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9 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 BRAKE GUARD PRODUCTS, INC.,
15 BRAKE GUARD LIMITED LIABILITY COMPANY,
a Nevada Limited Liability Company
16 BRAKE GUARD LIMITED LIABILITY COMPANY,
17 a Washington Limited Liability Company
18 ED F. JONES, a/k/a Ellsworth F. Jones, individually
and as President of Brake Guard Products, Inc.,
19 principal member of Brake Guard Limited Liability
Company of Nevada, and principal member of Brake
20 Guard Limited Liability Company of Washington, and
21 LAWRENCE H. JONES, an individual,
22 Defendants.

Civil Action No.
PLAINTIFF'S COMPLAINT
JURY DEMAND

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

3 1. Plaintiff brings this action under Sections 5(a), 5(l), 13(b) and 16(a) of the Federal
4 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(l), 53(b) and 56(a), to obtain monetary
5 civil penalties, injunctive and other equitable relief, including rescission, restitution and disgorgement,
6 from defendants for violations of a final order to cease and desist issued by the Commission, and for
7 defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15
8 U.S.C. § 45(a).

9 JURISDICTION AND VENUE

10 2. This court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345,
11 and 1355 and under 15 U.S.C. §§ 45(l), 53(b) and 56(a).

12 3. Venue in the United States District Court for the Western District of Washington is
13 proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

14 DEFENDANTS

15 4. Defendant Brake Guard Products, Inc. ("BGPI"), is a Washington corporation with its
16 office and principal place of business at 6565 North Perry Street, Spokane, Washington 99217.

17 5. Defendant Brake Guard Limited Liability Company ("BGN") is a Nevada limited
18 liability company with its office and principal place of business at 6565 North Perry Street, Spokane,
19 Washington 99217. Defendant BGN is a successor entity of BGPI.

20 6. Defendant Brake Guard Limited Liability Company ("BGW") is a Washington limited
21 liability company with its office and principal place of business at 6565 North Perry Street, Spokane,
22 Washington 99217. Defendant BGW is a successor entity of BGPI.

23 7. Defendant Ed F. Jones ("Ed Jones") is the president of BGPI, BGN and BGW.
24 Individually, or in concert with others, he formulates, directs, participates in, or controls the acts and
25 practices of BGPI, BGN, and BGW (collectively, "the corporate defendants"), including the acts and
26 practices complained of herein. Ed Jones transacts or has transacted business in the Western District
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1 of Washington.

2 8. Defendant Lawrence H. Jones (“Larry Jones”), also doing business as Lawrence
3 Enterprises and/or Lawrence Marketing, is Ed Jones’s son, and the main distributor for the corporate
4 defendants. Individually, or in concert with others, he formulates, directs, participates in, or controls
5 the acts and practices of the corporate defendants, including the acts and practices complained of
6 herein. Larry Jones transacts or has transacted business in the Western District of Washington.

7 PRIOR COMMISSION PROCEEDING

8 9. In a Commission proceeding bearing Docket No. 9277, BGPI and Ed Jones were
9 charged by the Commission with violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The
10 Commission conducted an administrative trial and, on January 23, 1998, issued an opinion
11 (“Commission’s opinion”) and final order against BGPI and Ed Jones to cease and desist from certain
12 advertising practices (“Commission’s order”).

13 10. The Commission’s order was served upon BGPI and Ed Jones on January 29, 1998,
14 and by operation of law became final and enforceable on March 30, 1998. The order remained in full
15 force and effect at all relevant times alleged herein. Pursuant to requirements set forth in Part VI of
16 the order that Brake Guard distributors be sent notice of the Commission’s opinion and order, BGPI
17 and Ed Jones delivered such notice to Larry Jones no later than July 20, 1998.

18 11. The Commission’s opinion includes findings that the after-market motor vehicle brake
19 device called Brake Guard Safety System (“Brake Guard”) is not an antilock braking system; does
20 not reduce wheel lockup, skidding, or loss of steering control; does not shorten stopping distances;
21 and does not provide antilock benefits that are at least equivalent to those provided by original
22 equipment manufacturer antilock braking systems.

23 12. Part II.B. of the Commission's order prohibits the defendants from representing in any
24 manner, directly or by implication, in connection with the manufacturing, labeling, advertising,
25 promotion, offering for sale, sale, or distribution of the Brake Guard Safety System, Advanced
26 Braking System, or Brake Guard ABS or any substantially similar product in or affecting commerce,

1 as "commerce" is defined in the Federal Trade Commission Act, that such product prevents or
2 substantially reduces wheel lock-up, skidding, or loss of steering control in emergency stopping
3 situations.

