

Complaint

77 F.T.C.

IN THE MATTER OF

DONAHUE SALES CORPORATION

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

Docket C-1713. Complaint, Mar. 25, 1970—Decision, Mar. 25, 1970

Consent order requiring a New York City sales corporation which is the exclusive distributor of "Talon products," consisting of packaged zippers, spooled thread, tape, and braid, to cease preticketing its merchandise, making agreements with purchasers prescribing minimum prices for a period of three years, effectuating any plan involving resale price maintenance, restricting the classes of retailers to whom its wholesalers may sell, and buying up retail stocks of home sewing products manufactured or distributed by any competitor.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 41), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party named in the caption hereof, and more particularly described and referred to hereinafter as respondent, has 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 Donahue Sales Corporation (hereafter sometimes referred to as "Donahue") is incorporated under the laws of the State of New York having its executive offices located at 41 East 51st Street, New York City, New York. In 1968, Donahue's sales were approximately \$48,000,000.

PAR. 2. Respondent Donahue Sales Corporation entered into a contractual arrangement with Talon, Inc. (hereafter sometimes referred to as "Talon") in 1946, whereby Donahue agreed to sell Talon packaged zippers to retail and wholesale outlets for resale in the home sewing market. In the 1960's, spooled thread, tape and braid, bearing the "Talon" trademark were sold by Talon to Donahue and resold by Donahue pursuant to the Talon-Donahue contractual arrangement. Since 1946, Donahue has purchased "Talon" trademarked products and has been the exclusive distributor of said products to retailers and wholesalers serving the home sewing market.

Unless specifically stated otherwise, "Talon products" will be used hereafter to refer to packaged zippers, spooled thread, tape and braid, bearing the "Talon" trademark.

The Donahue Sales Corporation also distributes other products produced by other companies. However, a predominant amount of Donahue's business involves the sale and distribution of Talon products.

PAR. 3. At the inception of the Talon-Donahue contractual arrangement, Talon, Inc., was an independent company, incorporated in the State of Pennsylvania, with its principal offices located in Meadville, Pennsylvania. Talon is now a division of Textron, Inc., of Providence, Rhode Island.

Talon is the leading producer of zippers in the United States. It manufactures and distributes more than 1500 types, sizes and colors of zippers. Talon does not sell packaged zippers, spooled thread, tape or braid, directly to the retail trade for resale in the home sewing market.

Talon owns approximately 10 percent of the stock of Donahue. Between 1948 and August 1968, one or more Talon officers was a member of the board of directors of Donahue.

PAR. 4. Respondent Donahue distributes and sells Talon products to the home sewing trade through the following sources:

- (a) 95 retail chains having 13,208 branches;
- (b) 3,000 retail stores, many of which are large, independently-owned department stores;
- (c) 300 wholesalers or notions jobbers who, in turn, resell to small department stores, variety stores, and fabric shops.

Donahue prepares and submits a report to Talon each quarter of every year which reflects its sales of Talon products to the home sewing trade.

PAR. 5. In the course and conduct of respondent's business, there has been at all times mentioned herein, and is now, a continuous and current movement of said zippers, spooled thread, braid and tape in interstate commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Except to the extent that competition has been hindered and suppressed by virtue of the acts and practices described below, respondent Donahue is engaged in substantial competition with other distributors of zippers, spooled thread, tape and braid.

PAR. 7. In the course and conduct of its business, respondent Donahue has engaged and is continuing to engage in the following un-

fair methods of competition and unfair acts or practices in commerce, among others, enumerated herein in this Paragraph:

(1) Between the years 1946 to December 1965, Donahue and Talon, Inc., entered into several written agreements to fix the prices at which Talon zippers were to be sold.

More particularly, such written contracts entered into by Donahue and Talon specifically provided: "Donahue will resell such packaged slide fasteners at prices approved by Talon."

This agreement has been implemented over a period of at least twenty years and has been applied to other home sewing products in addition to zippers.

