
IN THE MATTER OF
VESELY COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE
CLAYTON ACT

Docket C-1582. Complaint, Aug. 20, 1969—Decision, Aug. 20, 1969

Consent order requiring a Lapeer, Mich., manufacturer of camping or tent trailers to cease entering into exclusive dealing agreements with any dealer or purchaser of its trailers, threatening to terminate any such dealerships, attempting to persuade dealers to discontinue handling camping equipment of competitors; report names of all dealers terminated for dealing in competitors' products, reinstate such terminated dealers, and report all refusals to deal for the next five years.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 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 hereinafter more fully described, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45) and Section 3 of the Clayton Act (15 U.S.C. § 14), 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 as follows:

PARAGRAPH 1. Respondent Vesely Company is a corporation organized and doing business under the laws of the State of Michigan, with its office and principal place of business located at 2101 North Lapeer Road, Lapeer, Michigan.

Respondent Eugene L. Vesely, an individual, of the same

address as respondent Vesely Company, is founder, president, chairman of the board of directors and principally responsible for the policies of Vesely Company.

PAR. 2. Respondent Vesely Company has been and is now engaged in the manufacture, distribution and sale of camping or tent trailers under the "Apache" brand name.

PAR. 3. Respondent Vesely Company sells and distributes its camping or tent trailers to a network of independent retail dealers throughout the United States. These dealers offer the camping or tent trailers for sale or rental directly to the public.

PAR. 4. In the course and conduct of their business, respondents are and have been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Clayton Act. Respondents ship or cause their camping or tent trailers to be shipped from their manufacturing plant located at Lapeer, Michigan to dealers and purchasers located throughout the United States. The dollar volume of net sales of camping or tent trailers by Vesely Company has increased from over \$3,000,000 in 1962 to over \$10,000,000 in 1967. There is and has been at all times mentioned herein a continuous and substantial current of trade in commerce in the sale and distribution of camping or tent trailers between and among the several States of the United States and the District of Columbia.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondents have been and are now in substantial competition with other firms engaged in the manufacture, distribution or sale of camping or tent trailers.

PAR. 6. For many years and continuing to the present time it has been the practice and policy of Vesely Company to establish, maintain and enforce a merchandising or distribution program and policy for sale and distribution of camping or tent trailers to its retail dealers under which contracts, agreements, arrangements and understandings are entered into with the dealers whereby those dealers are required to refrain from purchasing and selling or renting camping or tent trailers sold or distributed by a competitor or competitors.

PAR. 7. Respondents have established a system of policing dealers in order to ascertain deviations by its dealers from the provisions of respondents' merchandising programs. Respondents conduct such policing by directing their salesmen and field

Complaint

76 F.T.C.

representatives to secure and report information as to dealers purchasing or evidencing an intent to purchase camping or tent trailers sold or distributed by a competitor or competitors.

PAR. 8. Upon learning of dealers purchasing or intending to purchase camping or tent trailers manufactured by a competitor or competitors, respondent Vesely Company enforces their restrictive policy by various means and methods, of which the following are examples:

Contacting the dealers and securing or attempting to secure from the dealers assurances that they will observe or comply with respondent's restrictive merchandising and distribution policy in the future;

Threatening to discontinue selling camping or tent trailers to the dealers who fail to observe and comply with the restrictive policy;

Threatening to place another dealer handling Vesely Company's camping or tent trailers in the immediate vicinity of dealers failing to observe and comply with its restrictive policy, so as to destroy the value of the offending dealer's business; and

Terminating and refusing to sell their camping or tent trailers to dealers failing to observe and comply with its restrictive policy.

PAR. 9. The effects of the sales and contracts of sale upon such conditions, agreements and understandings, and pursuant to the practices of respondents as herein described, may be to substantially lessen competition and may tend to create a monopoly in respondent Vesely Company in the manufacture, distribution and sale of camping or tent trailers.

PAR. 10. The aforesaid acts and practices of respondents constitute unreasonable restraints of trade and unfair acts and practices or unfair methods of competition in violation of the provisions of Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton Act.

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 Bureau of Restraint of Trade 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 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Vesely Company is a corporation organized and doing business under the laws of the State of Michigan, with its office and principal place of business located at 2101 North Lapeer Road, Lapeer, Michigan.

Respondent Eugene L. Vesely, an individual, of the same address as respondent Vesely Company, is founder, president, chairman of the board of directors and principally responsible for the policies of Vesely Company.

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

It is ordered, That respondent Vesely Company, a corporation, and its officers, and Eugene L. Vesely, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the manufacture and distribution of camping or tent trailers to dealers or purchasers for sale or rental in commerce, as "commerce" is defined in the Federal

Decision and Order

76 F.T.C.

Trade Commission Act and the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any camping or tent trailer on the condition, agreement or understanding that the dealer or purchaser thereof shall not purchase or deal in camping or tent trailers manufactured or distributed by a competitor or competitors;
2. Securing or attempting to secure assurances from dealers or purchasers that they will not purchase or deal in camping or tent trailers manufactured or distributed by a competitor or competitors;
3. Threatening to discontinue to sell camping or tent trailers to dealers or purchasers that indicate or state that they intend to purchase or deal in camping or tent trailers manufactured or distributed by a competitor or competitors;
4. Threatening to place another dealer selling or dealing in camping or tent trailers in the immediate vicinity of any dealer purchasing, intending to purchase, or dealing in camping or tent trailers manufactured or distributed by a competitor or competitors; and
5. Terminating dealerships or refusing to sell camping or tent trailers to any dealer or purchaser because such purchaser or dealer purchases or deals in camping or tent trailers manufactured or distributed by a competitor or competitors: *Provided however*, That respondents may terminate dealerships or refuse to sell to any dealer or purchaser that is or has been unable to adequately sell or service respondents' camping or tent trailers.

It is further ordered, That respondents Vesely Company, a corporation, and Eugene L. Vesely, individually and as an officer of said corporation, shall:

1. Within sixty (60) days after service upon them of this Order send by mail a copy of this Order to:
 - (a) All of the current dealers or purchasers of camping or tent trailers;
 - (b) All of the dealers or purchasers who were terminated or whom Vesely Company refused to sell its camping or tent trailers to since October 1, 1965, for purchasing or dealing in camping or tent trailers manufactured by a competitor or competitors, including therein a letter signed by the president of Vesely Com-

330

Decision and Order

pany advising these dealers or purchasers that they may apply in writing for reinstatement as a dealer or purchaser of camping or tent trailers within ninety (90) days after receipt of the letter; and

2. Reinstatement as a dealer or purchaser of camping or tent trailers all dealers requesting reinstatement who are willing and able to adequately sell and service respondent's camping or tent trailers, pursuant to the provisions of 1(b) immediately preceding.

3. During the next five calendar years following the effective date of this Order, notify the Federal Trade Commission by letter of each instance whereby Vesely Company has refused to sell camping or tent trailers to any dealer or purchaser because the dealer or purchaser was unable to adequately sell or service respondents' camping or tent trailers, this notification to include the name of the dealer or purchaser, address, and a detailed statement of the reasons for the refusal to sell.

It is further ordered, That respondents Vesely Company, a corporation, and Eugene L. Vesely, individually and as an officer of said corporation, shall forthwith distribute a copy of this order to every one of its present or future salesmen, field representatives, and to any individual engaged in the approval or cancellation of dealers or purchasers of camping or tent trailers.

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.
