

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

Docket C-2513. Complaint, Apr. 24, 1974—Decision, Apr. 24, 1974

Consent order requiring an Erie, Pa., manufacturer and seller of printing and fine paper products, among other things to cease maintaining or enforcing contracts which limit dealer's or distributor's freedom to carry, list or sell competing products; discourage selling at other than suggested prices; and limit the resale of respondent's products to firms of their choice.

Appearances

For the Commission: *Ronald J. Dolan.*

For the respondent: *Bergson, Borkland, Margolis & Adler, Wash., D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Hammermill Paper Company, a corporation subject to the jurisdiction of the Commission, has violated the provisions of Section 5 of the Federal Trade Commission Act (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 and states its charges as follows:

PARAGRAPH 1. Respondent, Hammermill Paper Company, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office in Erie, Pa.

PAR. 2. Respondent has been and is now, a manufacturer and nationwide seller of printing and fine paper and other paper products. For purpose of this complaint, the term "printing and fine paper" includes coated and uncoated book papers, coated and uncoated printing papers, offset papers, text and cover papers, sulphite bond papers, rag or cotton content papers, mimeograph and duplicator papers, onionskin, ledger paper and bristols.

PAR. 3. In 1970, respondent had net sales in excess of \$352 million and total assets of approximately \$353.8 million.

PAR. 4. Respondent sells more than seventy (70) percent of its products to wholesale distributors who resell these products to printers and other users of such products.

PAR. 5. At all times relevant herein, respondent has sold its products to wholesale distributors located throughout the United States and,

therefore, respondent is and has been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Since Feb. 23, 1967, respondent has published and distributed to its wholesale distributors a document entitled "Hammermill Sales Policies" which imposes upon such distributors the following terms and conditions, among others:

1. Hammermill Paper Company confines the sale of its standard lines exclusively to Hammermill agents; and does not choose nor maintain as such Agents who carry, list or sell any watermarked line at or below the price of Hammermill Bond, except such lines as may be established and owned by Hammermill Paper Company.

2. All suggested resale schedules are to be considered as exact and not minimum.

3. No Hammermill Agent is permitted to sell Hammermill Advertised Lines for stock purposes to a merchant who is not a Hammermill Agent * * *

PAR. 7. Each of the terms and conditions described above may tend to limit the freedom of respondent's wholesale distributors to carry, list or sell competing products; to prohibit wholesale distributors of respondent's products from selling respondent's products at prices other than those suggested by respondent; and to limit the freedom of such distributors to resell respondent's products to persons, firms and users of their own choice. Such acts and practices therefore constitute unfair methods of competition and unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 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 complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed 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

in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hammermill Paper Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 1540 East Lake Road, Erie, Pa.

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 Hammermill Paper Company, and its officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in or in connection with the merchandising, offering for sale and sale or distribution of paper and paper products in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

1. Putting into effect, maintaining or enforcing any merchandising or distribution plan or policy under which contracts, agreements or understandings are entered into with dealers or distributors of its products which have the purpose or effect of

(a) Limiting, allocating or restricting the persons or classes of persons to whom any dealer or distributor may resell his products;

(b) