

Order

77 F.T.C.

IN THE MATTER OF

## LENOX, INCORPORATED

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket 8718. Complaint, Oct. 10, 1970—Decision, June 24, 1970*

Order modifying a cease and desist order dated April 9, 1968, 73 F.T.C. 578, pursuant to a decision of the Court of Appeals, Second Circuit, dated October 10, 1969, 417 F. 2d 126 (8 S.&D. 1037), which held that Commission could not forbid respondent from making resale price maintenance agreements in States where such agreements are lawful; and further modifying the order, pursuant to a new judgment upon rehearing by the Court, dated March 10, 1970, by allowing respondent to enter into resale price maintenance contracts and providing for the repeal of one section if at the end of 2 years respondent can show competition has been restored.

## ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent having filed in the United States Court of Appeals for the Second Circuit a petition to review and set aside the order to cease and desist issued herein on April 9, 1968 [73 F.T.C. 578]; and the Court having entered its opinion and judgment modifying and, as modified, affirming and enforcing said order to cease and desist; and the Court on December 18, 1969, having granted respondent's petition for rehearing and on March 10, 1970, having issued a new judgment further modifying said order to cease and desist; and the time allowed for filing a petition for certiorari having expired and no such petition having been filed;

*Now, therefore, it is hereby ordered*, That the aforesaid order of the Commission to cease and desist be, and it hereby is, modified in accordance with the said final decree of the court of appeals to read as follows:

*It is ordered*, That respondent, Lenox, Incorporated, 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 fine china dinnerware, giftware, and artware, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from hindering, suppressing, or eliminating competition or from attempting to hinder, suppress, or eliminate competition between or among dealers handling respondent's products by:

1. Requiring dealers, through a franchise agreement or other means, to agree that they will resell at prices specified by respondent or that they will not resell below or above specified prices;

2. Requiring prospective dealers to agree, through direct or indirect means, that they will maintain respondent's specified resale prices as a condition of buying respondent's products;

3. Requesting dealers, either directly or indirectly, to report any person or firm who does not observe the resale prices suggested by respondent, or acting on reports so obtained by refusing or threatening to refuse sales to the dealers so reported;

4. Harassing, intimidating, coercing, threatening or otherwise exerting pressure on dealers, either directly or indirectly, to observe, maintain, or advertise established resale prices;

5. Selling to dealers at a mark down or discount from a resale or retail price for a period of three years following the effective date of this order: *Provided, however,* That respondent may, two years following the effective date of this order, upon a showing that competition in the resale of its products has been restored, petition the Commission to repeal this provision;

6. Publishing, disseminating or circulating to any dealer, any price list, price book or other document indicating any resale or retail prices for a period of three years following the effective date of this order: *Provided, however,* That respondent may, two years following the effective date of this order, upon a showing that competition in the resale of its products has been restored, petition the Commission to repeal this provision;

7. Utilizing any other cooperative means of accomplishing the maintenance of resale prices fixed by respondent;

8. Requiring or inducing, by any means, dealers or prospective dealers to refrain, or to agree to refrain, from reselling respondent's products to any dealers or distributors;

9. Nothing hereinabove contained shall be construed to limit or otherwise affect any resale price maintenance contracts that respondent may enter into in conformity with Section 5 of the Federal Trade Commission Act, as amended by the McGuire Act (66 Stat. 632 [1952], 15 USC 45 [a]);

10. (a) Failing to sell or refraining from selling to any dealer who desires to purchase from respondent and who was terminated after January 1, 1960, for failing to maintain respondent's "suggested" resale prices and who is located in any

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State of the United States in which resale price maintenance contracts are unlawful or in the District of Columbia;

(b) Failing to sell or refraining from selling to any dealer who desires to purchase from respondent who was terminated after January 1, 1960, for selling to another dealer for resale.

*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.

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IN THE MATTER OF

M. REINER & SONS, INC., ET AL.