

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky
Mary L. Azcuenaga
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle

In the matter of)
)
)
)
BRAKE GUARD PRODUCTS, INC.,) Docket No. 9277
a corporation, and)
)
ED F. JONES,)
individually and as an)
officer and director of)
said corporation.)
)

FINAL ORDER

DEFINITIONS

For the purposes of this Order:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results; and

2. "Purchasers for resale" shall mean all purchasers of the Brake Guard Safety System, Advanced Braking System, or Brake Guard ABS for resale to the public, including but not limited to franchisees, wholesalers, distributors, retailers, installers, and jobbers.

I.

IT IS ORDERED that respondents, Brake Guard Products Inc., a corporation, its successors and assigns, and its officers, and Ed F. Jones, individually and as an officer and director of said

corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the Brake Guard Safety System, Advanced Braking System, or Brake Guard ABS or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the initials or term ABS in conjunction with or as part of the name for such product or the product logo.

II.

IT IS FURTHER ORDERED that respondents, Brake Guard Products, Inc., a corporation, its successors and assigns, and its officers, and Ed F. Jones, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the Brake Guard Safety System, Advanced Braking System, or Brake Guard ABS or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product:

- A. Is an antilock braking system;
- B. Prevents or substantially reduces wheel lock-up, skidding, or loss of steering control in emergency stopping situations;
- C. Will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;
- D. Complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;
- E. Complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;
- F. Reduces stopping distances by 20 to 30% or by up to 30%;
- G. Provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; or

- H. Will stop a vehicle in a shorter distance than a vehicle that is not equipped with the product, in emergency stopping situations.

III.

IT IS FURTHER ORDERED that respondents Brake Guard Products, Inc., a corporation, its successors and assigns, and its officers, and Ed F. Jones, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, or any other system, accessory, or device designed to be used in, on, or in conjunction with any motor vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that installation of the system, accessory, or device will make operation of a vehicle safer than a vehicle that is not equipped with the system, accessory or device, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

IT IS FURTHER ORDERED that respondents Brake Guard Products, Inc., a corporation, its successors and assigns, and its officers, and Ed F. Jones, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, or any other system, accessory, or device designed to be used in, on, or in conjunction with any motor vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication:

- A. That any such product complies with any standard, definition, regulation, or any other provision of any governmental entity or unit, or of any other organization, or the extent of such compliance;
- B. That insurance benefits or discounts arising from the use of such product are available or the extent of such availability; or

C. That any endorsement (as "endorsement" is defined in 16 C.F.R. § 255.0(b)) of such a product represents the typical or ordinary experience of members of the public who use the product, unless:

(1) such representation is true; or

(2) respondent discloses clearly, prominently, and in close proximity to the endorsement or testimonial the generally expected results for users of such product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve and the possibility that consumers may not experience similar results.

V.

IT IS FURTHER ORDERED that respondents Brake Guard Products, Inc., a corporation, its successors and assigns, and its officers, and Ed F. Jones, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, or any other system, accessory, or device designed to be used in, on, or in conjunction with any motor vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the absolute or comparative attributes, efficacy, performance, safety, or benefits of such system, accessory, or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate shall be competent and reliable scientific evidence, that substantiates the representation.

VI.

IT IS FURTHER ORDERED that respondents Brake Guard Products, Inc., a corporation, its successors and assigns, and Ed F. Jones shall:

A. Within forty-five (45) days after the date of service of this Order, compile a current mailing list containing the names and last known addresses of all purchasers of the Brake Guard Safety System, Advanced Braking System, or Brake Guard ABS since January 1, 1990. Respondents shall compile the list by:

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

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

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

- B. Within sixty (60) days after the date of service of this Order, send by first class mail, postage prepaid, to the last address known to respondents of each purchaser of the Brake Guard Safety System, Advanced Braking System, or Brake Guard ABS identified on the mailing list compiled pursuant to subparagraph A of this Part, an exact copy of the notice attached hereto as Appendix B. The mailing shall not include any other documents. The envelope enclosing the notice shall have printed thereon in a prominent fashion the phrases "FORWARDING AND RETURN POSTAGE GUARANTEED" and "IMPORTANT NOTICE--U.S. GOVERNMENT ORDER ABOUT BRAKE GUARD or ADVANCED BRAKING SYSTEM DEVICE."
- C. Send the mailing described in subparagraph B of this Part to any person or organization not on the mailing list prescribed in subparagraph A of this Part about whom respondents later receive information indicating that the person or organization is likely to have been a purchaser of the Brake Guard Safety System, Advanced Braking System, or Brake Guard ABS, and to any purchaser whose notification letter is returned by the U.S. Postal Service as undeliverable and for whom respondents thereafter obtain a corrected address. The mailing required by this subpart shall be made within ten (10) days of respondents' receipt of a corrected address or information identifying each such purchaser.

