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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.

1  
2 **DEFENDANTS' COURSE OF CONDUCT**

3 6. Since 1994 defendants have offered for sale and sold, by  
4 mail or telephone, fancy automobile wheels, rims and tires to buyers  
5 throughout the United States. Defendants solicit these sales in  
6 magazines for automobile hobbyists and on their Internet website,  
7 [www.dynamicwheels.com](http://www.dynamicwheels.com).

8 7. Throughout 1999 and continuing thereafter, in the course  
9 of soliciting orders for this merchandise by mail or telephone,  
10 defendants routinely represent to buyers that merchandise is "in  
11 stock" and that it will be delivered to buyers within seven to ten  
12 calendar days after receipt of the buyer's payment.

13 8. In numerous instances the merchandise is not in fact in  
14 stock and is not shipped to buyers within the promised time.

15 9. In many instances in which defendants do not ship the  
16 merchandise within the promised times, they also do not, within those  
17 times, notify buyers that they will not be shipping the merchandise  
18 within the promised time period.

19 10. Having failed to ship in time or provide notification of  
20 delay to buyers, defendants charge a 20% cancellation or "restocking"  
21 fee when buyers cancel their orders. Often defendants do not send  
22 these discounted refunds to buyers for months.

23 11. In other instances, after accepting the buyer's payment  
24 for merchandise as part of the properly completed order, defendants  
25 notify the buyer that the ordered merchandise is unavailable and  
26 that, unless the buyer agrees to accept materially different  
27  
28

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**

1  
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  
2 c. Having notified the buyer of their inability to make  
3 shipment and having indicated their decision not to ship  
4 the merchandise, violated Section 435.1(c)(4) of the Rule  
5 by failing to deem the order canceled and to make a prompt  
6 refund to the buyer, as "prompt refund" is defined in  
7 section 435.2(f) of the Rule; and

8 d. Violated Sections 435.1(c) of the Rule by failing to make  
9 a refund, as the term "refund" is defined in section  
10 435.2(e) of the Rule, to the buyer, consisting of the  
11 amount tendered or the charge incurred by the buyer.

12 19. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C.  
13 § 57a(d)(3), a violation of the Rule constitutes an unfair or  
14 deceptive act or practice in violation of Section 5(a)(1) of the FTC  
15 Act, 15 U.S.C. § 45(a)(1).

16 **CIVIL PENALTIES, CONSUMER REDRESS AND INJUNCTIVE RELIEF**

17 20. Defendants have violated the Rule as described above with  
18 knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15  
19 U.S.C. § 45(m)(1)(A).

20 21. Each sale or attempted sale during the five years  
21 preceding the filing of this Complaint in which defendants have  
22 violated the Rule in one or more of the ways described above  
23 constitutes a separate violation for which plaintiff seeks monetary  
24 civil penalties.

25 22. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C.  
26 § 45(m)(1)(A), as modified by Section 4 of the Federal Civil  
27 Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and

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.

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