

Complaint

128 F.T.C.

IN THE MATTER OF

POOLS BY IKE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3902. Complaint, Nov. 1, 1999--Decision, Nov. 1, 1999*

This consent order, among other things, prohibits the California-based association of pool construction contractors from conspiring or agreeing (1) to fix or raise prices or fees for the construction or remodeling of swimming pools or (2) to refuse to deal with owner-builders, home construction contractors or developers.

Participants

For the Commission: *Thomas Dahdouh, David Newman, Jeffrey Klurfeld and Marianne Bitler.*

For the respondents: *Grover Waldon, Clifford & Brown, Bakersfield, CA., John Linford and H. Dennis Beaver, Bakersfield, CA.*

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 the individuals and corporations named above, hereinafter respondents, have violated 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. Respondent Pools by Ike, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 1730 Art Street, Bakersfield, California.

PAR. 2. Respondent Isaac W. Hornsby II is an individual and the president of Pools by Ike, Inc, a California corporation, a licensed swimming pool contractor with its office and principal place of business at 1730 Art Street, Bakersfield, California.

PAR. 3. Respondent Ricky Sneed, an individual doing business as Aloha Pools, is a licensed swimming pool contractor, with his

office and principal place of business at 119 Garden Drive, Bakersfield, California.

PAR. 4. Respondent Crystal One, Inc., a California corporation doing business as Crystal Pools, is a licensed swimming pool contractor with its office and principal place of business at 217 Mount Vernon Avenue, Suite 11, Bakersfield, California.

PAR. 5. Respondent Mario F. Medina is an individual and the president of Crystal One, Inc., a California corporation doing business as Crystal Pools, a licensed swimming pool contractor with its office and principal place of business at 217 Mount Vernon Avenue, Suite 11, Bakersfield, California.

PAR. 6. Respondent Swimco Pools, Inc., a California corporation doing business as Executive Pools and Service, is a licensed swimming pool contractor with its office and principal place of business at 5650 District Boulevard, Suite 105, Bakersfield, California.

PAR. 7. Respondent Brad L. Ward is an individual and the president of Swimco Pools, Inc., a California corporation doing business as Executive Pools and Service, a licensed swimming pool contractor with its office and principal place of business at 5650 District Boulevard, Suite 105, Bakersfield, California.

PAR. 8. Respondent Neudeck Pools, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 509 Ming Avenue, Bakersfield, California.

PAR. 9. Respondent Robert D. Hamilton is an individual and the president of Neudeck Pools, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 509 Ming Avenue, Bakersfield, California.

PAR. 10. Respondent Capri Pools, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 2810 Case Street, Bakersfield, California.

PAR. 11. Respondent M. Kirt Campbell is an individual and the president of Capri Pools, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 2810 Case Street, Bakersfield, California.

PAR. 12. Respondent Randall R. Arvizu, an individual doing business as Pacific Pools and Spas, is a licensed swimming pool

contractor with his office and principal place of business at 12308 Clementa Avenue, Bakersfield, California.

PAR. 13. Respondent Robbie Smith, an individual doing business as Robbie Smith Construction and Pools by Robbie, is licensed swimming pool contractor with his office and principal place of business at 8416 Rockport Drive, Bakersfield, California.

PAR. 14. Respondent Rock Bottom, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 801 Angus Lane, Bakersfield, California.

PAR. 15. Respondent Chuck D. Holmes is an individual and the president of Rock Bottom, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 801 Angus Lane, Bakersfield, California.

PAR. 16. Respondent W.W. Harper Enterprises, a California corporation doing business as WW Harper Pools & Spas, is a licensed swimming pool contractor with its office and principal place of business at 2400 K Street, Bakersfield, California.

PAR. 17. Respondent Michael J. Harper is an individual and the president of W.W. Harper Enterprises, a California corporation doing business as WW Harper Pools & Spas, a licensed swimming pool contractor with its office and principal place of business at 2400 K Street, Bakersfield, California.

PAR. 18. Respondent Michael A. Severini, an individual doing business as Severini Pools and Spas, is a licensed swimming pool contractor with his office and principal place of business at 661 Delfino Lane, Bakersfield, California.

PAR. 19. Respondent Caribbean Enterprises Construction Co., a California corporation doing business as Caribbean Pools & Spas, is a licensed swimming pool contractor with its office and principal place of business at 5330 Office Center Court, #30, Bakersfield, California.

