

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

DANCER-FITZGERALD-SAMPLE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8919. Complaint, Feb. 23, 1973—Decision, July 1, 1980

This consent order requires, among other things, a New York City advertising agency to cease disseminating advertisements which misrepresent, or fail to make relevant disclosures regarding the contents, performance, effectiveness, or therapeutic superiority of Bayer Aspirin, Bayer Children's Aspirin, Cope, or similar non-prescription drug products manufactured by Sterling Drug Inc. Additionally, the order requires the firm to substantiate all representations made for non-prescription drug products concerning their performance, effectiveness and freedom from side effects.

Appearances

For the Commission: *Melvin H. Orlans, H.R. Field, C.B. Anaer, R.B. Bloomfield, D.J. Freeman and Joel Brewer.*

For the respondent: *Richard Rieder, Dunnington, Bartholow & Miller, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sterling Drug Inc., a corporation, Dancer-Fitzgerald-Sample, Inc., a corporation, and Lois Holland Callaway, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

1. "Commerce" means commerce as defined in the Federal Trade Commission Act.

2. "False advertisement" means false advertisement as defined in the Federal Trade Commission Act.

PAR. 2. Respondent Sterling Drug Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 90 Park Ave. in the City of New York, State of New York.

Respondent Dancer-Fitzgerald-Sample, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 347 Madison Ave. in the City of New York, State of New York.

Respondent Lois Holland Callaway, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 745 Fifth Ave. in the City of New York, State of New York.

PAR. 3. Respondent Sterling Drug Inc. is now and has been for all times relevant to this complaint engaged in the manufacturing, advertising, offering for sale, sale and distribution of certain non-prescription internal analgesic preparations which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act. The designations, directions for use and active ingredients for some of these analgesic drugs are as follows:

1. *Designation:* "Bayer Aspirin"

Active ingredients:

Aspirin

Dosage: 1 or 2 tablets with water every 4 hours, as necessary, up to 12 tablets a day.

2. *Designation:* "Bayer Children's Aspirin"

Active Ingredients:

Aspirin

Dosage: Varies depending upon age of child.

3. *Designation:* "Cope"

Active Ingredients:

Aspirin

Caffeine

Methapyrilene Fumarate

Magnesium Hydroxide

Aluminum Hydroxide (Dried Gel)

Dosage: 1 or 2 tablets every 4 hours, as needed, up to 9 tablets per day.

1 Complaint

4. *Designation:* "Vanquish"

Active Ingredients:

Aspirin

Caffeine

Acetaminophen

Magnesium Hydroxide

Aluminum Hydroxide (Dried Gel)

Dosage: 2 caplets with water. Can be repeated every 4 hours if needed, up to 12 caplets per day.

5. *Designation:* "Midol"

Active Ingredients:

Aspirin

Caffeine

Cinnamedrine HCL

Dosage: 2 Midol Tablets with water. Repeat 1 or 2 tablets every 4 hours as needed, up to 8 tablets per day.

PAR. 4. Respondent Dancer-Fitzgerald-Sample, Inc. is now and for all times relevant to this complaint has been an advertising agency of Sterling Drug Inc., and for all times relevant to this complaint, has prepared and placed for publication, advertising material, including but not limited to the advertising referred to herein, to promote the sale of the said "Bayer Aspirin," "Bayer Children's Aspirin" and "Cope."

Respondent Lois Holland Callaway, Inc., for all time relevant to this complaint has been an advertising agency of Sterling Drug Inc., and for all times relevant to this complaint, has prepared and placed for publication advertising material, including but not limited to the advertising referred to herein, to promote the sale of the said "Vanquish."

PAR. 5. In the course and conduct of its aforesaid business, respondent Sterling Drug Inc., causes the said analgesic drug preparations, when sold, to be transported from its places of business located in various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent Sterling Drug Inc., maintains and at all times relevant to this complaint has maintained, a substantial course of trade in said preparations in commerce. The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of their businesses, respondents Sterling Drug Inc., Dancer-Fitzgerald-Sample, Inc., and Lois Holland Callaway, Inc., have disseminated, and caused the dissemination of, certain advertisements concerning the said drugs by the United

States mails and by various means in commerce, including but not limited to, advertisements inserted in magazines and newspapers, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said drugs and have disseminated, and caused the dissemination of, advertisements concerning said drugs by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said drugs in commerce.

PAR. 7. Typical of the statements and representations made in the advertisements, but not all inclusive thereof, are the following:

A. For Bayer Aspirin:

(1) To relieve a headache fast Bayer Aspirin's got the best help there is. Of all the leading pain relievers you see advertised, only Bayer is 100% aspirin. And Aspirin is what doctors recommend.

(2) I'm Ozzie Nelson. Here's something I'm passing along to *my* family. This booklet about pain relievers. Bayer tested its aspirin for quality against 220 other brands. The results? Bayer is superior. I also read about the latest report written by the American Medical Association Council on Drugs . . . Straight aspirin is preferred over other non-prescription pain relievers. Find out why . . . aspirin's the best pain reliever. And Bayer's the best aspirin.

(3) Has anyone ever improved on Bayer Aspirin? Made a faster Aspirin? A more effective Aspirin? Lots of people have tried. They took plain Aspirin. Made it bigger. Smaller. They buffered it. They added extra ingredients. They squeezed it. Squared it. Flavored it. Gummed it. Capsuled it. Fizzed it. Even tried spraying it . . . They did every thing—but improve it. Today there is still nothing faster . . . nothing more effective . . . than good old genuine Bayer Aspirin. It's pure Aspirin . . . not part Aspirin. It works wonders for headache, muscle pain, aches and fever of a cold. For just about anything that hurts.

(4) Would you like to see the inside story on all the major pain relievers you see advertised? Inside every single leading pain reliever is the same major ingredient . . . Aspirin . . . every one of those products relies chiefly on Aspirin. Surprised? Don't be . . . after all, Aspirin is the only pain reliever doctors overwhelmingly recommend for nearly every type of ache or pain. And did you know that Bayer is the only one of those pain relievers that makes all its own Aspirin? With care and experience no one else can match? That's why pure Bayer Aspirin, without Buffering or Caffeine or any other extra ingredient is the pain reliever for you.

(5) Deciding which pain reliever you should take can be like a game. Some talk about strength, some talk about speed, some talk about ingredients they don't name. But of all the leading pain relievers you see advertised, Bayer is the only one that is all Aspirin. And Aspirin is what doctors recommend.

(6) Bayer wants you to *know* about pain relievers . . . did you know that two Bayer Aspirin tablets bring all the pain relief power a headache can use? Did you know that Bayer without any additives is every bit as fast and effective in relieving pain as those products that have additives?

(7) Confused by claims? By shapes and sizes? By strange sounding ingredients? When you need fast relief from headache pain, don't forget this fact . . . Bayer is 100% Aspirin and Aspirin is the strongest pain reliever you can buy. No wonder Bayer works wonders.

(8) If you've ever heard that all aspirin's alike, here's something you should know. While it's true that the United States Pharmacopoeia does set standards for aspirin, Bayer surpasses these standards in many ways. For example, Bayer standards require complete tablet disintegration within thirty seconds. That's ten times faster than the accepted five-minute standard. It's one of the things that helps make Bayer fast and gentle.

(9) 1ST MAN: How come Bayer doesn't buffer its aspirin? BAYER MAN: There's really no need to. In relieving pain, buffered aspirin isn't any faster or gentler than Bayer. Yes.

(10) When hot weather makes you feel headachy, tense, irritable, two Bayer Aspirin and a short rest can help you feel better fast!

It happens to most of us on a hot, humid summer day, when the pressures of daily living mount up. By mid-afternoon we feel so headachy and edgy that the simplest chore, the smallest disturbance becomes an irritation. We're in no mood to enjoy life or the company of others.

Here's how to turn that mood around: just take two Bayer Aspirin for your headache, sit down for a few minutes and relax. You too will say, "Bayer works wonders." These few minutes can make a world of difference in the way you feel and act. You'll enjoy being with people, and they'll enjoy being with you.

Whenever you get headachy, tense and out of sorts on a hot summer afternoon, set aside a few minutes for Bayer Aspirin and a brief rest. Bayer is *pure* aspirin, not just *part* aspirin. Ask your pharmacist.

(11) Bayer recently tested its aspirin against 220 other brands. For purity, stability, speed of disintegration, Bayer was consistently better.

(12) I read about recent Bayer tests on aspirin. They tested for *quality*, for purity, for *freshness* against 220 other brands. The tests showed that Bayer makes the superior aspirin.

B. Bayer Aspirin for Children:

. . . You don't settle for any children's aspirin. You want the best. You want Bayer because no one makes aspirin like Bayer. No one purifies aspirin like Bayer. No one protects Aspirin like Bayer.

C. For Cope:

(1) Important studies made at the world's leading headache clinic show that for

relief of severe nervous tension headaches a combination of a pain reliever and a sedative provides greater relief than either medication alone. Of all the leading remedies you can buy for ordinary nervous tension headaches, only Cope combines a gentle relaxer with a powerful pain reliever for really effective relief. If you have chronic headaches, see your doctor. For the usual nervous tension headache get Cope.

(2) I get it on rainy days. I get it during rush hour. I get it when the boss looks over my shoulder. When the name of the pain is nervous tension headache, the name of the remedy is Cope. Because Cope gives you a powerful pain reliever plus a gentle relaxer.

D. For Vanquish:

(1) (3 tablets are shown with 1 caplet of Vanquish)

For your headache pain, here are your major choices. This leading extra strength product has no buffers. This leading buffered product has no extra strength. This leading pain reliever has strength but no buffers. Of all the leading pain relievers you can buy, only Vanquish gives you extra strength and gentle buffers. Vanquish. The choice. (Sterling Drug Inc.)

(2) When you get a headache we think you should take Vanquish. And we'll show you why in a head to head comparison. This is Vanquish. It gives you extra strength and gentle buffers. And it's the only leading pain reliever that does. This is a leading extra strength product. It has no buffers. And there are no buffers in this other extra strength product either. This leading buffered product comes without extra strength. We think your headache deserves extra strength and you deserve gentle buffers. (Sterling Drug Inc.)

(3) Vanquish is different. It gives you proven effectiveness of Aspirin as in this tablet plus extra medication as in these. But it also includes two gentle buffers . . . With Vanquish the only one. (Sterling Drug Inc.)

