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United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
DYNAMIC WHEELS & TIRES, INC.,)	
a corporation, and)	
)	COMPLAINT FOR CIVIL
GARY JERJERIAN,)	PENALTIES, INJUNCTIVE
individually,)	AND OTHER RELIEF
)	
Defendants.)	
)	

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

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a) and 57b, to obtain monetary civil penalties, redress, and injunctive and other relief for defendants' violations of the Commission's Trade Regulation Rule Concerning the Sale of Mail or Telephone Order

1 Merchandise (the "Rule"), 16 C.F.R. Part 435, and injunctive relief
2 for violations of Section 5(a)(1) of the FTC Act, 15 U.S.C. §
3 45(a)(1).
4

5 **JURISDICTION AND VENUE**

6 2. This Court has jurisdiction over this matter under 28
7 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§
8 45(m)(1)(A), 53(b), 56(a) and 57b. This action arises under 15
9 U.S.C. § 45(a)(1).

10 3. Venue in the Central District of California is proper
11 under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

12 **DEFENDANTS**

13 4. Defendant Dynamic Wheels & Tires, Inc., is a California
14 corporation with its principal place of business located within the
15 Central District of California at 4315 Maine Avenue, Baldwin Park, CA
16 91706. Defendant was incorporated in 1994 and has transacted
17 business continuously in the Central District of California since
18 then.

19 5. Defendant Gary Jerjerian is the President of Dynamic
20 Wheels & Tires, Inc., and is responsible for its day-to-day
21 operations. He has formulated, directed, or controlled the acts or
22 practices of Dynamic Wheels & Tires, Inc., or he has had the
23 authority to formulate, direct or control its acts or practices,
24 including the various acts and practices set forth herein. His
25 business address is the same as that of the corporate defendant. In
26 connection with the matters alleged herein, Gary Jerjerian transacts
27 business in the Central District of California.

DEFENDANTS' COURSE OF CONDUCT

6. Since 1994 defendants have offered for sale and sold, by

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1 merchandise, defendants will refund the amount tendered by the buyer
2 minus a 20% cancellation or "restocking" fee.

3
4 12. When buyers refuse to accept materially different
5 merchandise, defendants refund the amount tendered by buyers less a
6 20% cancellation or "restocking" fee. Often defendants do not send
7 these discounted refunds to buyers for months.

8
9 13. In other instances, after accepting the buyer's payment
10 for the merchandise as part of the properly completed order,
11 defendants notify the buyer that the price was understated and that,
12 unless the buyer agrees to pay the difference between the quoted
13 price and the corrected price, the merchandise will not be shipped
14 and defendants will refund the buyer's payment minus a 20%
15 cancellation or "restocking" fee.

16
17 14. When buyers refuse to pay more and cancel their orders,
18 defendants refund the amounts they paid minus a 20% cancellation or
19 "restocking" fee. Often defendants delay sending these discounted
20 refunds to buyers for months.

21 **THE RULE**

22 15. The Rule was promulgated by the Commission on October 22,
23 1975, under the FTC Act, 15 U.S.C. § 41 *et seq.* and became effective
24 February 2, 1976. On September 21, 1993, the Rule was amended under
25 Section 18 of the FTC Act, 15 U.S.C. § 57a, and the amendments took
26 effect on March 1, 1994. The Rule applies to orders placed by mail,
27 telephone, facsimile transmission or on the Internet.

28 **VIOLATIONS OF THE RULE**

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2 16. At all times material hereto, defendants have engaged in
3 the sale of merchandise ordered by mail or telephone ("the
4 merchandise"), in commerce, as "commerce" is defined in Section 4 of
5 the FTC Act, 15 U.S.C. § 44.

6 17. In numerous instances, defendants have violated Section
7 435.1(a) of the Rule by soliciting orders for the merchandise when
8 they had no reasonable basis to expect that they would be able to
9 ship the merchandise within the time stated in their solicitations.

10 18. In numerous instances, after having solicited orders for
11 the merchandise and received "properly completed orders," as that
12 term is defined in Section 435.2(d) of the Rule, and having been
13 unable to ship the merchandise to the buyer within the Rule's
14 applicable time, as set forth in Section 435.1(a)(1) of the Rule (the
15 "applicable time"), defendants:

- 16 a. Violated Section 435.1(b)(1) of the Rule by failing,
17 within the applicable time, to offer to the buyer, clearly
18 and conspicuously and without prior demand, an option
19 either to consent to a delay in shipping or to cancel the
20 order and receive a prompt refund;
- 21 b. Having failed within the applicable time to ship or to
22 offer the buyer the option to either consent to a delay in
23 shipping or to cancel the buyer's order and receive a
24 prompt refund, violated Section 435.1(c)(5) of the Rule by
25 failing to deem the order canceled and to make a prompt
26 refund to the buyer, as "prompt refund" is defined in
27 section 435.2(f) of the Rule;

1 Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d),
2 authorizes this Court to award monetary civil penalties of not more
3 than \$11,000 for each such violation of the Rule.

4 23. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes the
5 court to award such relief as is necessary to redress the injury to
6 consumers or others resulting from defendants' violation of the Rule.

7 24. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
8 this Court is authorized to issue a permanent injunction against
9 defendant's violating the FTC Act and provide such other equitable
10 relief as is necessary to redress injury to consumers or others
11 resulting from defendants' violations of the FTC Act.

12 **PRAYER**

13 WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C.
14 §§ 45(a)(1), 45(m)(1)(A), 53(b) and 57b, and the Court's own
15 equitable powers to:

- 16 (a) Enter judgment against defendants and in favor of
17 plaintiff for each violation alleged in this Complaint;
18 (b) Award plaintiff monetary civil penalties from defendants
19 for each violation of the Rule;
20 (c) Permanently enjoin defendants from violating the Rule;
21 (d) Award such equitable relief as the Court finds necessary
22 to redress injury to consumers resulting from defendants'
23 violations of the FTC Act, including but not limited to
24 rescission of contracts, immediate refund of all monies
25 paid, and disgorgement of ill-gotten gains; and
26

1 (e) Award plaintiff such additional relief as the Court may
2 deem just and proper.

3 OF COUNSEL:

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6 for Enforcement

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