PAR. 20. Respondent Michael Webb is an individual and the president of Caribbean Enterprises Construction Co., a California corporation doing business as Caribbean Pools & Spas, a licensed swimming pool contractor with its office and principal place of business at 5330 Office Center Court, #30, Bakersfield, California.

PAR. 21. Respondent Sunburst Pools, Inc., a California corporation doing business as Sunnyside Pool Service, is a licensed swimming pool contractor with its principal office and place of business at 5630 District Blvd., Bakersfield, California.

PAR. 22. Respondent Keith E. Kelley is an individual and the president of Sunburst Pools, Inc., a California corporation doing business as Sunnyside Pools Service, a licensed swimming pool contractor with its principal office and place of business at 5630 District Blvd., Bakersfield, California.

PAR. 23. Respondent Pamela Gates, an individual doing business as Tiffany Pools, is a licensed swimming pool contractor with her office and principal place of business at 324 Oak Street, Suite N, Bakersfield, California.

PAR. 24. The acts and practices of respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 25. Respondents are all swimming pool contractors who are licensed by the State of California to construct swimming pools and do business in and around Bakersfield, a city of 224,000 people in Kern County in the Central Valley of California. Except to the extent that competition has been restrained as herein alleged, respondents have been, and are now, in competition among themselves and with other pool contractors in the Bakersfield area.

PAR. 26. Building a swimming pool entails a series of discrete tasks. Although swimming pool contractors may perform some of the construction work themselves, they generally hire a variety of subcontractors to do the work. First, a digger excavates the area where the pool is to be installed. Second, a steel subcontractor builds the steel reinforcing cage that forms the pool. Plumbers and electricians next install plumbing and electrical conduits. Third, a gunite subcontractor "shoots" nearly dry concrete into the hole to create the pool's shell. Fourth, a tile setter subcontractor lays the tile. Fifth, a decking subcontractor pours and molds the concrete deck surrounding the pool. Sixth, plumbers complete the plumbing and electrical work. Finally, a plasterer applies a coat of plaster to finish the pool's surface. Other related work that may be subcontracted includes landscaping (including but not limited to installation of decorative features such as waterfall, rocks or boulders), security, and fence services related to swimming pools.

PAR. 27. Homeowners usually hire a pool contractor to handle all these aspects of constructing a swimming pool. Some homeowners, however, may choose instead to enter into an arrangement, known in

the industry as an "owner-builder" arrangement, by which they hire subcontractors directly or use pool contractors as consultants only in arranging for subcontractors. In this way, homeowners who act as owner-builders are able to save a substantial amount of money. In such arrangements, however, liability in the event of an accident or injury during construction falls on the homeowner, rather than on the pool contractor.

PAR. 28. Home construction developers and contractors may hire pool contractors to handle all aspects of constructing a swimming pool. Home construction developers and contractors may also employ swimming pool subcontractors when they build homes with swimming pools. In those situations, the home construction contractor or developer, who is licensed by the State of California, is liable in the event of an accident or injury during construction much as a pool contractor is liable.

PAR. 29. Beginning in early March 1998, respondents and others, all competing pool contractors, began meeting on a regular basis in an informal group that later came to be known as the Southern Valley Pool Association, hereafter the "Association." Although one of the reasons respondents met was to discuss common concerns of the swimming pool construction trade, one of the subjects which developed was a belief that there was a lack of profitability in building swimming pools in Bakersfield.

PAR. 30. Through the Association meetings and other communications, some respondents, acting as a combination, acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements among themselves, express or implied, to fix or increase the prices homeowners paid for swimming pool construction.

PAR. 31. As a result of this combination, some respondents significantly increased prices to homeowners for constructing a swimming pool.

PAR. 32. Through the Association meetings and other communications, some respondents, acting as a combination, also engaged in a group boycott aimed at owner-builders and home construction developers and contractors. Some respondents viewed owner-builders as a major threat to the success of their efforts to raise prices to homeowners, primarily based upon a belief that most such contracting was being performed on a cash basis. Homeowners acting as owner-builders could work directly with subcontractors or use pool

contractors only as consultants and thereby defeat the price increase, many times by paying cash. Home construction developers and contractors could also work directly with subcontractors (rather than with pool contractors) and similarly defeat the price increase. Consequently, some respondents agreed to pressure their subcontractors to charge owner-builders 50 percent more (and to charge home construction contractors or developers 25 percent more) than the subcontractors were charging pool contractors. Some respondents set the price increases at these high levels in order to eliminate or reduce any savings homeowners and home construction developers and contractors would realize by bypassing pool contractors and dealing directly with subcontractors. Some respondents agreed among themselves to stop using subcontractors who refused to implement these price increases. Some respondents also agreed, as a further inducement to gain the subcontractors' agreement to this plan, to pay subcontractors a higher price for subcontractor services.

