

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair
Noah Joshua Phillips
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya

In the Matter of

WEBER-STEPHEN PRODUCTS LLC, a limited liability company.

DECISION AND ORDER

DOCKET NO. C-

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge Respondent with violations of the Federal Trade Commission Act and the Magnuson-Moss Warranty Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act and the Magnuson-Moss Warranty Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent is Weber-Stephen Products LLC, a limited liability company with its principal office or place of business at 1415 South Roselle Road, Palatine, Illinois, 60067.
2. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. **“Clearly and Conspicuously”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
1. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 2. An audible disclosure, including by streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 3. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 4. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.
 5. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 6. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- B. **“Consumer Products”** means any tangible personal product which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

- C. **“Implied Warranty”** means an implied warranty arising under State law (as modified by 15 U.S.C. §§ 2308 and 2304(a)) in connection with the sale by a supplier of a consumer product.
- D. **“Respondent”** means Weber-Stephen Products LLC and its successors and assigns.
- E. **“Supplier”** means any person engaged in the business of making a Consumer Product directly or indirectly available to consumers.
- F. **“Warrantor”** means any Supplier or other person who gives or offers to give a Written Warranty or who is or may be obligated under an Implied Warranty.
- G. **“Written Warranty”** means—
 - (a) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a Supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time; or
 - (b) any undertaking in writing in connection with the sale by a Supplier of a Consumer Product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a Supplier and a buyer for purposes other than resale of such product.

Provisions

I. Prohibitions Concerning Written Warranties

IT IS ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

- A. Expressly or by implication conditioning a warranty for a Consumer Product that costs more than five dollars, on a consumer’s using, in connection with such product, any article or service which is identified by brand, trade, or corporate name, unless the article or service is provided to the consumer without charge under the terms of the warranty or the Warrantor has been granted a waiver by the Commission under 15 U.S.C § 2303(c); and
- B. Violating any provision of the Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301-2312) or the rules promulgated by the Commission under the Magnuson-Moss Warranty Act (16 C.F.R. §§ 701, 702, 703), copies of which are attached hereto as Attachment B.

II. Prohibited Claims and Conduct

IT IS FURTHER ORDERED that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting, directly or indirectly, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Consumer Products cost more than five dollars shall not:

1. Make any representation, or assist others in making any representation, expressly or by implication, except for representations regarding Consumer Products that are offered free of charge under the warranty or for which the Commission has provided a waiver under 15 U.S.C. § 2302(c), that:
 - a. A warranty will or may be void if a consumer uses unauthorized or third-party parts or services in connection with the Consumer Product;
 - b. A warranty will or may be void if a consumer makes any modifications to the Consumer Product, without the Respondent's authorization or approval; or
 - c. As a condition of warranty coverage, or within the Written Warranty, that consumers must use only genuine or authorized parts.

Nothing in this paragraph shall preclude Respondent from expressly excluding liability for defects or damage caused by unauthorized or third-party parts or service, or from expressly excluding liability for unauthorized conversions of a gas grill to use a different fuel type (e.g., liquid propane to natural gas, or vice versa);

2. Fail to disclose, Clearly and Conspicuously, in any warranty the following statement ("Required Disclosure"): "Using third-party parts will not void this warranty."

Provided, however, if the Respondent offers any product or service for free under the warranty or the Respondent obtains a waiver from the Commission with respect to any product or service, the warranty may state that consumers must use that product or service to maintain the warranty. If so, the Required Disclosure shall Clearly and Conspicuously state as follows: "Except as described in ____, using third-party parts will not void this warranty;" and

3. Misrepresent, expressly or by implication, any fact material to consumers concerning any warranty or maintenance requirement of any good or service.

III. Notice to Customers

IT IS FURTHER ORDERED that Respondent must notify customers as follows:

- A. Respondent shall identify consumers who both (1) purchased a Weber gas or electric grill between May 1, 2012 and the effective date of the entry of this Order; and (2) registered a warranty on a Weber gas or electric grill and opted in to receiving communications from Weber (“Eligible Customers”).
 - 1. Such Eligible Customers, and their contact information, must be identified to the extent such information is in Respondent’s possession, custody or control, including from third parties such as authorized sellers and service providers of Weber products.
 - 2. Eligible Customers include those identified at any time, including after Respondent’s execution of the Agreement.
- B. Respondent must notify all identified Eligible Customers by mailing or emailing each a notice in the form shown in Attachment A (“Notice”). The communication containing the notification letter may contain a copy of this Order, but no other document or enclosure.
- C. For all electric and gas grills manufactured 90 or more days from the date on which this Order is entered, Respondent shall include a paper warranty that complies with Sections I and II of this Order.
- D. Respondent must post Clearly and Conspicuously on Respondent’s website, www.weber.com and on its smartphone/tablet app, an exact copy of the notice attached hereto as Attachment A, as well as the terms of the warranty.
- E. Respondent shall ensure that the exact copy of the notice attached hereto as Attachment A and the terms of its warranty remain posted Clearly and Conspicuously on its website and on its smartphone/table app for at least 5 years after the effective date of this Order.
- F. Respondent must report on its notification program under penalty of perjury:
 - 1. Respondent must submit a report that summarizes its compliance to date, including the total number of Eligible Customers identified, within 60 days of the effective date of the Order.
 - 2. If a representative of the Commission requests any information regarding the program, including any of the underlying customer data, Respondent must submit it to the Commission within 10 days of receipt of the request.
 - 3. Failure to provide required notices or any requested information will be treated as a continuing failure to obey this Order.

IV. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For three years, Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities related to drafting and enforcing Respondent's warranties, and all agents and representatives who participate in drafting or enforcing said warranties; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur on or before the date they assume their responsibilities.
- C. From each individual or entity to which a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

V. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (b) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business; (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in (a) any designated point of contact; or (b) the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.

- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re Weber-Stephen Products LLC, Docket No. [REDACTED].

VI. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records for 5 years after the issuance date of the Order and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. copies or records of all consumer complaints, warranty coverage claims, and refund requests relating to Respondent’s warranties, whether received directly or indirectly, such as through a third party, and any response;
- D. a copy of each unique warranty or other document summarizing or referring to the warranty; and
- E. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VII. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent’s compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent's General Counsel. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VIII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been 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.

By the Commission.

April Tabor
Secretary

SEAL:
ISSUED: