

Complaint

118 F.T.C.

IN THE MATTER OF

NORTH AMERICAN PLASTICS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3526. Complaint, Sept. 7, 1994--Decision, Sept. 7, 1994*

This consent order prohibits, among other things, an Illinois corporation and its officer from making unsubstantiated degradability or environmental benefit representations about their plastic bags in the future.

*Appearances*

For the Commission: *Brinley H. Williams, Phillip Broyles and Christian White.*

For the respondents: *Jeannie Lamar, Peterson & Ross, Chicago, IL.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that North American Plastics Corporation, a corporation, and Harold V. Engh, Jr., individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent North American Plastics Corporation is a Delaware corporation with its office and principal place of business at 921 Industrial Drive, Aurora, Illinois.

Respondent Harold V. Engh, Jr., is an officer of said corporation. In his capacity as an officer, he formulates, directs and controls the acts and practices of said corporation, and his business address is the same as that of the corporation.

PAR. 2. Respondents have advertised, offered for sale, sold and distributed plastic trash bags to the public under such trade names as "EnviroGard."

PAR. 3. The acts or practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for EnviroGard bags, including, but not necessarily limited to, the package label attached hereto as Exhibit A and the promotional materials attached hereto as Exhibits B and C.

The package labeling and promotional materials for EnviroGard plastic bags, attached hereto as Exhibits A, B and C, include one or all of the following statements on the package:

- BIODEGRADABLE [Exhibits A, B and C]
- Other degradable-type trash bags don't break down in landfills because they depend on harsh chemical additives that work only in sunlight. [Exhibit A]
- Works when other degradables don't! [Exhibit B]
- Naturally Biodegradable [Exhibit B]
- SAFE & NATURAL: EnviroGard Biodegradable trash bags are formulated with cornstarch. They degrade naturally upon contact with soil micro-organisms. Unlike our so called "Degradable" competition, EnviroGard degrades without sunlight. [Exhibit C]

PAR. 5. Through the statements referred to in paragraph four, and others in package labeling not specifically set forth herein, respondents have represented, directly or by implication, that:

(1) Compared to other plastic bags, EnviroGard bags offer a significant environmental benefit when consumers dispose of them as trash that is buried in a landfill; and

(2) EnviroGard bags will completely break down, decompose and return to nature in a reasonably short period of time after consumers dispose of them as trash that is buried in a landfill.

PAR. 6. Through the statements and representations referred to in paragraphs four and five, and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time they made such representations, respondents possessed and relied upon a reasonable basis for such representations.

PAR. 7. In truth and in fact, at the time respondents made such representations, respondents did not possess and rely upon a reason-

able basis for such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint  
EXHIBIT A

EXHIBIT A

**ENVIROGUARD**

**BIODEGRADABLE**

**Trash & Lawn Bags**

By adding a little compost to the plastic EnviroGuard trash bags something exciting New Biodegradable EnviroGuard trash bags breakdown anywhere they come into contact with the soil. Other degradable-type occurring soil microorganisms. This compost helps the microorganisms decompose the plastic because they use the trash bags don't breakdown in landfills in sunlight. Biodegradable harsh chemical additives that work only in sunlight. Biodegradable trash bag that works the natural way. EnviroGuard Mother Nature will thank you. Do not leave these bags in areas accessible to small children.