PAR. 33. In furtherance of the group boycott described in paragraph 32:

A. Some respondents agreed to call a series of meetings with all the members of each trade of subcontractor (guniters, excavators, deckers, etc.). Beginning in early April 1998, a series of meetings was held, with some of respondents and all or nearly all of each trade of subcontractors in attendance. At these meetings with subcontractors, subgroups of the respondents:

1. Instructed the subcontractors to raise their prices to owner-builders by 50 percent and to home construction developers and contractors by 25 percent;

2. Warned the subcontractors that the respondents would stop subcontracting with them if the subcontractors did not increase their prices to owner-builders and home construction developers and contractors as set forth above; and

3. Offered the subcontractors a *quid pro quo* whereby, if the subcontractors agreed to increase prices to owner-builders and home construction developers and contractors as set forth above, respondents would agree to a specified increase (the amount of which varied depending on the particular subcontracting work being done) in the price subcontractors charged respondents for subcontractor services.

B. As a direct result of these meetings, most of the subcontractors raised their prices to pool contractors by the specified amounts on or about May 15, 1998. Also as a direct result of these meetings, some subcontractors began charging or sought to charge owner-builders and home construction developers and contractors substantially higher prices than they charged swimming pool contractors. Other subcontractors stopped doing owner-builder jobs altogether, because they were fearful of losing their work with respondents.

PAR. 34. The acts and practices of the respondents as described in this complaint have had the purpose, tendency, effect, and capacity to restrain trade unreasonably and hinder competition in the provision of swimming pool contracting and subcontracting services in California in the following ways, among others:

A. To restrain competition among swimming pool contractors and subcontractors;

B. To fix or increase the prices that consumers pay for swimming pool contracting services and subcontracting services;

C. To deprive consumers of the benefits of competition among swimming pool contractors and subcontractors; and

D. To interfere with consumers' choice in deciding to build their swimming pool in an owner-builder arrangement or through home construction developers or contractors.

PAR. 35. 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 ("Commission"), having initiated an investigation of certain acts and practices of certain swimming pool contractors, sometimes acting collectively as the Southern Valley Pool Association, hereinafter sometimes referred to as "respondents," and the respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents, and their respective 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the 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, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Pools by Ike, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 1730 Art Street, Bakersfield, California.
2. Respondent Isaac W. Hornsby II is an individual and the president of Pools by Ike, Inc, a California corporation, a licensed swimming pool contractor with its office and principal place of business at 1730 Art Street, Bakersfield, California.

3. Respondent Ricky Sneed, an individual doing business as Aloha Pools, is a licensed swimming pool contractor, with his office and principal place of business at 119 Garden Drive, Bakersfield, California.

4. Respondent Crystal One, Inc., a California corporation doing business as Crystal Pools, is a licensed swimming pool contractor with its office and principal place of business at 217 Mount Vernon Avenue, Suite 11, Bakersfield, California.

5. Respondent Mario F. Medina is an individual and the president of Crystal One, Inc., a California corporation doing business as Crystal Pools, a licensed swimming pool contractor with its office and principal place of business at 217 Mount Vernon Avenue, Suite 11, Bakersfield, California.

6. Respondent Swimco Pools, Inc., a California corporation doing business as Executive Pools and Service, is a licensed swimming pool contractor with its office and principal place of business at 5650 District Boulevard, Suite 105, Bakersfield, California.

7. Respondent Brad L. Ward is an individual and the president of Swimco Pools, Inc., a California corporation doing business as Executive Pools and Service, a licensed swimming pool contractor with its office and principal place of business at 5650 District Boulevard, Suite 105, Bakersfield, California.

8. Respondent Neudeck Pools, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 509 Ming Avenue, Bakersfield, California.

9. Respondent Robert D. Hamilton is an individual and the president of Neudeck Pools, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 509 Ming Avenue, Bakersfield, California.

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11. Respondent M. Kirt Campbell is an individual and the president of Capri Pools, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 2810 Case Street, Bakersfield, California.

