

Complaint

IN THE MATTER OF

BROWNING ARMS COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2212. Complaint, May 4, 1972—Decision, May 4, 1972*

Consent order requiring a Morgan, Utah, manufacturer of firearms and accessories to cease fixing the resale prices of its products, requiring its dealers to agree to its specified prices, requiring dealers and sales personnel to report any persons not observing retail selling prices, requiring those dealers caught price-cutting to cease their practices as a condition of future sales, and to prevent its dealers from reselling its products to other dealers or distributors. Respondent is also required to indicate on any future price lists that the prices are only suggested or approximate.

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 Browning Arms Company, a corporation, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. 45), 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 with respect thereto as follows:

PARAGRAPH 1. Respondent, Browning Arms Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its office and principal place of business located on Route #1 in Morgan, Utah.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of firearms and firearm accessories with gross sales in 1970 in excess of \$32,000,000. Respondent's firearms are manufactured in Belgium according to respondent's specifications and such firearms are subsequently distributed and sold to approximately 10,500 authorized dealers located throughout the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been and is now engaged in commerce, as "commerce"

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is defined in the Federal Trade Commission Act, in that respondent has caused and now causes its various products to be shipped from the states in which they are manufactured, assembled, or warehoused to other States of the United States for resale and distribution through its authorized dealers.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in competition with other persons, firms and corporations engaged in the manufacture, sale and distribution of firearms and firearm accessories.

PAR. 5. Respondent, in combination, agreement, understanding and conspiracy with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers, has for the last several years been engaged in a planned course of action to fix, establish and maintain certain specified uniform prices at which its products are resold. In furtherance of said planned course of action, respondent has for the past several years engaged in the following acts and practices, among others:

(a) Regularly furnishing all its dealers with price lists and necessary supplements thereto containing the established resale prices;

(b) Establishing agreements, understandings, and arrangements with its dealers, some of whom are located in states which do not have fair trade laws, as a condition precedent to the granting of a dealership, that such dealers will maintain its resale prices;

(c) Informing its dealers, by direct and indirect means, that it expects and requires all of its dealers to maintain and enforce its resale prices, or such dealerships will be terminated;

(d) Requiring its dealers to agree not to sell or otherwise supply its firearms and firearm accessories to anyone who is not an authorized dealer of the respondent;

(e) Soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting dealers who advertise, offer to sell or sell respondent's products at prices lower than its established resale prices; and,

(f) Directing its salesmen, representatives, and other employees to secure and report information identifying any dealer who fails to adhere to and maintain its established resale prices.

PAR. 6. By means of the aforesaid acts and practices, and more, respondent, in combination, agreement, understanding and conspiracy with certain of its authorized dealers and with the acquiescence of other of its authorized dealers, has established, maintained and

pursued a planned course of action to fix and maintain certain specified uniform prices at which respondent's products will be resold.

PAR. 7. The acts and practices of respondent as hereinabove described, have been and are now having the effect of hindering, lessening, restricting, restraining and eliminating competition in the resale and distribution of respondent's firearms and firearm accessories, and constitute unfair methods of competition in commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

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 Washington, D.C. Regional Office 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, its attorney 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, 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 Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Browning Arms Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its offices and principal place of business located on Route #1 in Morgan, Utah.

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, Browning Arms Company, a corporation, its subsidiaries, successors, assigns, officers, directors, agents, representatives, and employees, individually or in concert directly or through any corporate or other device in connection with the manufacture, distribution, offering for sale or sale of firearms and firearm accessories (hereinafter referred to in this order as "products,") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing any plan or policy under which contracts, agreements, understandings or arrangements are entered into with dealers in respondent's products which have the purpose or effect of fixing, establishing, maintaining or enforcing the retail prices at which respondent's products are to be resold.

B. Requiring any dealer or prospective dealer to enter into verbal agreements or understandings that such dealer or prospective dealer will maintain respondent's established or suggested retail prices as a condition of buying respondent's products.

C. 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 any person or firm so reported.

D. Directing or requiring respondent's salesmen, or any other agents, representatives, or employees, directly or indirectly, as part of any plan or program of requiring its dealers to adhere to its suggested resale prices, to report dealers who do not observe such suggested resale prices, or to act on such reports by refusing or threatening to refuse sales to dealers so reported.

E. Requiring from dealers charged with price cutting or failure to observe suggested resale prices, promises or assurances of the observance of respondent's resale prices as a condition precedent to future sales to said dealers.

F. Publishing, disseminating or circulating to any dealer, any price lists, price books, price tags or other documents indicating any resale or retail prices without stating on such lists, books, tags or other documents that the prices are suggested or approximate.

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

Provided, however, nothing hereinabove shall be construed to waive, limit or otherwise affect the right of respondent to enter into, establish, maintain and enforce in any lawful manner any price maintenance agreement excepted from the provisions of Section 5 of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, mail a copy of this order to each of its dealers in the States of Alabama, Alaska, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, Rhode Island, Texas, Utah, Vermont, Wyoming and the Commonwealth of Puerto Rico and the District of Columbia under cover of the letter annexed hereto as Exhibit A, and furnish the Commission proof of the mailing thereof.

It is further ordered, That the respondent herein shall forthwith distribute a copy of this order to each of its operating divisions, and to all of its sales personnel and shall instruct each sales person employed by it now or in the future to read this order and to be familiar with its provisions.

It is further ordered, That respondent Browning Arms Company notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other such change in the corporation.

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.

(Letterhead of Browning Arms Company)

DEAR DEALER: Browning Arms Company has entered into an agreement with the Federal Trade Commission relating to the distributional activities and pricing policy of Browning Arms Company. A copy of the consent order entered into pursuant to that agreement is enclosed herewith.

Browning Arms Company has entered into this agreement solely for the purpose of settling a dispute with the Commission, and the agreement and consent order is not to be construed as an admission by Browning Arms Company that it has violated any of the laws administered by the Commission, or that any of the allegations in the complaint are true and correct. Instead, the order merely relates to the activities of Browning Arms Company in the future.

In order that you may readily understand the terms of the consent order, we have set forth the essentials of the agreement with the Commission, al-

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though you must realize that the consent order itself is controlling rather than the following explanation of its provisions:

(1) While Browning Arms Company may suggest resale prices for its products, distribute suggested resale price lists, and preticket with suggested prices, Browning Arms Company will not solicit the agreement of its dealers in your state to adhere to those suggested prices or take any other action to induce such dealers to follow those suggested prices since they are not binding.

(2) Browning Arms Company will not solicit, invite or encourage dealers in your state to report any person not following its suggested prices, and furthermore will not act on any such reports sent to it.

(3) Browning Arms Company will not require or induce its dealers in your state to refrain from advertising Browning Arms Company products at any price they choose or from selling Browning Arms Company products at any price to any person of their choice.

Sincerely yours,

JOHN V. BROWNING, *President.*

Exhibit A