**CAUTION! Danger of Suffocation.**

Complaint

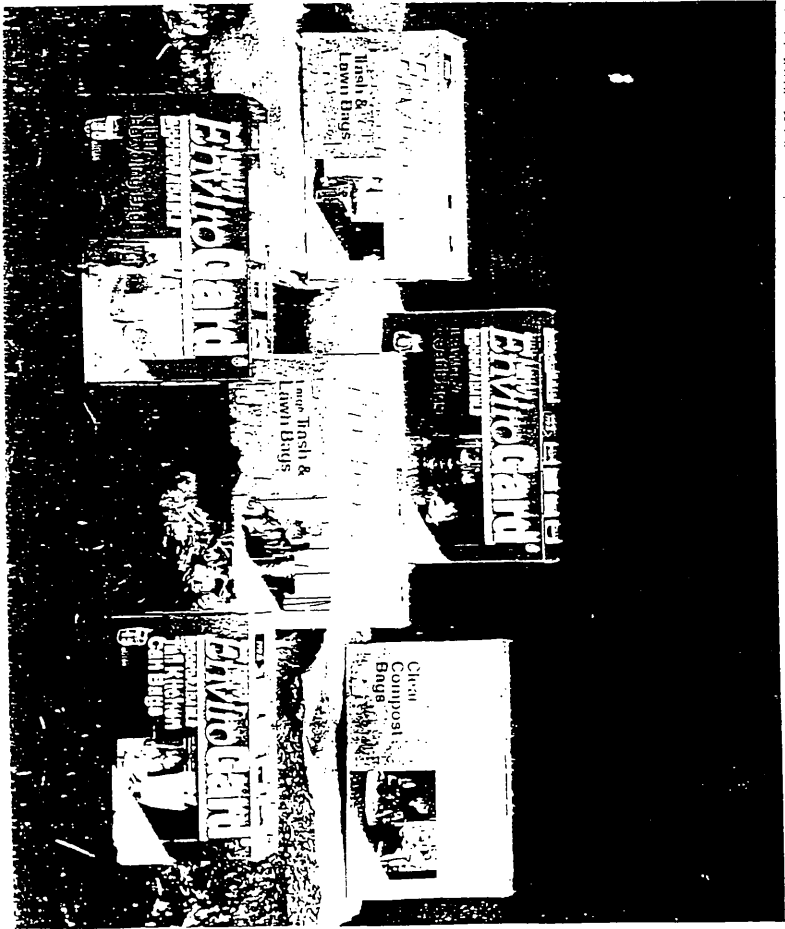
118 F.T.C.

EXHIBIT B

**GOOD BUSINESS For You & The Environment**

- The reason that consumers choose EnviroGard will support products that help the environment (Aldi) they will pay more for them.
- Naturally Biodegradable.
- Requires no sunlight to degrade.
- Formulated with green, plant based, polypropylene.
- 100% Recycled content.

**EnviroGard**® **BIODEGRADABLE** Trash Bags



# ENVIROGARD™

**NATURALLY PROFITABLE!**  
and good for the environment too.

- **SAFE & NATURAL:** EnviroGard Biodegradable trash bags are formulated with cornstarch. They degrade naturally upon contact with soil micro-organisms. Unlike our so called "Degradable" competition, EnviroGard degrades without sunlight.
- **SUPPORTS RECYCLING:** EnviroGard products and packaging contain recycled materials and are themselves recyclable.
- **USES LESS PLASTIC:** EnviroGard contains cornstarch, so less plastic is used in its manufacture.
- **OUTSTANDING VALUE:** EnviroGard Biodegradable trash bags are profit makers, costing the same or less than several leading brands that are only degradable — **Not BIODEGRADABLE.**

# BIODEGRADABLE Trash Bags

Complaint

EXHIBIT C

Stock #	Description	Pack. Case	Pack. Size	Ship Weight
72413	Full Recycled Bag 13 gallon - 24" x 30"	12	24	16.0
72013	Full Recycled Bags 13 gallon - 24" x 30"	1	20	3.7
71530	Black & Green Bags 30 gallon - 30" x 36"	12	15	17.0
74030	Black & Green Bags 30 gallon - 30" x 36"	1	40	3.47
71031	Large Black & Green Bags 33 gallon - 33" x 40"	12	10	17.1
73033	Large Black & Green Bags 33 gallon - 33" x 40"	1	30	3.17
70839	Green & Red Bags 6 Recycled - 33" x 44"	12	8	15.4
72439	Green & Red Bags 6 Recycled - 33" x 44"	1	24	3.11
70833	Compost Bags 33 gallon - 33" x 40"	12	8	16.5
71530	Clear Recycling Bags 30 gallon - 30" x 36"	12	15	17.0

This recycled material is used in 1 pound hard biodegradable trash bags. 012440 P.C.T. has been formulated exclusively for North American Plastics Corp. by Archer Daniels Midland Co.

**NORTH AMERICAN PLASTICS CORP.**

921 Industrial Drive  
Aurora, IL 60506  
Phone: 708/896 6200  
Outside Illinois: 800/323 5864  
Fax: 708/896 5127

## 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 Cleveland 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 respondents, their attorney, 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent North American Plastics Corporation is a Delaware corporation with its office and principal place of business at 921 Industrial Drive, Aurora, Illinois.

Respondent Harold V. Engh, Jr., is an officer of said corporation. In his capacity as an officer, he formulates, directs and controls the acts and practices of said corporation, and his business address is the same as that of the corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## ORDER

## DEFINITION

For purposes of this order, the following definition shall apply:

“*Plastic bag*” means any plastic grocery sack, or any plastic “disposer” bag, including, but not limited to, trash bags, lawn bags and kitchen bags, that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under the “North American Plastics” or “EnviroGard” brand name, or any other brand name of respondents, their successors and assigns; and also means any plastic bag sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

## I.

*It is ordered*, That respondent North American Plastics Corporation, a corporation, its successors and assigns, and its officers, and Harold V. Engh, Jr., individually and as an officer of said corporation, and respondents’ representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any plastic bag, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions or symbols:

(A) That any such plastic bag is “degradable,” “biodegradable,” or “photodegradable,” or

(B) Through the use of “degradable,” “biodegradable,” or “photodegradable,” or any other substantially similar term or expression, that the degradability of any such plastic bag offers any environmental benefit when consumers dispose of them as trash that is buried in a sanitary landfill or incinerated,

unless at the time of making such representation, respondents possess and rely upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substantiates such



representation. For purposes of this order, competent and reliable scientific evidence shall mean tests, analyses, research, studies, or other evidence based on 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.

## II.

*It is further ordered,* That respondents North American Plastics Corporation, a corporation, its successors and assigns, and its officers, and Harold V. Engh, Jr., individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any North American Plastics Corporation product, including, but not limited to, any plastic bags and their packaging, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence that substantiates such representation.

## III.

Nothing in this order shall prevent respondents from using any of the terms cited in Part I, or similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

## IV.

*It is further ordered,* That, for three (3) years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

(A) All materials relied upon to substantiate any representation covered by this order; and

(B) All tests, reports, studies, surveys or other materials in its possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation.

V.

*It is further ordered,* That respondent North American Plastics Corporation shall distribute a copy of this order within sixty (60) days after service of this order upon it to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation of labeling and advertising and placement of newspaper, periodical, broadcast and cable advertisements covered by this order.

VI.

*It is further ordered,* That respondent North American Plastics Corporation shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation, such as 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 arising out of this order.

VII.

*It is further ordered,* That respondent Harold V. Engh, Jr., shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the service date of this order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the manufacture, sale or distribution of plastic products, or of his affiliation with a new business or employment in which his own duties and responsibilities relate to the manufacture, sale or distribution of plastic products. When so required under this paragraph, each such notice shall include the individual respondent's new

business address and a statement of the nature of the business or employment in which respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

### VIII.

*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 in which they have complied with this order.

By the Commission.<sup>1</sup>

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<sup>1</sup> Prior to leaving the Commission, former Commissioner Owen registered her vote in the affirmative for the Complaint and Decision and Order in this matter.

## IN THE MATTER OF

## MACY'S NORTHEAST, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-3527. Complaint, Sept. 13, 1994--Decision, Sept. 13, 1994*

This consent order requires, among other things, the New York-based retail department store subsidiaries to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to deliver a copy of the consent order to retail store managers involved in consumer sales, to inform their retail store managers of their compliance responsibilities, and to develop and implement a program for instructing their sales personnel about the availability and location of manufacturers' warranty information.

*Appearances*

For the Commission: *Jeffrey Klurfeld, Gerald Wright and Christian White.*

For the respondents: *Carol Hecht Katz*, in-house counsel, New York, N.Y.

## COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.*, and Rule 702, 16 CFR Part 702, promulgated thereunder, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc., corporations ("respondents"), wholly-owned subsidiaries of R. H. Macy & Co., Inc., a Delaware corporation, have violated the provisions of said Acts and Rule 702 promulgated under the Magnuson-Moss Warranty Act, and it appearing to the Commission that a proceeding by it would be in the public interest, alleges:

PARAGRAPH 1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in

Rule 702, 16 CFR 702.1 promulgated thereunder, shall apply to the terms used in this complaint.

PAR. 2. Respondent Macy's Northeast, Inc. 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 151 W. 34th Street, New York, New York.

Respondent Macy's South, Inc. 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 151 W. 34th Street, New York, New York.

Respondent Macy's California, Inc. 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 50 O'Farrell Street, San Francisco, California.

Respondent Bullock's, Inc. 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 50 O'Farrell Street, San Francisco, California.

PAR. 3. Respondents are now and have been engaged in the operation of retail department stores in New York, California and various other states. In the operation of their retail stores, respondents are now and have been distributing, advertising, offering for sale and selling, among other items, wearing apparel, consumer electronics, watches, home furnishings, housewares and small appliances, all of which are consumer products. Therefore, respondents are both suppliers and sellers of consumer products.