12. Respondent Randall R. Arvizu, an individual doing business as Pacific Pools and Spas, is a licensed swimming pool contractor with his office and principal place of business at 12308 Clementa Avenue, Bakersfield, California.

13. Respondent Robbie Smith, an individual doing business as Robbie Smith Construction and Pools by Robbie, is licensed swimming pool contractor with his office and principal place of business at 8416 Rockport Drive, Bakersfield, California.

14. Respondent Rock Bottom, Inc., a California corporation, is a licensed swimming pool contractor with its office and principal place of business at 801 Angus Lane, Bakersfield, California.

15. Respondent Chuck D. Holmes is an individual and the president of Rock Bottom, Inc., a California corporation, a licensed swimming pool contractor with its office and principal place of business at 801 Angus Lane, Bakersfield, California.

16. Respondent W.W. Harper Enterprises, a California corporation doing business as WW Harper Pools & Spas, is a licensed swimming pool contractor with its office and principal place of business at 2400 K Street, Bakersfield, California.

17. Respondent Michael J. Harper is an individual and the president of W.W. Harper Enterprises, a California corporation doing business as WW Harper Pools & Spas, a licensed swimming pool contractor with its office and principal place of business at 2400 K Street, Bakersfield, California.

18. Respondent Michael A. Severini, an individual doing business as Severini Pools and Spas, is a licensed swimming pool contractor with his office and principal place of business at 661 Delfino Lane, Bakersfield, California.

19. Respondent Caribbean Enterprises Construction Co., a California corporation doing business as Caribbean Pools & Spas, is a licensed swimming pool contractor with its office and principal place of business at 5330 Office Center Court, #30, Bakersfield, California.

20. Respondent Michael Webb is an individual and the president of Caribbean Enterprises Construction Co., a California corporation doing business as Caribbean Pools & Spas, a licensed swimming pool contractor with its office and principal place of business at 5330 Office Center Court, #30, Bakersfield, California.

21. Respondent Sunburst Pools, Inc., a California corporation doing business as Sunnyside Pool Service, is a licensed swimming pool contractor with its principal office and place of business at 5630 District Blvd., Bakersfield, California.

22. Respondent Keith E. Kelley is an individual and the president of Sunburst Pools, Inc., a California corporation doing business as Sunnyside Pools Service, a licensed swimming pool contractor with its principal office and place of business at 5630 District Blvd., Bakersfield, California.

23. Respondent Pamela Gates, an individual doing business as Tiffany Pools, is a licensed swimming pool contractor with her office and principal place of business at 324 Oak Street, Suite N, Bakersfield, California.

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

ORDER

I.

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

A. "*Respondents*" shall mean each of (1) the named individual respondents, any entity through which each of them conducts business, each of their representatives, agents, and employees; and (2) the named corporate respondents, and their respective directors, officers, employees, agents, representatives, successors and assigns, their respective subsidiaries, divisions, groups and affiliates controlled by the respective corporate respondents, and the respective directors, officers, employees, agents, representatives, successors and assigns of each such subsidiary, division, group and affiliate.

B. "*Swimming pool contractor*" shall mean any person licensed by a State to construct, renovate or remodel a swimming pool.

C. "*Subcontractor*" shall mean any person licensed by a State to perform any of the tasks involved in the construction, renovation or remodeling of swimming pools, including but not limited to excavation, structural steel installation, guniting, plumbing, electrical, concrete decking, tiling, plastering, engineering and architectural services. The term "subcontractor" shall also mean any person performing landscaping services (including but not limited to waterfall, decorative rock or boulder work), security, and fence installation related to a swimming pool.

D. "*Person*" shall mean both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

E. "*Owner-builder*" shall mean any homeowner who contracts with one or more subcontractors, either directly or by using a swimming pool contractor as a consultant only, in connection with the construction, renovation or remodeling of a swimming pool.

F. "*Meeting*" shall mean any assembly of three or more swimming pool contractors, whether in person, by telephone conference or otherwise, in which one or more respondent is participating, for any purpose other than social matters or discussions relating to a specific proposed or actual business transaction or project in which those involved are or would be in a contractor/subcontractor or other joint or cooperative working relationship.

G. "*Commission*" shall mean the Federal Trade Commission.

H. "*Soliciting*" for the purposes of this order means requesting, proposing, threatening, urging, recommending, advocating, or attempting to persuade in any way.

II.

