



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

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

**DEFENDANTS**

4. Defendant Deer Creek Products, Inc. is a Florida corporation with its office and principal place of business located within the Southern District of Florida at 3038 N.W. 25<sup>th</sup> Avenue, Pompano Beach, Florida 33069. Defendant Deer Creek Products, Inc. transacts business in the Southern District of Florida.

5. Defendant Golden Age Products, Inc. is a Florida corporation with its office and principal place of business located within the Southern District of Florida at 3038 N.W. 25<sup>th</sup> Avenue, Pompano Beach, Florida 33069. Defendant Golden Age Products, Inc. transacts

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## **DEFENDANTS' COURSE OF CONDUCT**

7. From January 2000 through December 2001, defendants offered for sale and sold by mail and telephone consumer goods, including the Bio Ear Electronic Sound Amplifying Device, the Ink Jet Refill Kit, a Flag Case, the Big Mouth Billy Bass, and the Indoor TV Antenna to consumers throughout the United States. Defendants solicited these sales through their catalog and space ads in print media.

8. During 2000 and 2001 defendants made no express shipment representation in their advertisements. The Rule accordingly requires defendants to have a reasonable basis to expect that they will be able to ship within 30 days of receiving consumers' properly completed orders.

9. In numerous instances during 2000 and 2001, defendants failed to ship

by mail, telephone, facsimile transmission, or the Internet.

### **VIOLATIONS OF THE RULE**

11. At all times material hereto, defendants have engaged in the sale of merchandise ordered by mail and telephone, in commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

12. In numerous instances, after having solicited mail and telephone orders for merchandise and received “properly completed orders,” as that term is defined in Section 435.2(d) of the Rule, 16 C.F.R. § 435.2(d), and having been unable to ship some or all of the ordered merchandise to the buyer within the Rule's applicable time, as set out in Section 435.1(a)(1) of the Rule, 16 C.F.R. § 435.1(a)(1) (“applicable time”), defendants have:

- a. Violated Section 435.1(a)(1) of the Rule by soliciting orders for the sale of telephone or mail order merchandise when they had no reasonable basis to expect that they would be able to ship some or all of such merchandise within thirty (30) days after receipt of a properly completed order;
- b. Violated Section 435.1(b)(1) of the Rule by failing to timely offer to the buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund;
- c. Violated Section 435.1(b)(1) of the Rule by failing to provide to the buyer a definite revised shipping date;
- d. Violated Section 435.1(b)(2) of the Rule by failing to offer to the buyer a renewed option either to consent to a delay in shipping or to cancel the order and receive a prompt refund;

Complaint

Complaint, in which defendants have violated the Rule in one or more of the ways described above constitutes a separate violation for which plaintiff seeks monetary civil penalties.

17. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Rule.

18. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against defendants' violating the FTC Act.

### **PRAYER**

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

- (1) Enter judgment against defendants and in favor of plaintiff for each violation alleged in this Complaint;
- (2) Award plaintiff monetary civil penalties from defendants for each violation of the Rule;
- (3) Enjoin defendants from violating the Rule; and
- (4) Award plaintiff such additional relief as the Court may deem just and proper.

DATED:

THE UNITED STATES OF AMERICA:

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