(4) Her headache is killing me. When she gets a pain in the head, it can be a big pain to me, so I give her Vanquish. Vanquish is strong medicine. Vanquish contains more pain relievers than the largest selling extra strength tablet . . . and it has gentle buffers. How's your headache, dear? Dit Dit Dit Dah . . . Vanquish is strong medicine. (Sterling Drug Inc., and Lois Holland Callaway, Inc.)

E. For Midol:

(1) Live Your Life . . . Relieved of Menstrual Distress. In the modern life you lead, there come the calm times, too. Strolling hand in hand. Reading together. Talking together. These are the precious, serene moments. And you let nothing interfere. Not even functional menstrual distress. How? With Midol. Because MIDOL contains:

An exclusive anti-spasmodic that helps STOP CRAMPS

Medically-approved ingredients that RELIEVE HEADACHE, LOW BACKACHE . . . CALM JUMPY NERVES . . .

Plus a special mood-brightener that gives you a real lift . . . gets you through the trying pre-menstrual period feeling calm and comfortable.

PAR. 8. Through the use of these advertisements, and others

1

Complaint

similar thereto not specifically set out herein, it was represented directly or by implication:

A. By respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc., that it has been established that:

1. Bayer Aspirin is superior in terms of significant therapeutic effect to any other aspirin.

2. Bayer Children's Aspirin is superior in terms of significant therapeutic effect to any other children's aspirin.

3. A recommended dose of Cope is more effective for the relief of "nervous tension headache" pain than a recommended dose of any other non-prescription internal analgesic.

B. By respondent Sterling Drug Inc., that it has been established that:

1. A recommended dose of Vanquish is more effective for the relief of pain than a recommended dose of aspirin or buffered aspirin.

2. Because Vanquish contains "gentle buffers" it will result in less gastric discomfort than any non-prescription internal analgesic not containing buffers.

C. By respondents Sterling Drug Inc. and Lois Holland Callaway, Inc., that a recommended dose of Vanquish is more effective for the relief of pain than the largest selling "extra strength" tablet.

PAR. 9. In truth and in fact, none of said representations has been established, for reasons including, but not limited to, the existence of a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drugs, as to the validity of all such representations.

PAR. 10. Through the use of these advertisements, and others similar thereto not specifically set out herein, it was represented directly or by implication by respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc. that:

A. Bayer Aspirin is superior in terms of significant therapeutic effect to any other aspirin.

B. Bayer Children's Aspirin is superior in terms of significant therapeutic effect to any other children's aspirin.

PAR. 11. There existed, at the time of said representations, no reasonable basis for making the above representations, in that

respondents lacked competent and reliable scientific evidence sufficient to support such representations.

PAR. 12. Through the use of these advertisements, and others similar thereto not specifically set out herein, it was represented directly or by implication:

A. By respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc., that a recommended dose of Cope is more effective for the relief of "nervous tension headache" pain than a recommended dose of any other non-prescription internal analgesic.

B. By respondent Sterling Drug Inc., that:

1. A recommended dose of Vanquish is more effective for the relief of pain than a recommended dose of aspirin or buffered aspirin.

2. Because Vanquish contains "gentle buffers" it will result in less gastric discomfort than any non-prescription internal analgesic not containing buffers.

C. By respondents Sterling Drug Inc. and Lois Holland Callaway, Inc., that a recommended dose of Vanquish is more effective for the relief of pain than the largest selling "extra strength" tablet.

PAR. 13. There existed, at the time of said representations, a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drugs, as to the validity of such representations.

PAR. 14. Moreover, respondents made said representations without disclosing the existence of such a substantial question as to the validity of each representation. In light of the representations made, the existence of such a substantial question is a material fact, which, if known to consumers, would be likely to affect their consideration of whether or not to purchase such products. Thus, respondents have failed to disclose material facts.

PAR. 15. Through the use of the aforesaid advertisements and others similar thereto not specifically set out herein, it was represented directly or by implication:

A. By respondents Sterling Drug Inc. and Dancer-Fitzgerald-Sample, Inc. that a recommended dose of Bayer Aspirin relieves nervous tension, anxiety and irritability and improves the user's mood.

B. By respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc. that a recommended dose of Cope relieves nervous tension, anxiety and irritability and will enable persons to cope with the ordinary stresses of everyday life.

C. By respondent Sterling Drug Inc. that a recommended dose of Midol relieves nervous tension, stress, fatigue and depression and improves the user's mood.

PAR. 16. There existed at the time of said representations no reasonable basis for making the above representation in that respondents had no competent and reliable scientific evidence to support such representations.

PAR. 17. Through the use of the advertisements referred to in Paragraph Seven, sections (A) (2) (3) (4) (6) (7) and (9), (C), and (D) above it was represented directly or by implication:

A. By respondents Sterling Drug Inc., Dancer-Fitzgerald-Sample, Inc., that Bayer Aspirin is as effective for the relief of headache pain (including "nervous tension headache" pain) as, and will cause gastric discomfort no more frequently than, any other non-prescription internal analgesic, including Cope and Vanquish;

B. By respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc., that Cope is more effective for the relief of "nervous tension headache" pain than any other non-prescription internal analgesic, including Bayer Aspirin and Vanquish;

C. By respondent Sterling Drug Inc., that Vanquish is more effective for the relief of headache pain than any aspirin, including Bayer Aspirin, and will cause less gastric discomfort than any non-buffered internal analgesic, including Bayer Aspirin.