It is further ordered, That respondents, 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, 15 U.S.C. 44, shall forthwith cease and desist from:

A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding, express or implied, with any person or among any persons:

(1) To fix, establish, raise, stabilize, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, or other aspect or term of the fees charged or to be charged for the construction, renovation or remodeling of swimming pools or fees paid or to be paid to any subcontractor in connection with the construction, renovation or remodeling of swimming pools; or

(2) To refuse to deal with owner-builders or home construction contractors or developers;

B. Soliciting:

(1) Any person to fix, establish, raise, stabilize, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, or other aspect or term of the fees charged or to be charged for the construction, renovation or remodeling of swimming pools or fees paid or to be paid to any subcontractor in connection with the construction, renovation or remodeling of swimming pools;

(2) Any swimming pool contractor to refuse categorically to deal with owner-builders or home construction contractors or developers;

(3) Any subcontractor to refuse categorically to deal with owner-builders, home construction contractors or developers, or swimming pool contractors who act or wish to act as consultants for owner-builders; or

(4) Any subcontractor with respect to the terms of that subcontractor's dealings with owner-builders, home construction contractors or developers, or swimming pool contractors who act or wish to act as consultants for owner-builders; and

C. Inducing, suggesting, urging, encouraging, or assisting any person to take any action that if taken by any of the respondents would violate this order.

Provided, however, that nothing in paragraph II of this order prohibits any respondent from discussing and/or entering into a specific proposed or actual business transaction or project in which those involved are or would be in a contractor/subcontractor or other joint or cooperative working relationship.

III.

It is further ordered, That for a period of five (5) years from the date this order becomes final, respondents shall make an audible tape recording of the entirety of any meeting and shall maintain a copy of the tape recording and all materials distributed at the meeting for a period of three (3) years from the date of the meeting. For the purpose of compliance with this paragraph, respondents may designate an individual as custodian of the tape recordings and materials to be maintained.

IV.

It is further ordered, That respondents shall, in the event that they, or any of them, forms an organization or trade association, a purpose of which is to represent the interests of swimming pool contractors, incorporate paragraph II of this order by reference in the by-laws of any such organization or trade association and shall distribute by first-class mail a copy of the by-laws to each of the members of the organization or trade association.

V.

It is further ordered, That each respondent shall notify the Commission at least thirty (30) days prior to any proposed change in his/her business format, including incorporation, the creation of or dissolution of any partnership, the assignment of any license, or sale, or in the case of any corporate respondent, any proposed change in any 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 under this order.

VI.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final, each respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the respondent intends to comply, is complying, and has complied with paragraphs II through V of this order.

B. One (1) year from the date this order becomes final, annually for the next five (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, each respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with paragraphs II through V of this order.

C. The above described reports shall be submitted to: Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, each respondent shall permit any duly authorized representative of the Commission:

A. Upon forty-eight (48) hours' prior notice to a respondent, access, during normal office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in the possession or under the control of each respondent relating to any matter contained in this order; and

B. Upon five (5) business days' notice to a respondent, and without restraint or interference from that respondent, to interview that respondent or any employee or representative of that respondent.

VIII.

It is further ordered, That this order shall terminate on November 1, 2019.

IN THE MATTER OF

TIGER DIRECT, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3903. Complaint, Nov. 4, 1999--Decision, Nov. 4, 1999

This consent order, among other things, prohibits Tiger Direct, a Florida-based advertiser and distributor of computer products, from representing that it provides on-site warranty service without disclosing all limitations or conditions that apply to obtaining the on-site service, prohibits the respondent from failing to adhere to the disclosure provisions of the Warranty Act, and requires the respondent, within a reasonable period of time, to fulfill its obligations under the warranty to the consumer.

Participants

For the Commission: *Colleen Lynch, Andrew Caverly and Margaret Patterson.*

For the respondent: *Kip Schwartz, Holland & Knight, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Magnuson-Moss Warranty Act ("the Warranty Act"), 15 U.S.C. 2301 *et seq.*, and Rules 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), 16 CFR Parts 701 and 702, promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Tiger Direct, Inc., a corporation, ("Tiger" or "respondent"), has violated the provisions of said Acts and Rules, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rules 701 and 702, 16 CFR 701.1 and 702, promulgated thereunder shall apply to the terms used in this complaint.

2. Respondent Tiger Direct, Inc., is a Florida corporation with its principal office or place of business at 8700 West Flagler Street, 4th Floor, Miami, Florida.