

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff, the United States of America, acting upon notification and authorization to the
2 Attorney General by the Federal Trade Commission ("Commission"), for its complaint alleges that:

3 1. Plaintiff brings this action under Sections 5(a), 5(l), 13(b) and 16(a) of the Federal
4 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(l), 53(b) and 56(a), to obtain monetary
5 civil penalties, injunctive and other equitable relief, including rescission, restitution and disgorgement,
6 from defendants for violations of a final order to cease and desist issued by the Commission, and for
7 defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15
8 U.S.C. § 45(a).

9 JURISDICTION AND VENUE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 of Washington.

2 8. Defendant Lawrence H. Jones (“Larry Jones”), also doing business as Lawrence
3 Enterprises and/or Lawrence Marketing, is Ed Jones’s son, and the main distributor for the corporate

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28 Plaintiff’s Complaint
page 3

1 as "commerce" is defined in the Federal Trade Commission Act, that such product prevents or

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16. The Commission's order defines "competent and reliable scientific evidence" as 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.

17. Part IV.C. of the Commission's order prohibits the defendants from misrepresenting in

1 19. At all times mentioned herein, defendants have been engaged in the manufacturing,
2 labeling, advertising, promotion, offering for sale, sale, or distribution of Brake Guard in or affecting
3 commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. The corporate
4 defendants are engaged in the manufacturing, advertising, marketing and sale of Brake Guard. The
5 corporate defendants promote and market Brake Guard mainly to the recreational vehicle ("RV")
6 market through a network of distributors. Ed Jones is the owner and manager of the corporate
7 defendants. Larry Jones travels throughout the United States selling Brake Guard, as well as
8 distributorships for the corporate defendants, and is the corporate defendants' main recruiter of
9 distributors. BGN and BGW (as BGPI's successor entities) and Larry Jones (as the corporate
10 defendants' agent and representative) are, and were at all times relevant herein, bound by the
11 applicable injunctive provisions in the Commission's order, which apply to ". . . respondents, Brake
12 Guard Products Inc., a corporation, its successors and assigns, and its officers, and Ed F. Jones,
13 individually and as an officer and director of said corporation, and respondents' agents,
14 representatives, and employees"

15 20. Brake Guard is a braking system, accessory, or device, designed to be used in, on, or
16 in conjunction with a motor vehicle, and in or affecting commerce, as "commerce" is defined in the
17 Federal Trade Commission Act.

18 21. Since March 30, 1998, defendants have conducted live seminars and disseminated or
19 caused the dissemination of advertisements and promotional materials (such as packaging, brochures,
20 flyers, promotional videos and an Internet Web site) to promote Brake Guard.

21 DEFENDANTS' VIOLATIONS OF THE COMMISSION'S ORDER
22 FIRST CAUSE OF ACTION

23 22. Through the use of statements contained in the advertisements and promotional
24 materials referred to in paragraph 21, defendants have represented, directly or by implication, in
25 connection with the advertising, promotion, offering for sale, sale, or distribution of Brake Guard that
26 Brake Guard prevents or substantially reduces wheel lock-up, skidding, or loss of steering control in
27

1 emergency stopping situations, thereby violating Part II.B. of the Commission's order.

2 SECOND CAUSE OF ACTION

3 23. Through the use of statements contained in the advertisements and promotional
4 materials referred to in paragraph 21, defendants have represented, directly or by implication, in
5 connection with the advertising, promotion, offering for sale, sale, or distribution of Brake Guard,
6 that Brake Guard provides antilock braking system benefits, including wheel lock-up control benefits,
7 that are at least equivalent to those provided by original equipment manufacturer electronic antilock
8 braking systems, thereby violating Part II.G. of the Commission's order.

9 THIRD CAUSE OF ACTION

10 24. Through the use of statements contained in the advertisements and promotional
11 materials referred to in paragraph 21, defendants have represented, directly or by implication, in
12 connection with the advertising, promotion, offering for sale, sale, or distribution of Brake Guard,
13 that Brake Guard will stop a vehicle in a shorter distance than a vehicle that is not equipped with the
14 product, in emergency stopping situations, thereby violating Part II.H. of the Commission's order.