- D. In the event respondents receive any information that, subsequent to its receipt of Appendix A, any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this Order, immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisement or promotional material.
- E. Terminate within ten (10) days the use of any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use any advertisement or promotional material that contains any representation prohibited by this Order after receipt of the notice required by subparagraph A of this Part.

VII.

IT IS FURTHER ORDERED that respondents Brake Guard Products, Inc., a corporation, and Ed F. Jones shall for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

- A. The list compiled pursuant to subparagraph A of Part VI of this Order;
- B. Copies of notification letters sent to purchasers pursuant to subparagraphs B and C of Part VI of this Order; and
- C. Copies of notification letters sent to purchasers for resale pursuant to subparagraphs A and D of Part VI of this Order, and all other communications with purchasers for resale relating to the notices required by Part VI of this Order.

VIII.

IT IS FURTHER ORDERED that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors or assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

- A. All materials that were relied upon in disseminating such representation; and
- B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that

contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

IX.

IT IS FURTHER ORDERED that respondent Brake Guard Products, Inc., its successors and assigns, shall:

- A. Within thirty (30) days after the date of service of this Order, provide a copy of this Order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and
- B. For a period of ten (10) years from the date of service of this Order, provide a copy of this Order to each of respondent's future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order, within three (3) days after the person assumes his or her position.

X.

IT IS FURTHER ORDERED that respondent Brake Guard Products, Inc., its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

XI.

IT IS FURTHER ORDERED that respondent Ed F. Jones shall, for a period of ten (10) years from the date of entry of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XII.

IT IS FURTHER ORDERED that this Order will terminate on January 15, 2018, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; **provided, however**, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this Order that terminates in less than twenty years;
- B. The application of this Order to any respondent that is not named as a defendant in such complaint; and
- C. Any provision of this Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed, or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XIII.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

By the Commission, Commissioner Thompson and Commissioner Swindle not participating.

Donald S. Clark
Secretary

SEAL:
ISSUED: January 15, 1998
ATTACHMENT: Opinion of the Commission

APPENDIX A

[Brake Guard Products, Inc. letterhead]

Dear Brake Guard Reseller:

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

The FTC's Decision and Order

The Federal Trade Commission has determined that the following claims made for the Brake Guard device in Brake Guard Products, Inc.'s advertisements, logos and promotional material are **FALSE** and **MISLEADING**:

- (a) The Brake Guard is an antilock braking system;
- (b) The Brake Guard prevents or substantially reduces wheel lock-up, skidding, or loss of steering control in emergency stopping situations;
- (c) The Brake Guard will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;
- (d) The Brake Guard complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;
- (e) The Brake Guard complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;
- (f) The Brake Guard reduces stopping distances by 20 to 30% or by up to 30%;
- (g) The Brake Guard provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

- (h) The Brake Guard will stop a vehicle in a shorter distance than a vehicle that is not equipped with the product, in emergency stopping situations.

The FTC Order requires Brake Guard Products, Inc. to cease and desist from making these false claims for the Brake Guard device.

In addition, the FTC Order requires Brake Guard Products, Inc. to cease and desist from making claims that the Brake Guard will make a vehicle safer, unless at the time of making such representation it possesses competent and reliable scientific evidence substantiating the representation.

We need your assistance in complying with this Order.

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

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

If you have any questions, you may call Deborah Kelly of the Federal Trade Commission at (202) 326-3004. Thank you for your cooperation.

Very truly yours,

Ed F. Jones
President
Brake Guard Products, Inc.

APPENDIX B

[Brake Guard Products, Inc. letterhead]

Dear Brake Guard customer:

Our records indicate that you previously purchased a Brake Guard Safety System, Advanced Braking System, or Brake Guard ABS (hereinafter "Brake Guard"), a brake product. This letter is to advise you that the Federal Trade Commission ("FTC") recently obtained an Order against Brake Guard Products, Inc. regarding certain claims made for the Brake Guard device. Please read this letter in its entirety.

The FTC's Decision and Order

The Federal Trade Commission has determined that the following claims made for the Brake Guard device in Brake Guard Products, Inc.'s advertisements, logos and promotional material are **FALSE** and **MISLEADING**:

- (a) The Brake Guard is an antilock braking system;
- (b)

The FTC Order requires Brake Guard Products, Inc. to cease and desist from making these false claims for the Brake Guard device.

In addition, the FTC Order requires Brake Guard Products, Inc. to cease and desist from making claims that the Brake Guard will make a vehicle safer, unless at the time of making such representation it possesses competent and reliable scientific evidence substantiating the representation.

If you have any questions, you may call Deborah Kelly of the Federal Trade Commission at (202) 326-3004. Thank you for your cooperation.

Very truly yours,

Ed F. Jones
President
Brake Guard Products, Inc.