4 13. Part II.G. of the Commission's order prohibits the defendants from representing in any
5 manner, directly or by implication, in connection with the manufacturing, labeling, advertising,
6 promotion, offering for sale, sale, or distribution of the Brake Guard Safety System, Advanced
7 Braking System, or Brake Guard ABS or any substantially similar product in or affecting commerce,
8 as "commerce" is defined in the Federal Trade Commission Act, that such product provides antilock
9 braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those
10 provided by original equipment manufacturer electronic antilock braking systems.

11 14. Part II.H. of the Commission's order prohibits the defendants from representing in any
12 manner, directly or by implication, in connection with the manufacturing, labeling, advertising,
13 promotion, offering for sale, sale, or distribution of the Brake Guard Safety System, Advanced
14 Braking System, or Brake Guard ABS or any substantially similar product in or affecting commerce,
15 as "commerce" is defined in the Federal Trade Commission Act, that such product will stop a vehicle
16 in a shorter distance than a vehicle that is not equipped with the product, in emergency stopping
17 situations.

18 15. Part III. of the Commission's order prohibits the defendants from representing in any
19 manner, directly or by implication, in connection with the manufacturing, labeling, advertising,
20 promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, or any
21 other system, accessory, or device designed to be used in, on, or in conjunction with any motor
22 vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act,
23 that installation of the system, accessory, or device will make operation of a vehicle safer than a
24 vehicle that is not equipped with the system, accessory or device, unless, at the time of making such
25 representation, defendants possess and rely upon competent and reliable scientific evidence that
26 substantiates the representation.

1 16. The Commission's order defines "competent and reliable scientific evidence" as tests,
2 analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant
3 area, that has been conducted and evaluated in an objective manner by persons qualified to do so,
4 using procedures generally accepted in the profession to yield accurate and reliable results.

5 17. Part IV.C. of the Commission's order prohibits the defendants from misrepresenting in
6 any manner, directly or by implication, in connection with the manufacturing, labeling, advertising,
7 promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, or any
8 other system, accessory, or device designed to be used in, on, or in conjunction with any motor
9 vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act,
10 that any endorsement (as "endorsement" is defined in 16 C.F.R. § 255.0(b)) of such a product
11 represents the typical or ordinary experience of members of the public who use the product, unless:
12 (1) such representation is true; or (2) the defendant discloses clearly, prominently, and in close
13 proximity to the endorsement or testimonial the generally expected results for users of such product,
14 or the limited applicability of the endorser's experience to what consumers may generally expect to
15 achieve and the possibility that consumers may not experience similar results.

16 18. Part V. of the Commission's order prohibits the defendants from making any
17 representation, directly or by implication, in connection with the manufacturing, labeling, advertising,
18 promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, or any
19 other system, accessory, or device designed to be used in, on, or in conjunction with any motor
20 vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act,
21 regarding the absolute or comparative attributes, efficacy, performance, safety, or benefits of such
22 system, accessory, or device, unless such representation is true and, at the time of making such
23 representation, defendants possess and rely upon competent and reliable evidence, which when
24 appropriate shall be competent and reliable scientific evidence, that substantiates the representation.

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26 DEFENDANTS' COURSE OF CONDUCT

1 19. At all times mentioned herein, defendants have been engaged in the manufacturing,
2 labeling, advertising, promotion, offering for sale, sale, or distribution of Brake Guard in or affecting
3 commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. The corporate
4 defendants are engaged in the manufacturing, advertising, marketing and sale of Brake Guard. The
5 corporate defendants promote and market Brake Guard mainly to the recreational vehicle ("RV")
6 market through a network of distributors. Ed Jones is the owner and manager of the corporate
7 defendants. Larry Jones travels throughout the United States selling Brake Guard, as well as
8 distributorships for the corporate defendants, and is the corporate defendants' main recruiter of
9 distributors. BGN and BGW (as BGPI's successor entities) and Larry Jones (as the corporate
10 defendants' agent and representative) are, and were at all times relevant herein, bound by the
11 applicable injunctive provisions in the Commission's order, which apply to ". . . respondents, Brake
12 Guard Products Inc., a corporation, its successors and assigns, and its officers, and Ed F. Jones,
13 individually and as an officer and director of said corporation, and respondents' agents,
14 representatives, and employees"

15 20. Brake Guard is a braking system, accessory, or device, designed to be used in, on, or
16 in conjunction with a motor vehicle, and in or affecting commerce, as "commerce" is defined in the
17 Federal Trade Commission Act.

18 21. Since March 30, 1998, defendants have conducted live seminars and disseminated or
19 caused the dissemination of advertisements and promotional materials (such as packaging, brochures,
20 flyers, promotional videos and an Internet Web site) to promote Brake Guard.

21 DEFENDANTS' VIOLATIONS OF THE COMMISSION'S ORDER

22 FIRST CAUSE OF ACTION

23 22. Through the use of statements contained in the advertisements and promotional
24 materials referred to in paragraph 21, defendants have represented, directly or by implication, in
25 connection with the advertising, promotion, offering for sale, sale, or distribution of Brake Guard that
26 Brake Guard prevents or substantially reduces wheel lock-up, skidding, or loss of steering control in
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1 emergency stopping situations, thereby violating Part II.B. of the Commission's order.

2 SECOND CAUSE OF ACTION

3 23. Through the use of statements contained in the advertisements and promotional
4 materials referred to in paragraph 21, defendants have represented, directly or by implication, in
5 connection with the advertising, promotion, offering for sale, sale, or distribution of Brake Guard,
6 that Brake Guard provides antilock braking system benefits, including wheel lock-up control benefits,
7 that are at least equivalent to those provided by original equipment manufacturer electronic antilock
8 braking systems, thereby violating Part II.G. of the Commission's order.

9 THIRD CAUSE OF ACTION

10 24. Through the use of statements contained in the advertisements and promotional
11 materials referred to in paragraph 21, defendants have represented, directly or by implication, in
12 connection with the advertising, promotion, offering for sale, sale, or distribution of Brake Guard,
13 that Brake Guard will stop a vehicle in a shorter distance than a vehicle that is not equipped with the
14 product, in emergency stopping situations, thereby violating Part II.H. of the Commission's order.

15 FOURTH CAUSE OF ACTION

16 25. Through the use of statements contained in the advertisements and promotional
17 materials referred to in paragraph 21, defendants have represented, directly or by implication, in
18 connection with the advertising, promotion, offering for sale, sale, or distribution of Brake Guard,
19 that installation of Brake Guard will make operation of a vehicle safer than a vehicle that is not
20 equipped with Brake Guard, without the defendants possessing and relying upon competent and
21 reliable scientific evidence that substantiates that representation, thereby violating Part III. of the
22 Commission's order.

23 FIFTH CAUSE OF ACTION

24 26. Through the use of statements contained in the advertisements and promotional
25 materials referred to in paragraph 21, defendants have misrepresented in connection with the
26 advertising, promotion, offering for sale, sale, or distribution of Brake Guard, that testimonials in
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1 support of Brake Guard represent the typical or ordinary experience of members of the public who
2 use the product when such representations were false and without disclosing clearly, prominently, and
3 in close proximity to the endorsement or testimonial the generally expected results for users of such
4 product, or the limited applicability of the endorser's experience to what consumers may generally
5 expect to achieve and the possibility that consumers may not experience similar results, thereby
6 violating Part IV.C of the Commission's order.

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8 SIXTH CAUSE OF ACTION

9 27. Through the use of statements contained in the advertisements and promotional
10 materials referred to in paragraph 21, defendants have made representations, directly or by
11 implication, in connection with the advertising, promotion, offering for sale, sale, or distribution of
12 Brake Guard, regarding the absolute and comparative attributes, efficacy, performance, safety, and
13 benefits of Brake Guard, without the defendants possessing and relying upon competent and reliable
14 evidence that substantiates those representations, thereby violating Part V. of the Commission's
15 order.

16 DEFENDANTS' VIOLATIONS OF SECTION 5 OF THE FTC ACT

17 28. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive
18 acts or practices in or affecting commerce are hereby declared unlawful."

19 SEVENTH CAUSE OF ACTION

20 29. Through the use of the statements contained in the advertisements and promotional
21 materials referred to in paragraph 21, defendants have represented, expressly or by implication, that:

- 22 (a) Brake Guard is an antilock braking system;
- 23 (b) Brake Guard prevents or substantially reduces wheel lock-up, skidding, and
24 loss of steering control in emergency stopping situations;
- 25 (c) Brake Guard significantly reduces stopping distances;
- 26 (d) Brake Guard provides antilock braking system benefits, including wheel lock-
27 up control benefits, that are at least equivalent to those provided by original

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equipment manufacturer electronic antilock braking systems; and

- (e) Testimonials from consumers appearing in the advertisements and promotional materials for Brake Guard reflect the typical or ordinary experience of members of the public who have used the product.

30. In truth and in fact:

- (a) Brake Guard is not an antilock braking system;
- (b) Brake Guard does not prevent or substantially reduce wheel lock-up, skidding, and loss of steering control in emergency stopping situations;
- (c) Brake Guard does not significantly reduce stopping distances;
- (d) Brake Guard does not provide antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and
- (e) Testimonials from consumers appearing in the advertisements and promotional materials for Brake Guard do not reflect the typical or ordinary experience of members of the public who have used the product.

Therefore, the representations set forth in Paragraph 29 were, and are, false or misleading and constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

EIGHTH CAUSE OF ACTION

31. Through the use of statements contained in the advertisements and promotional materials referred to in paragraph 21, defendants have represented, expressly or by implication, that:

- (a) In emergency stopping situations, a vehicle equipped with Brake Guard will stop in a shorter distance than a vehicle that is not equipped with the device;
and
- (b) Installation of Brake Guard will make operation of a vehicle safer than a vehicle that is not equipped with the device.

1 32. Through the use of statements contained in the advertisements and promotional
2 materials referred to in paragraph 21, defendants have represented, expressly or by implication, that
3 they possessed and relied upon a reasonable basis that substantiated the representations set forth in
4 Paragraph 31, at the time the representations were made.

5 33. In truth and in fact, defendants did not possess and rely upon a reasonable basis that
6 substantiated the representations set forth in Paragraph 31, at the time the representations were made.
7 Therefore, the representation set forth in Paragraph 32 was, and is, false or misleading and constitutes
8 an unfair or deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9 **CONSUMER INJURY**

10 34. Consumers have suffered substantial monetary loss as a result of defendants' unlawful
11 acts or practices. Absent injunctive relief by this Court, defendants are likely to continue to injure
12 consumers and harm the public interest.

13 **CIVIL PENALTIES AND EQUITABLE RELIEF**

14 35. Each dissemination of a representation in violation of Parts II.B., II.G., II.H., III.,
15 IV.C., and V. of the Commission's order, as set forth in Paragraphs 22 through 27 above, constitutes
16 a separate violation of the Commission's order for which plaintiff seeks monetary civil penalties.

17 36. Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), and Section 4 of the Federal Civil
18 Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize the Court to
19 award monetary civil penalties of not more than \$11,000 for each such violation of the Commission's
20 order.

21 37. Under Sections 5(l) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(l) and 53(b), this
22 Court is authorized to grant injunctive and other ancillary relief, including consumer redress,
23 disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced
24 by the Federal Trade Commission.

25 38. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief
26 to remedy the injury caused by the defendants' violations of the law.

1 PRAYER FOR RELIEF

2 WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(l), 49 and 53(b),
3 and pursuant to the Court's own equitable powers to:

4 (1) Preliminarily enjoin defendants from violating the Commission's order issued in FTC
5 Docket No. 9277 and from engaging in, or assisting others engaged in, violations of Section 5 of the
6 FTC Act;

7 (2) Enter judgment against defendants and in favor of plaintiff for each violation alleged
8 in this Complaint;

9 (3) Award plaintiff monetary civil penalties from defendants for each violation of the
10 Commission's order alleged in this Complaint;

11 (4) Permanently enjoin defendants from violating the Commission's order issued in FTC
12 Docket No. 9277;

13 (5) Permanently enjoin the defendants from engaging in, or assisting others engaged in,
14 violations of Section 5 of the FTC Act;

15 (6) Award such relief as the Court finds necessary to redress injury to consumers resulting
16 from the defendants' violations of the Commission's order and the FTC Act, including but
17 not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten
18 monies;

19 (7) Award plaintiff the costs of bringing this action; and

20 (8) Grant such equitable relief as the Court may determine to be proper and just.

21 JURY DEMAND

22 The United States demands a trial by jury of any issue triable of right by a jury.

23 Dated: This _____ day of May, 2001.

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Respectfully submitted,

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