15 FOURTH CAUSE OF ACTION

16 25. Through the use of statements contained in the advertisements and promotional
17 materials referred to in paragraph 21, defendants have represented, directly or by implication, in
18 connection with the advertising, promotion, offering for sale, sale, or distribution of Brake Guard,
19 that installation of Brake Guard will make operation of a vehicle safer than a vehicle that is not
20 equipped with Brake Guard, without the defendants possessing and relying upon competent and
21 reliable scientific evidence that substantiates that representation, thereby violating Part III. of the
22 Commission's order.

23 FIFTH CAUSE OF ACTION

24 26. Through the use of statements contained in the advertisements and promotional
25 materials referred to in paragraph 21, defendants have misrepresented in connection with the
26 advertising, promotion, offering for sale, sale, or distribution of Brake Guard, that testimonials in
27

1 support of Brake Guard repreuofof

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28 Plaintiff's Complaint
page 8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

equipment manufacturer electronic antilock braking systems; and

- (e) Testimonials from consumers appearing in the advertisements and promotional materials for Brake Guard reflect the typical or ordinary experience of members of the public who have used the product.

30. In truth and in fact:

- (a) Brake Guard is not an antilock braking system;
- (b) Brake Guard does not prevent or substantially reduce wheel lock-up, skidding, and loss of steering control in emergency stopping situations;
- (c)

1 32. Through the use of statements contained in the advertisements and promotional
2 materials referred to in paragraph 21, defendants have represented, expressly or by implication, that
3 they possessed and relied upon a reasonable basis that substantiated the representations set forth in
4 Paragraph 31, at the time the representations were made.

5 33. In truth and in fact, defendants did not possess and rely upon a reasonable basis that
6 substantiated the representations set forth in Paragraph 31, at the time the representations were made.
7 Therefore, the representation set forth in Paragraph 32 was, and is, false or misleading and constitutes
8 an unfair or deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9 **CONSUMER INJURY**

10 34. Consumers have suffered substantial monetary loss as a result of defendants' unlawful
11 acts or practices. Absent injunctive relief by this Court, defendants are likely to continue to injure
12 consumers and harm the public interest.

13 **CIVIL PENALTIES AND EQUITABLE RELIEF**

14 35. Each dissemination of a representation in violation of Parts II.B., II.G., II.H., III.,
15 IV.C., and V. of the Commission's order, as set forth in Paragraphs 22 through 27 above, constitutes
16 a separate violation of the Commission's order for which plaintiff seeks monetary civil penalties.

17 36. Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), and Section 4 of the Federal Civil
18 Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize the Court to
19 award monetary civil penalties of not more than \$11,000 for each such violation of the Commission's
20 order.

21 37. Under Sections 5(l) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(l) and 53(b), this
22 Court is authorized to grant injunctive and other ancillary relief, including consumer redress,
23 disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced
24 by the Federal Trade Commission.

25 38. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief
26 to remedy the injury caused by the defendants' violations of the law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(l), 49 and 53(b), and pursuant to the Court's own equitable powers to:

(1) Preliminarily enjoin defendants from violating the Commission's order issued in FTC Docket No. 9277 and from engaging in, or assisting others engaged in, violations of Section 5 of the FTC Act;

(2) Enter judgment against defendants and in favor of plaintiff for each violation alleged in this Complaint;

(3) Award plaintiff monetary civil penalties from defendants for each violation of the Commission's order alleged in this Complaint;

(4) Permanently enjoin defendants from violating the Commission's order issued in FTC Docket No. 9277;

(5) Permanently enjoin the defendants from engaging in, or assisting others engaged in, violations of Section 5 of the FTC Act;

(6) Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the Commission's order and the FTC Act, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies;

(7)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Of Counsel:
ELAINE D. KOLISH
Associate Director
for Enforcement
Federal Trade Commission

JAMES REILLY DOLAN
Assistant Director
for Enforcement
Federal Trade Commission

Respectfully submitted,

FRANCIS J. DISKIN
United States Attorney

Brian Kipnis
Assistant U. S. Attorney
601 Union Street, Suite 5100
Seattle, Washington 98101-3903
Telephone: (206) 553-7970

Allan Gordus
U.S. Department of Justice
Office of Consumer Litigation
P.O. Box 386
Washington, D.C. 20044
Phone: (202) 307-1862
Fax: (202) 514-8742