its

advertisers, and enforcing reasonable guidelines with respect to representations that Fastline reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

IV.

It is further ordered, That Mid-America:

A. Within sixty (60) days after the date this order becomes final, amend its by-laws to incorporate by reference paragraph II of this order, and distribute by first-class mail a copy of the amended by-laws to each of its members;

B. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order in this matter to each of its current officers and directors, and to each other agent, representative, or employee of Mid-America whose activities are affected by this order, or who have responsibilities with respect to the subject matter of this order;

C. Within thirty (30) days after the date this order becomes final, distribute by-first class mail a copy of the complaint and order in this matter to each of its members;

D. For a period of five (5) years after the date this order becomes final, and within thirty (30) days of the date the person assumes such position, distribute a copy of the complaint and order in this matter to each new officer and director of Mid-America, and to each other agent, representative, or employee of Mid-America whose activities are affected by this order, or who have responsibilities with respect to the subject matter of this order; and

E. For a period of five (5) years after the date this order becomes final, provide each new member with a copy of the complaint and order in this matter, and the amended by-laws, within thirty (30) days of the new member's admission to Mid-America.

V.

It is further ordered, That Fastline shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order in this matter to each of its current officers and directors, and to each other agent, representative, or employee of Fastline whose activities are affected

by this order, or who have responsibilities with respect to the subject matter of this order;

B. For a period of five (5) years after the date this order becomes final, and within thirty (30) days of the date the person assumes such position, distribute a copy of the complaint and order in this matter to each new officer and director of Fastline, and to each other agent, representative, or employee of Fastline whose activities are affected by this order, or who have responsibilities with respect to the subject matter of this order;

C. Within thirty (30) days after the date this order becomes final publish, in a clear and conspicuous manner, a copy of the NOTICE in the Attachment to this order in the next scheduled issue of each Fastline Farm Edition; and

D. For a period of five (5) years after the date this order becomes final publish, in a clear and conspicuous manner, a copy of the NOTICE in the Attachment to this order in the February issue of each Fastline Farm Edition, or in the next issue of each Fastline Farm Edition in the event no Fastline Farm Edition is published in February.

VI.

It is further ordered, That each respondent shall file a verified written report with the Commission within sixty (60) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which the respondent has complied with and is complying with this order.

VII.

It is further ordered, That the respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any corporate respondent, such as dissolution, assignment, sale or reorganization resulting in the emergence of a successor corporation or association, or the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising under this order.

VIII.

It is further ordered, That each respondent shall, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, permit duly authorized Commission representatives:

A. Access during respondent's office hours, in the presence of counsel, to inspect any facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in respondent's possession or control that relate to any matter contained in this order; and

B. An opportunity, subject to respondent's reasonable convenience, to interview respondent, and officers, directors, employees, agents, or other representatives of respondent, who may have counsel present, regarding such matters.

IX.

It is further ordered, That this order will terminate on July 28, 2018.

ATTACHMENT TO CONSENT ORDER TO CEASE AND DESIST
IMPORTANT NOTICE REGARDING PRICE ADVERTISING IN FASTLINE

As a result of discussions with the Federal Trade Commission, Fastline Publications, Inc., has entered into an order prohibiting it from agreeing, attempting to agree, or taking any action in furtherance of any agreement with any other person, including, but not limited to, any other person who advertises in Fastline, to prohibit, restrict, regulate, impede, or interfere with the advertising of prices or other terms or conditions of sale for farm equipment or parts by any person. The order is for settlement purposes only and does not constitute an admission of a violation by Fastline. Copies of the order can be obtained by contacting Fastline.

IN THE MATTER OF

BOGDANA CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3820. Complaint, July 28, 1998--Decision, July 28, 1998*

This consent order prohibits, among other things, the California-based company and its officers from making efficacy, performance, or safety claims for any food, drug or dietary supplement, unless they possess competent and reliable scientific evidence that substantiates the claims. In addition, the consent order prohibits the respondents from producing or disseminating any advertisement that misrepresents that it is not a paid advertisement, or that misrepresents that the testimonials and endorsements in their advertisements reflect the typical experiences of consumers who use their products.

Participants

For the Commission: *Lisa Kopchik* and *Jeff Bloom*.

For the respondents: *Karen Weaver* and *Rakesh M. Amin, Weaver & Amin*, Chicago, IL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Bogdana Corporation, a corporation, and Joseph L. Gruber and Bogda Gruber, individually and as officers of Bogdana Corporation ("respondents"), have 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 Bogdana Corporation is a California corporation with its principal office or place of business at 8929 Wilshire Boulevard, Third Floor, Beverly Hills, California.

2. Respondent Joseph L. Gruber is an officer of Bogdana Corporation. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Bogdana Corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Bogdana Corporation.