The representations referred to in sections (A), (B), and (C) above are mutually inconsistent. Respondents have made claims for a product that are inconsistent with contemporaneous claims for other products made by the same firm.

PAR. 18. Furthermore, in advertisements for Cope, respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc. referred to the results of tests or studies and represented, directly or by implication, that such tests or studies prove the claim that a recommended dose of Cope is more effective for the relief of "nervous tension headaches" than recommended doses of all other non-prescription internal analgesics.

PAR. 19. In truth and in fact, the tests or studies referred to do not prove the claim that a recommended dose of Cope is more effective for the relief of "nervous tension headaches" than recommended doses of all other non-prescription internal analgesics.

PAR. 20. Through the use of the advertisements referred to in Paragraph Seven, Sections A(11) and (12), and other similar thereto not specifically set out herein, respondents Sterling Drug Inc. and

Dancer-Fitzgerald-Sample, Inc. represented, directly or indirectly, that Bayer Aspirin has been tested against 220 other brands of aspirin for quality, purity, freshness, stability, and speed of disintegration, and that the results of the tests demonstrated that Bayer Aspirin is qualitatively superior to all of the other brands tested in all respects, and therapeutically superior to all of the other brands tested.

PAR. 21. In truth and in fact, the tests referred to do not demonstrate that Bayer Aspirin is qualitatively superior in all respects, including speed of disintegration, to all other aspirins tested. Moreover, these tests do not demonstrate that Bayer is therapeutically superior to all other brands because at the time of such representations there existed a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug product, concerning the validity, significance or interpretation of such tests as related to such representation.

PAR. 22. Respondents Sterling Drug Inc. and Dancer-Fitzgerald-Sample, Inc. represented directly or by implication that Cope contained a unique formula in that it alone among non-prescription headache remedies contained both a pain reliever and an ingredient with sedative properties. In truth and in fact the ingredients referred to are aspirin and methapyrilene, both of which were available for non-prescription use in Excedrin PM. Therefore, the advertisements referred to in Paragraph Seven (C)(1) were and are misleading in a material respect.

PAR. 23. Respondents Sterling Drug Inc. and Lois Holland Callaway, Inc., marketed and advertised Vanquish without disclosing in the advertising for this product that it contains aspirin and caffeine. Aspirin and caffeine are well-known commonplace substances widely available in a variety of non-prescription products. Moreover, the use of aspirin or caffeine can be injurious to health and may cause undesirable side effects. Thus, respondents have failed to disclose in advertising a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase such products.

PAR. 24. Furthermore, respondents Sterling Drug Inc. and Dancer-Fitzgerald-Sample, Inc. marketed and advertised Cope without disclosing in the advertising for this product that it contains aspirin and caffeine. Aspirin and caffeine are well-known commonplace substances widely available in a variety of non-prescription products. Moreover, the use of aspirin or caffeine can be injurious to health and may cause undesirable side effects. Thus, respondents

have failed to disclose in advertising a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase such products.

PAR. 25. Furthermore, respondent Sterling Drug Inc. marketed and advertised Midol without disclosing in the advertising for this product that it contains aspirin and caffeine. Aspirin and caffeine are well-known commonplace substances widely available in a variety of non-prescription products. Moreover, the use of aspirin or caffeine can be injurious to health and may cause undesirable side effects. Thus, respondent has failed to disclose in advertising a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase such products.

PAR. 26. Furthermore, in advertisements for Midol, respondents Sterling Drug Inc. and Thompson-Koch Company represented directly or by implication that the analgesic ingredients in Midol are other than ordinary aspirin and that the stimulant in Midol is other than caffeine.

PAR. 27. In truth and in fact, the analgesic ingredient in Midol is ordinary aspirin, and the stimulant in Midol is caffeine.

PAR. 28. The advertisements referred to in Paragraph Eight above were, and are, misleading in material respects, as alleged in Paragraphs Nine, Thirteen, Fourteen, Nineteen, Twenty-one, Twenty-two, Twenty-three, Twenty-four, Twenty-five, and Twenty-seven and constituted and now constitute false advertisements.

PAR. 29. The making of claims for a product that are inconsistent with contemporaneous claims for other products made by the same firm, as alleged in Paragraph Seventeen above, and the making of representations as alleged in Paragraphs Eleven, Thirteen, Fourteen, and Sixteen, constituted and now constitute unfair or deceptive acts or practices in commerce.

PAR. 30. The use by respondents of the aforesaid deceptive statements, representations, or claims, and the dissemination of the aforesaid false advertisements has had and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements, representations, or claims were and are true and into the purchase of substantial quantities of said drugs of respondent Sterling Drug Inc. by reason of said erroneous and mistaken belief.

PAR. 31. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Sterling Drug Inc. has been and now is in substantial competition in commerce, with corpora-

tions, firms and individuals in the sale of drug products of the general kind and nature as those sold by respondent.

In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Dancer-Fitzgerald-Sample, Inc. has been, and now is in substantial competition in commerce with other advertising agencies.

In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Lois Holland Callaway, Inc. has been, and now is in substantial competition in commerce with other advertising agencies.

PAR. 32. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges the above-named respondents with violation of the Federal Trade Commission Act; and

Respondent Dancer-Fitzgerald-Sample, Inc. ("Dancer") for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent Dancer of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent Dancer 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 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 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Dancer is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 347 Madison Ave., New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject

1

Decision and Order

matter of this proceeding and of respondent Dancer, and the proceeding against respondent Dancer is in the public interest.

ORDER

I

It is ordered, That respondent Dancer-Fitzgerald-Sample, Inc., a corporation, its successors and assigns, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, forthwith cease and desist from:

A. Disseminating, or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act which:

1. Represents directly or by implication, in connection with the advertising, offering for sale, sale or distribution of Bayer Aspirin or any other product consisting of the same active ingredient in approximately equal amount, that Bayer Aspirin or such other product is superior in terms of significant therapeutic effect to any other aspirin unless such representation of superiority is true as applied to each and every brand of aspirin for which a comparison is made or implied.

2. Represents directly or by implication, in connection with the advertising, offering for sale, sale or distribution of Bayer Children's Aspirin, or any other product consisting of the same active ingredient in approximately equal amount, that Bayer Children's Aspirin or such other product is superior in terms of significant therapeutic effect to any other aspirin unless such representation of superiority is true as applied to each and every brand of aspirin for which a comparison is made or implied.

3. Represents directly or by implication, in connection with the advertising, offering for sale, sale or distribution of Cope, or any other product consisting of the same active ingredients in approximately equal amounts, that a recommended dose of Cope or such other product is more effective for the relief of nervous tension headaches than recommended doses of any other non-prescription analgesic.

4. Represents, directly or by implication, in connection with the advertising, offering for sale, sale or distribution of any non-prescription drug product, that any non-prescription drug product has a

unique combination of ingredients when the claimed unique combination is contemporaneously available, regardless of proportion, in other non-prescription drug products unless respondent can establish that it neither knew, nor had reason to know, nor upon reasonable inquiry could have known of such other non-prescription drug product.

5. Fails to disclose that Cope contains aspirin and caffeine.

B. Disseminating or causing the dissemination of any advertisement by any means, which contains statements which are inconsistent with, negate, or contradict any disclosures required by Paragraph A(5) above, or in any way obscure the meaning of such disclosures;

C. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any of the products named in Paragraph A above in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Subparagraphs A(1) through A(4) above; or which fails to disclose the disclosures required in Subparagraph A(5) above;

D. Representing that aspirin alone relieves nervous tension, anxiety or irritability or will improve the user's mood;

E. Representing that a recommended dose of Cope, or any other product consisting of the same active ingredients in approximately equal amounts, relieves nervous tension, anxiety or irritability or will enable persons to cope with the ordinary stresses of everyday life;

F. Making any statement or representation, directly or by implication, concerning any product which is inconsistent with a contemporaneous claim made by respondent for any other product manufactured or distributed by the same advertiser, either directly or through any corporation, subsidiary, division or other device.

G. Representing directly or by implication, in connection with the advertising, offering for sale, sale or distribution of any non-prescription drug product that any claim is proved by one or more tests or studies when such tests do not prove such claims unless respondent can establish that it neither knew nor had reason to know, nor upon reasonable inquiry could have known, that such tests do not prove such claims.

II

It is ordered, That respondent Dancer-Fitzgerald-Sample, Inc., a

corporation, its successors and assigns, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any non-prescription drug product do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication, that a claim concerning the performance, effectiveness, or freedom from side effects of such product has been established, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug products, as to the validity of such claim, unless respondent can establish that it neither knew nor had reason to know, nor upon reasonable inquiry could have known, of the existence of such substantial question;

B. Making any statements or representations, directly or by implication, concerning the performance, effectiveness, or freedom from side effects of such product, unless at the time of such representations, respondents have competent and reliable scientific evidence to support such representations.

III

It is ordered. That respondent Dancer-Fitzgerald-Sample, Inc., a corporation, its successors and assigns, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any non-prescription drug product do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to disclose that the product contains aspirin or caffeine, if such is the case; *provided, however,* that a disclosure of aspirin content shall be unnecessary where the trademark or name contains the term "Aspirin;"

B. Disseminating, or causing the dissemination of, any advertisement by any means, which contains statements which are inconsistent with, negate or contradict any disclosures required by Para-

graph A above, or in any way obscure the meaning of such disclosures;

C. Making any representation, directly or by implication, concerning the performance, effectiveness, or freedom from side effects of such product, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug products, as to the validity of such representation unless respondent can establish that it neither knew nor had reason to know, nor upon reasonable inquiry could have known, of the existence of such substantial question.

IV

Provided, however, that Paragraphs II(A) and III(C) of this Order shall not take effect or be binding unless or until an order provision embodying the "Standard" set forth in Paragraphs II(A) and III(C), or any modification thereof, becomes final with respect to Sterling Drug Inc., co-respondent joined in the complaint issued in Docket 8919. *Provided further,* that should said order against Sterling Drug Inc., contain a standard different or modified in any respect from the "Standard" set forth in said paragraphs, both parties agree to a reopening and modification of these paragraphs for the sole purpose of incorporating said modification into these paragraphs. For the purpose of this Paragraph IV the "Standard" shall mean "when there exists a substantial question recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such non-prescription internal analgesic product".

Provided further, that the defense of "neither knew nor had reason to know, nor upon reasonable inquiry could have known," as set forth in Paragraphs II(A) and III(C) of this Order shall not be revised or modified or otherwise affected, even though the "Standard" finally utilized is different or modified in any respect from the "Standard" set forth in said paragraphs.

Provided further, that should said order against Sterling Drug Inc., with respect to the prohibitions contained in Paragraphs II(A) and III(C) of this Order, prohibit only representations as to the comparative performance, comparative effectiveness and comparative freedom from side effects, both parties agree to a reopening and modification of these paragraphs for the sole purpose of incorporating said modification into these paragraphs.

V

Provided further, that Paragraphs III(A) and III(B) of this Order

shall not take effect or be binding unless or until an order provision requiring the disclosure of aspirin or caffeine content becomes final with respect to Sterling Drug Inc. in Docket 8919.

Provided further, that nothing contained in this Order shall in any way limit respondent's right to move for a reopening of the Order under the Rules of the Commission and request a modification thereof in accordance with the provisions of those Rules.

VI

It is further ordered, That respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That respondent shall, within sixty (60) days and at the end of six (6) months after the effective date of the Order served upon it, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the Order to cease and desist.

Commissioner Pitofsky did not participate.

Complaint

96 F.T.C.

IN THE MATTER OF

BOB RICE FORD, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS
WARRANTY ACTS*Docket C-3026. Complaint, July 1, 1980—Decision, July 1, 1980*

This consent order requires, among other things, a Boise, Idaho seller of new and used motor vehicles and its corporate officer to make the text of written warranties readily available to prospective buyers and prominently display signs advising consumers of such availability. Written warranties must include all statutorily required information, and limited warranties so designated. Respondents are also required to post signs stating that all warranties are not the same and that comparisons should be made prior to purchase. All relief available to purchasers under state laws must be provided; and affected customers, in instances where implied warranties were improperly waived, notified of their implied warranty rights. Further, the order bars respondents from raising any defenses pertaining to a disclaimer of implied warranties in suits brought by motor vehicle purchasers who were issued written limited warranties disclaiming implied warranties. Additionally, respondents are required to instruct their employees as to their statutory obligations, and maintain a surveillance program designed to ensure compliance with the provisions of the order.

*Appearances*For the Commission: *Dennis D. McFeely.*For the respondents: *Paul T. Baird, Boise, Idaho.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (“Warranty Act”), the implementing Rules concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions (“Disclosure Rule”) (16 C.F.R. 701 (1977)) and the Availability of Written Warranty Terms (“Pre-Sale Rule”) (16 C.F.R. 702 (1977)) duly promulgated on December 31, 1975 pursuant to Title I, Section 109 of the Warranty Act (15 U.S.C. 2309), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bob Rice Ford, Inc., a corporation, and Robert L. Rice, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, the Pre-Sale Rule and the

Disclosure Rule, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The present tense as used herein includes the past tense.

PAR. 2. Respondent Bob Rice Ford, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho. Its principal office and place of business is located at 3150 Main St., Boise, Idaho.

Respondent Bob L. Rice is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of Bob Rice Ford, Inc.

PAR. 3. Respondents have been, and are now, engaged in the advertising, offering for sale, and sale of new and used automobiles and trucks to the public.

PAR. 4. In the course and conduct of their business, respondents offer for sale and sell to consumers, consumer products distributed in commerce as "consumer product," "consumer," "distributed in commerce," and "commerce," are defined by Sections 101(1), 101(3), 101(13) and 101(14), respectively, of the Warranty Act. Respondents are, therefore, suppliers as "supplier" is defined by Section 101(4) of the Warranty Act.

COUNT 1

PAR. 5. Alleging violation of the Warranty Act and Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Four are incorporated by reference herein as if fully set forth verbatim.

PAR. 6. Respondents, in the course and conduct of their business, have offered and sold automobiles and other consumer products manufactured after July 4, 1975 costing the consumer in excess of \$15.00, many of which are warranted by the manufacturer. Respondents are therefore sellers as "seller" is defined in Section 702.1(e) of the Pre-Sale Rule.

PAR. 7. In connection with the offering for sale and sale of automobiles and other consumer products manufactured after January 1, 1977, respondents have failed, as required by Section 702.3(a) of the Pre-Sale Rule, to make the text of any written warranty available for prospective buyers' review prior to sale.

PAR. 8. Respondents' failure to comply with the Pre-Sale Rule as

described in Paragraphs Six and Seven of this complaint is a violation of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT 2

PAR. 9. Alleging violation of the Warranty Act and Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Four are incorporated by reference herein as if fully set forth verbatim.

PAR. 10. In the course and conduct of its business, respondents provide to purchasers of used automobiles and trucks manufactured after July 4, 1975 a written limited warranty covering the engine, transmission, rear axle, brake system, and electrical system. Respondents are therefore warrantors as "warrantor" is defined by Section 101(5) of the Warranty Act.

PAR. 11. In connection with the respondents' providing of written warranties, respondents have failed to designate the warranty as a "Limited Warranty" as required by Section 103 of the Warranty Act.

PAR. 12. Respondents' failure to properly designate their warranty is a violation of Section 103 of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT 3

PAR. 13. Alleging violation of the Warranty Act and Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Four and Paragraph Ten are incorporated by reference herein as if fully set forth verbatim.

PAR. 14. In written warranties provided to purchasers of used automobiles and trucks manufactured after January 1, 1977 respondents have failed to clearly and conspicuously disclose in a single document in simple and readily understood language the following statements:

A. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

B. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

Failure to include these statements violates Section 701.3 of the Disclosure Rule.

PAR. 15. Respondents' failure to comply with the Disclosure Rule as described in Paragraph Fourteen of this complaint is a violation of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT 4

PAR. 16. Alleging violation of the Warranty Act and Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Four and Paragraph Ten are incorporated by reference herein as if fully set forth verbatim.

PAR. 17. While providing written warranties to purchasers, of used automobiles and trucks manufactured after July 4, 1975, respondents have, with respect to those same purchasers, disclaimed all implied warranties (including the implied warranties of merchantability and fitness for a particular use) arising under state law and otherwise available to purchasers of respondents' automobiles and trucks.

PAR. 18. Respondents' disclaimer of the implied warranties as described in Paragraph Seventeen of this complaint is a violation of Section 108 of the Warranty Act, and, pursuant to Section 110(b) of the Warranty Act, is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and the Magnuson-Moss Warranty Act.

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 Federal Trade Commission having initiated an investigation of certain acts and practices of Bob Rice Ford, Inc., a corporation, and Robert L. Rice, individually and as an officer of said corporation, and it now appearing that said corporation, and Robert L. Rice, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed, by and between Bob Rice Ford, Inc., by its duly authorized officer, Robert L. Rice, individually and as an officer of said corporation, and counsel for the Federal Trade Commission that:

1. Proposed respondent Bob Rice Ford, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho with its principal office and place of business located at 3150 Main St., Boise, Idaho.

Proposed respondent Robert L. Rice is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not

constitute an admission by respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any rights they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I. Definitions

A. "Warranty Act" means the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C.2301, *et seq.*).

B. The definition of terms contained in Section 101 of the Warranty Act and in Rules 701 and 702 promulgated thereunder (16 C.F.R. 701.1, 702.1) as presently defined and as may be amended hereafter, shall apply to the terms of this order.

C. With respect to new automobiles and trucks, "display area" means a prominent location in the showroom.

II.

It is ordered, That respondent Bob Rice Ford, Inc., a corporation, its successors and assigns, and its officers, and Robert L. Rice, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or indirectly through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, and sale of automobiles or other consumer products:

A. Shall, with respect to written warranties on new cars and other new consumer products, make available to the consumer prior to sale through utilization of a binder system as specified in 16 C.F.R. 702.3(a)(1)(ii), as presently written and as may be amended hereafter, the text of any written warranties offered or provided by respondents or the manufacturers of automobiles and consumer products sold by respondents. In utilizing any such binder or binders respondents shall:

1. provide prospective buyers with ready access thereto; and
2. a. display such binder(s) in a manner reasonably calculated to elicit the prospective buyers' attention; or
b. i. make such binder(s) available to prospective buyers on request; and
ii. place signs reasonably calculated to elicit the prospective buyers' attention in prominent locations within the display area, advising such prospective buyers of the availability of the binder(s), including instructions for obtaining access; and
3. index such binder(s) according to product or warrantor; and
4. clearly entitle such binder(s) as "Warranties" or other similar title.

Provided, however, that with respect to written warranties on new cars, it shall be deemed compliance with this paragraph if respondents display the text of any written warranties offered on new cars in the showroom in a manner reasonably calculated to elicit prospective buyers' attention, employing any means authorized by 16 C.F.R. 702.3(a)(1)(i) or (iv), as presently written and as may be amended hereafter. In such instance, the sign required by Paragraph III(A) shall be amended by inserting, in lieu of Line 3, the phrase "The warranty on new cars is posted in this showroom," and inserting, in lieu of Line 4, the phrase "There is also a warranty binder for parts and accessories."

B. Shall clearly and conspicuously display the text of each written warranty offered by respondents for used motor vehicles on a

window of each warranted vehicle; *provided*, that in the event the Federal Trade Commission issues a final Trade Regulation Rule establishing requirements which make compliance with this paragraph impossible, or which requires disclosure of warranty terms on window forms, then this paragraph will be null and void.

III.

It is further ordered, That respondents:

A. Post, in a prominent location in the showroom, a sign, at least 36 inches wide by 48 inches high and reasonably calculated to elicit prospective buyers' attention, which contains a verbatim reproduction of the following language:

IMPORTANT!

NOT ALL WARRANTIES ARE THE SAME
 Compare warranties before you buy
 There is a warranty binder in this showroom
 If you can't find it, ask for it
 Check for these things:
 Full or Limited:

What costs are covered?
 What do *you* have to do?
 Are all parts covered?
 How long does the warranty last?

B. Post, in a prominent location in the used car sales office lobby, a sign, at least 36 inches wide by 48 inches high and reasonably calculated to elicit prospective buyers' attention, which contains a verbatim reproduction of the following language:

IMPORTANT!

NOT ALL WARRANTIES ARE THE SAME
 Compare warranties before you buy
 Warranties (when given) are on the windows of used cars
 If you don't see it, ask about it
 Check for these things:
 Full or Limited:

What costs are covered?
 What do *you* have to do?
 Are all parts covered?
 How long does the warranty last?