(2) In order to carry out a plan of policy, whereby the resale prices for Talon products are observed and maintained by retailers and wholesalers purchasing such products, and as a part of said plan or policy, Donahue has adopted and employed, and still employs, in the States of Nebraska, Texas, Minnesota and other States of the United States, the following means, among others, of maintaining the resale prices charged by retailers and wholesalers for Talon products:

(a) It issues resale price lists to the trade in which the various resale prices for said products are set forth and explained;

(b) It enters into informal agreements, understandings and arrangements with such retailers and wholesalers that said resale prices are required to be maintained as a condition of opening or selling to such accounts;

(c) It instructs its wholesale customers to refrain from selling Talon products to so-called discount stores;

(d) It solicits cooperation from wholesalers handling Talon products in obtaining reports or letters from potential discounting customers that such customers will not cut the resale prices on Talon products;

(e) It directs Donahue salesmen and other employees and solicits wholesalers to secure information as to retailers and wholesalers who fail to observe said resale prices;

(f) It uses information received through Donahue salesmen and other employees to induce and coerce such retailers and wholesalers who 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;

(g) It has used, and now uses, other equivalent means and methods for the enforcement of said system of resale price maintenance with the result that said prices have been and are generally observed

and maintained by retailers and wholesalers handling Talon products.

PAR. 8. In addition to the foregoing, respondent Donahue has engaged in the unfair method of competition and unfair act and practice of purchasing and offering to purchase stocks of zippers and spooled thread sold and distributed by competitors by agreeing or arranging for valuable consideration to lift or remove from the channels of trade such stocks of zippers and spooled thread distributed to retail outlets by competitors.

PAR. 9. In addition to the foregoing, respondent Donahue has engaged in the following unfair methods of competition and unfair acts and practices, among others:

(a) Established a policy whereby certain large chain stores and department stores are treated as the reserved accounts of Donahue;

(b) Instructed, advised or otherwise informed wholesalers purchasing Talon products for resale that Donahue's reserved accounts are to be sold and serviced only by Donahue, and

(c) Refused to sell and threatened to refuse to sell Talon products to wholesalers soliciting or attempting to solicit Donahue's reserved accounts as their own customers.

PAR. 10. The above acts and practices have had and still have the capacity and tendency of hindering, suppressing or eliminating competition with the following effects, among others:

(a) Retailers and wholesalers of Talon products are required to resell at the prices fixed by respondent;

(b) Retailers and wholesalers of Talon products are prevented from selling these products at the prices they deem to be warranted;

(c) Price competition in the resale of Talon products has been eliminated and other forms of competition have been sharply curtailed in Nebraska, Texas, Minnesota and other States of the United States;

(d) Competing manufacturers have had their zipper or spooled thread products entirely removed from the shelves of their customers and have lost such customers as their retail accounts;

(e) Wholesalers of Talon products have been prevented from selling such products to customers of their own choice.

PAR. 11. The aforesaid acts and practices of the respondent 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.

Order

77 F.T.C.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 Donahue Sales Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 41 East 51st Street, New York City, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, Donahue Sales Corporation, a corporation, and its 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 packaged zippers, spooled threads, or tapes and braids for home sewing purposes and bearing the trademark "Talon" or manufactured by the Talon Division of Textron Inc., in commerce, as "commerce" is

defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Accepting for resale from Textron Inc., or any division or subsidiary thereof, any of the above products, with pricing information affixed to said products or imprinted on the packages or containers of said products, unless prior to such acceptance:

(a) Donahue Sales Corporation has independently determined the pricing information to be imprinted on or affixed to said products, without prior consultation with respect to the pricing information to be imprinted on or affixed to said products; and

(b) Donahue Sales Corporation has communicated in writing this pricing information to Textron Inc., or any of its divisions or subsidiaries, requesting them to affix or imprint the pricing information on the said products, packages or containers;

2. Entering into any contract or agreement or continuing the effectiveness of any contract or agreement prescribing minimum or stipulated prices for the above products, when contracts or agreements of that description are lawful as applied to intra-state transactions under any statute, law or public policy in any state, territory or the District of Columbia, in which such resale is to be made or to which the products are to be transported for such resale, for a period of three years following the effective date of this order;

3. Adopting or placing into effect any plan, policy or scheme to fix or maintain the resale price of the above products, by any device or method. In particular, respondent shall cease and desist from:

(a) Requiring purchasers or prospective purchasers to agree that they will resell at prices specified by respondent, or that they will not resell below or above such specified prices;

(b) Threatening to refuse or refusing to sell respondent's products to any purchaser or prospective purchaser, because such purchaser fails to observe and maintain suggested resale prices or will not agree to observe and maintain suggested resale prices;

(c) Requesting or encouraging purchasers, either directly or through salesmen, agents, representatives or employees, to report any persons or firms who do not observe the resale prices suggested by respondent;

Order

77 F.T.C.

(d) Utilizing salesmen, agents, representatives or employees, directly or indirectly, to report purchasers who do not observe suggested resale prices, as part of any plan, policy or scheme to maintain suggested resale prices, except that nothing in this provision shall be interpreted so as to prohibit respondent's salesmen, agents, representatives or employees, from observing and reporting pricing information, when not a part of such a plan, policy or scheme;

4. Entering into, maintaining, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan, policy or program to fix, establish, limit or restrict the persons or classes of persons to whom any distributor or wholesaler may sell the above products in the United States.

