

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1966,
TO JUNE 30, 1966

IN THE MATTER OF POWERNAIL COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-1028. Complaint, Jan. 7, 1966—Decision, Jan. 7, 1966

Consent order requiring an Illinois manufacturer and distributor of power nailing equipment and nails which are used in the installation of flooring and sheathing to cease using coercive, intimidating, and harassing tactics to force their retail customers to maintain fixed resale prices for respondents' products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in respect thereto as follows:

PARAGRAPH 1. Respondent Powernail Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its main office and place of business in Prairie View, Illinois. It is now and at all times hereinafter mentioned has been the sole or exclusive distributor of patented machines and nails, respectively termed "powernailers" and "powercleats," which are used in the installation of various types of flooring and sheathing. The Powernail Company sells such products to approximately 5,000 dealers located in various States of the United States and the sales of such products are substantial.

PAR. 2. The EPA Manufacturing Company, is a limited partnership organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located on the same premises as that occupied by respondent Powernail Company. The EPA Manufacturing Company is now, and at all times hereinafter mentioned, has been engaged in the business of manufacturing the aforementioned patented machines and nails which it sells to its sole or exclusive distributor, Powernail Company.

Respondent Edgar P. Anstett is the sole general partner of the EPA Manufacturing Company and is president of Powernail Company, and at all times mentioned herein has been primarily responsible in the formation, direction and control of the policies, practices and acts of the EPA Manufacturing Company and Powernail Company as hereinafter referred to.

PAR. 3. In the course and conduct of respondents' businesses, there has been at all times mentioned herein, and is now, a continuous and current movement of said machines and nails in interstate commerce, as "commerce" is defined by the Federal Trade Commission Act.

PAR. 4. The Powernail Company and EPA Manufacturing Company now, and at all times mentioned herein, have been in competition with other individuals, partnerships, corporations or firms engaged in the manufacture, distribution and sale of such flooring, sheathing and nailing equipment in interstate commerce except to the extent that such competition has been hindered, lessened, restricted, restrained and eliminated by the unlawful acts and practices hereinafter alleged. The aforementioned Powernail equipment has for the past several years achieved acceptance by flooring contractors, carpenters and other users thereof to such an extent that respondents have obtained a dominant position amounting to a virtual monopoly in the manufacture, distribution and sale of such flooring, sheathing and nailing equipment in the United States.

PAR. 5. For the several years last past, respondents have adopted and employed and still employ in the Milwaukee, Wisconsin area, and other areas of the United States, a system of establishing resale prices for Powernail products, which prices respondents required and still require Powernail dealers to observe as the respective resale prices to be charged by such dealers in reselling said products to the purchasers thereof.

PAR. 6. In order to carry out the said plan or policy, and to se-

1

Complaint

cure the cooperation therein of dealers generally, and in the Milwaukee, Wisconsin area in particular, respondents adopted and employed and still employ the following among other means by which respondents and those cooperating with them have undertaken to prevent and have prevented other dealers from selling said products at prices other than the said resale prices so established by respondents:

(a) They issue resale price lists and dealer discount lists to the trade in which the various resale prices for said products are set forth and explained;

(b) They make it generally known to the trade by letters and salesmen's interviews, and other means, that they expect and require dealers handling Powernail products to maintain and enforce said resale prices or such dealerships will be terminated;

(c) They enter into informal agreements, understandings and arrangements with such dealers that as a condition of opening accounts for such dealers said resale prices are required to be maintained;

(d) They invite, procure and solicit from dealers handling Powernail products, cooperation in submitting reports as to the failure of other dealers to observe and maintain said resale prices;

(e) They invite, procure and solicit from dealers handling Powernail products, assistance and cooperation in ascertaining information pertaining to any dealers who resell such products to discontinued dealers or any other persons, firms or organizations which fail to maintain such resale prices;

(f) They direct Powernail salesmen and other employees to secure information as to dealers who fail to observe said resale prices;

(g) They use information received through Powernail salesmen, employees and dealers to induce and coerce such dealers as have failed to observe said resale prices to maintain the same in the future by exacting promises, assurances or agreements from them to that effect;

(h) They threaten to refuse and do refuse to sell Powernail products to dealers failing to observe and maintain said resale prices;

(i) They favor dealers who maintain said prices against competing dealers who fail to observe the same;

(j) They employ Powernail salesmen and others to submit call reports which are placed in the appropriate ledger accounts of

such dealers informing respondents of all instances in which dealers handling Powernail products have failed to observe and maintain said resale prices;

(k) They have placed and still place inspection slips containing serial numbers in all orders filled for such dealers and have used and still use such serial numbers for the purpose, among others, of tracing sales made at below said resale prices;

(l) They have used and now use other equivalent cooperative means and methods for the enforcement of said system of resale prices; all with the result that said prices have been and are generally observed and maintained by dealers handling Powernail products.

PAR. 7. The above acts and practices have had and still have the capacity, tendency and effect of hindering, suppressing or eliminating competition between or among all dealers handling Powernail products to resell the same at prices fixed by respondents as aforesaid; such practices prevent dealers from selling these products at the prices they deem to be warranted; such practices have the capacity, tendency and effect to hinder and suppress all price competition in the resale of such products in various localities, including the Milwaukee, Wisconsin area, among others, thus tending to obstruct their free and natural flow of commerce in such products and the freedom of competition in this channel of interstate commerce.

PAR. 8. The aforesaid acts and practices of the respondents have the tendency to unduly hinder competition and have injured, hindered, suppressed, lessened or eliminated actual and potential competition, and thus are to the prejudice and injury of the public, constitute unfair methods of competition in commerce or unfair acts and practices in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in

1

Order

the complaint to issue herein, 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Powernail Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its main office and principal place of business located in Prairie View, Illinois.

EPA Manufacturing Company is a limited partnership organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located on the same premises as that occupied by respondent Powernail Company, its exclusive distributor.

Respondent Edgar P. Anstett is the sole general partner of the EPA Manufacturing Company and is also president of Powernail Company. His address is the same as that of said companies.

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

I. *It is ordered*, that respondents Powernail Company, a corporation, and Edgar P. Anstett, individually, trading and doing business as EPA Manufacturing Company, and their officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of nailing equipment, including but not limited to that used in connection with flooring and sheathing, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from hindering, suppressing, or eliminating competition, or attempting to hinder, suppress or eliminate competition between or among dealers handling respondents' nailing equipment by:

1. Requiring purchasers or prospective purchasers to agree that they will resell at prices specified by respondents, or that they will not resell below or above such specified prices: *Provided, however*, That upon proper showing by res-

pondents that there are other commodities of the same general class produced by others in free and open competition with respondents' nailing equipment, the Commission will consider the terms of this Order in the light of such conditions;

2. Utilizing Powernail salesmen, or any other agents, representatives or employees, directly or indirectly, as part of any plan or program for maintaining resale prices, to report dealers who do not observe such suggested resale prices, or to act on reports so obtained by refusing or threatening to refuse sales to dealers so reported;

3. Harassing, intimidating, and coercing dealers into observing and maintaining resale prices;

4. Harassing, intimidating, coercing or threatening to refuse or refusing to sell Powernail products to dealers for failure to observe and maintain the resale prices;

5. Requesting dealers, either directly or through Powernail salesmen, agents, representatives or employees, to report any persons or firms who do not observe the resale prices suggested by respondents, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported;

6. Requiring from dealers charged with price-cutting, promises or assurances of the observance of respondents' resale prices as a condition precedent to future sales to said dealers;

7. Refusing or failing to reinstate any former dealer terminated for reason, in whole or in part, of his past pricing practices, where such dealer requests reinstatement pursuant to the provisions of Paragraph III, *infra*, of this Order;

8. Utilizing any other cooperative means of accomplishing the maintenance of resale prices fixed by respondents for their products.

II. *It is further ordered*, That the respondents herein shall within sixty (60) days after service upon them of this Order, serve by mail a copy of this Order on all dealers of Powernail products.

III. *It is further ordered*, That the respondents herein shall: (1) Within sixty (60) days after service upon them of this Order: (a) send each dealer terminated since January 1, 1960, a letter advising him that he may apply within thirty (30) days from receipt of that letter for reinstatement as a Powernail

1

Complaint

dealer; and (b) submit to the Commission a list of all dealers terminated since January 1, 1960; and, further that

(2) Within one hundred and twenty (120) days after service upon them of this Order: (a) submit to the Commission a list of all dealers who have been reinstated since service upon respondents of this Order; and (b) submit to the Commission a list of all dealers who have not been reinstated and the reason or reasons therefor.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this Order.