PAR. 4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the ordinary course and conduct of their aforesaid business, respondents regularly sell or offer for sale consumer products for purposes other than resale or use in the ordinary course of the buyer's business. Therefore, respondents are sellers of consumer products.

PAR. 6. On or after March 12, 1987, respondents, in the ordinary course of their business as sellers of consumer products actually costing more than \$15 and manufactured on or after January 1, 1977, have failed to make the texts of written warranties readily available for examination by prospective buyers prior to sale through utiliza-

tion of one or both of the following methods required by 16 CFR 702.3(a), as amended:

1. Displaying the text of the warranty in close proximity to the warranted product;
2. Furnishing the text of the warranty upon request prior to sale and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

PAR. 7. Respondents' failures to comply with the provisions of 16 CFR 702, as amended, constituted and now constitute violations of the Magnuson-Moss Warranty Act and, pursuant to Section 110(b) thereof, unfair or deceptive practices under Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

#### 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 San Francisco 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 respondents, their attorney, 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and no comments having been filed

thereafter by interested parties pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Macy's Northeast, Inc. 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 151 W. 34th Street, New York, New York.

Respondent Macy's South, Inc. 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 151 W. 34th Street, New York, New York.

Respondent Macy's California, Inc. 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 50 O'Farrell Street, San Francisco, California.

Respondent Bullock's, Inc. 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 50 O'Farrell Street, San Francisco, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

#### ORDER

The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rule 702, 16 CFR 702.1, promulgated thereunder, shall apply to the terms of this order.

#### I.

*It is ordered,* That respondents Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc., corporations, their successors and assigns, and their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale or offering for sale of any consumer product in or affecting commerce, do forthwith cease and desist from failing to make a text of any written

warranty on a consumer product actually costing more than \$15 readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in 16 CFR 702.3(a), as amended.

## II.

*It is further ordered,* That respondents shall, within thirty (30) days of the date of service of this order, deliver to each current retail store manager and assistant or operations manager engaged in the sale of consumer products on behalf of respondents, a copy of this order to cease and desist.

## III.

*It is further ordered,* That respondents shall, within thirty (30) days of the date of service of this order, instruct all current retail store managers and assistant or operations managers engaged in the sale of consumer products on behalf of respondents as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this order.

## IV.

*It is further ordered,* That respondents shall, for a period of not less than four (4) years from the date of service of this order, instruct all future retail store managers and assistant or operations managers who will be engaged in the sale of consumer products on behalf of respondents, before they assume said responsibilities for respondents, as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this order.

## V.

*It is further ordered,* That respondents shall, within thirty (30) days of the date of service of this order, develop and implement a program to instruct their sales personnel about the availability and location of warranty information.



## VI.

*It is further ordered,* That respondents shall, for a period of not less than five (5) years from the date of service of the order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondents to their retail store managers and assistant and operations managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this order; (ii) copies of signs posted by respondents in their retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and (iii) copies of the text of written warranties made readily available by respondents' retail store outlets for examination by prospective buyers on request.

## VII.

*It is further ordered,* That respondents, for a period of six (6) years from the date of service of this order, shall notify the Commission at least thirty (30) days prior to any 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 that may affect compliance obligations arising out of the order.

## VIII.

*It is further ordered,* That respondents shall, within ninety (90) days after service of this order on them, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

## IN THE MATTER OF

## MONTGOMERY WARD &amp; CO., INCORPORATED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-3528. Complaint, Sept. 13, 1994--Decision, Sept. 13, 1994*

This consent order requires, among other things, the Illinois-based retail department store to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to deliver a copy of the consent order to retail store managers involved in consumer sales, to inform their retail store managers of their compliance responsibilities, and to develop and implement a program for instructing their sales personnel about the availability and location of manufacturers' warranty information.

*Appearances*

For the Commission: *Jeffrey Klurfeld, Gerald Wright and Christian White.*

For the respondent: *Philip Delk*, in-house counsel, Chicago, IL.

## COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.*, and Rule 702, 16 CFR Part 702, promulgated thereunder, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Montgomery Ward & Co., Incorporated, a corporation ("respondent"), has violated the provisions of said Acts and Rule 702 promulgated under the Magnuson-Moss Warranty Act, and it appearing to the Commission that a proceeding by it would be in the public interest, alleges:

PARAGRAPH 1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rule 702, 16 CFR 702.1 promulgated thereunder, shall apply to the terms used in this complaint.