C. The signs required by Paragraphs III.A. and B. shall be posted for a period of not less than three years from the effective date of this order. The language in such signs shall be unencumbered by other written or visual matter, shall be spaced, indented and punctuated

as indicated in Paragraphs III.A. and B. above, and shall be printed in black against a solid white background, as follows:

1. The title of each sign shall be the word "Important" and shall be printed in capital letters in 4-inch boldface type followed by an exclamation mark.
2. The next phrase shall be printed on a separate line in capital letters and in 3-inch medium face type.
3. The next three phrases shall be printed on separate lines and in 3-inch medium face type.
4. Each succeeding phrase shall be printed on a separate line and in 2-inch medium face type.
5. The word "Important!" and each phrase shall be at least one inch from every other phrase.

IV.

It is further ordered, That respondents in connection with the advertising, offering for sale, and sale of automobiles and other consumer products shall clearly and conspicuously designate written warranties offered by said respondents as required by Section 103 of the Warranty Act. If a written warranty is given which does not meet the standards set forth in Section 104 of the Warranty Act:

- A. The warranty shall be titled "Limited Warranty"; and
- B. The title shall be printed in capital letters in 44-point boldface type.

V.

It is further ordered, That respondents in connection with the offering of written warranties on automobiles and other consumer products shall clearly and conspicuously disclose in a single document in simple and readily understood language, the following items of information:

- A. The identity of the party or parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to persons other than every consumer owner during the term of the warranty;
- B. A clear description and identification of products, or parts, or characteristics, or components or properties covered by and, where necessary for clarification, excluded from the warranty;
- C. A statement of what the warrantor will do in the event of a

defect, malfunction or failure to conform with the written warranty, including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;

D. The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;

E. A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations. This includes the name(s) of the warrantor(s), together with: the mailing address(es) of the warrantor(s), and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number which consumers may use without charge to obtain information on warranty performance;

F. Information respecting the availability of any informal dispute settlement mechanism that complies with 16 C.F.R. 703 (1977);

G. Any limitations on the duration of implied warranties, disclosed on the face of the warranty as provided in Section 108 of the Warranty Act, accompanied by the following statement:

Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

H. Any exclusions of or limitations on relief such as incidental or consequential damages, accompanied by the following statement, which may be combined with the statement required in subparagraph G above:

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

I. A statement in the following language:

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

VI.

It is further ordered, That respondents, in connection with the advertising, offering for sale, and sale of automobiles or other consumer products in instances where respondents either provide a written warranty to the consumer with respect to such consumer product, or, at the time of sale or within 90 days thereafter, enter

into a service contract with the consumer which applies to such consumer product, shall:

A. Not disclaim or modify, except as permitted by Section 108(b) of the Warranty Act, any implied warranty with respect to a consumer product;

B. Not limit the duration of any implied warranty with respect to a consumer product unless:

1. any written warranty is clearly and conspicuously designated a "Limited Warranty"; and

2. the limitation is for a period of time at least as long as the duration of any written warranty provided by respondents with respect to the product; and

3. the duration of the written warranty is for a reasonable duration; and

4. the limitation is conscionable, is set forth in clear and unmistakable language, and is prominently displayed on the face of the warranty.

VII.

It is further ordered, That respondents shall:

A. Not raise any defenses pertaining to a disclaimer, limitation or modification of implied warranties in any case, suit or claim brought or made against respondents by consumers who have purchased any of respondents' warranted motor vehicles manufactured after July 4, 1975 and who were issued a written limited warranty disclaiming implied warranties;

B. Provide, in good faith, all consumers with all relief available to them under applicable Idaho state laws, if:

1. said consumers purchased any of respondents' warranted motor vehicles manufactured after July 4, 1975 and were issued a used car owner security plan attempting to disclaim implied warranties; and

2. if said motor vehicles did not comply with all of the implied warranties;

C. Notify all consumers who have purchased any of respondents' warranted motor vehicles manufactured after July 4, 1975 and were issued a used car owner security plan which attempted to disclaim implied warranties, by mailing to each such consumer within 60 days of the effective date of this order at the customer's last residence

address known to respondents, the notice set forth in Appendix A of this order. If the notice is returned undelivered, the return envelope shall be retained and the notice is to be sent to the customer's last employment address known to respondents or to the address of a co-signer, relative or other person through whom the customer may be reached.

VIII.

It is further ordered, That:

A. Respondents deliver a copy of this order to cease and desist to all present and future employees, salespersons, agents, independent contractors, and other representatives of respondents engaged in the sale of automobiles or consumer products on behalf of respondents, and secure a signed statement acknowledging receipt of the order from each such person.

B. Respondents instruct all present and future employees, salespersons, agents, independent contractors, and other representatives of respondents, engaged in the sale of automobiles or other consumer products on behalf of respondents, as to their specific obligations and duties under the Warranty Act, all present and future implementing Rules promulgated under the Act and this order including but not limited to:

1. instructions as to the availability and location of warranty information;
2. instructions as to the nature of and differences among full warranties, limited warranties, and service contracts.

C. Respondents institute a program of continuing surveillance to reveal whether respondents and respondents' employees, salespersons, agents, independent contractors, or other representatives are in compliance with this order.

D. Respondents maintain complete records for a period of not less than three (3) years from the date of the incident, of any written or oral information received which indicates the possibility of a violation of this order by any of respondents' employees, salespersons, agents, independent contractors, or other representatives. Any oral information received indicating the possibility of a violation of the order shall be reduced to writing, and shall include the name, address and telephone number of the informant, the name and address of the individual involved, the date of the communication and a brief summary of the information received. Such records shall