5. Offering to buy or buying or taking over stock of packaged zippers, spooled threads or tapes and braids used for home sewing purposes, sold and distributed by competitors, for the purpose of lifting or removing such stock from the channels of trade, or agreeing or arranging with retail sellers for any consideration whatsoever, to lift or remove from the channels of trade any of the above products, distributed to such retail outlets by competitors, except that nothing in this order shall be interpreted so as to restrict the respondent's right to agree to or arrange for acceptance of damaged, soiled or defective Talon trademarked products.

Provided, however, That after a period of three years following the effective date of this order, nothing contained in Paragraphs 2 through 5 of this order shall be interpreted as prohibiting any act or practice excepted from the provisions of the Federal Trade Commission Act by virtue of the McGuire Act, the amendments to said Act, or any other applicable statute, whether now in effect or hereafter enacted, or from complying with the requirements of any law or ordinance.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, serve a copy of this order by mail, (1) on all of its jobber customers who sell Talon products to the home sewing market, along with a copy of Letter "A" attached hereto, and (2) on all of its retailer and chain store customers who sell Talon products to the home sewing market, along with a copy of Letter "B" attached hereto, both letters to be on respondent's official company stationery and signed by the president of respondent corporation.

304

Order

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

LETTER A

(Official Donahue Sales Corporation Letterhead)

(Date)

Dear _____:

Donahue Sales Corporation has agreed to the entry of an order by the Federal Trade Commission which among other things permits you freely to determine the prices at which you will sell "Talon" trademarked products. The preticketed price, which will continue to appear on all Talon products, is simply a suggested price, placed thereon for your convenience. Furthermore, under this order, you are free to sell "Talon" trademarked products to any customer of your own choice, without regard to the type of business in which such customer is engaged or whether or not such customers are or were sold directly by Donahue Sales Corporation.

Furthermore, Donahue Sales Corporation wants to make it perfectly clear that the purpose of entering into an agreement with the Federal Trade Commission was to reach an amicable settlement and in no sense constitutes an admission on the part of Donahue Sales Corporation that it has violated any law or regulation.

A copy of the order is enclosed.

Very truly yours,

(President of Donahue Sales Corporation)

LETTER B

(Official Donahue Sales Corporation Letterhead)

(Date)

Dear _____:

Donahue Sales Corporation has agreed to the entry of an order from the Federal Trade Commission, which among other things permits you freely to determine the prices at which you may sell "Talon" trademarked products. The preticketed price, which will continue to appear on all Talon products, is simply a suggested price, placed thereon for your convenience.

Furthermore, Donahue Sales Corporation wants to make it perfectly clear that the purpose of entering into an agreement with the Federal Trade Commission was to reach an amicable settlement and in no sense constitutes an admission on the part of Donahue Sales Corporation that it has violated any law or regulation.

A copy of the order is enclosed.

Very truly yours,

(President of Donahue Sales Corporation)

Complaint

77 F.T.C.

IN THE MATTER OF

SILVER PRIDE CHINCHILLAS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1714. Complaint, Mar. 25, 1970—Decision, Mar. 25, 1970*

Consent order requiring a Nashville, Tenn., distributor of chinchilla breeding stock to cease making exaggerated earning claims for purchasers of its chinchillas, misrepresenting the quality of its stock, deceptively guaranteeing the fertility of its stock, and misrepresenting its services to purchasers.

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 Silver Pride Chinchillas, Inc., a corporation, and Jay F. Meyers and I. T. Sturges, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions 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 that respect as follows:

PARAGRAPH 1. Respondent Silver Pride Chinchillas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 1040 Murfreesboro Road, Nashville, Tennessee.

Respondents Jay F. Meyers and I. T. Sturges are officers of Silver Pride Chinchillas, Inc. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporation.

PAR 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused their said chinchillas, when sold, to be shipped from their place of business in the State of Tennessee to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of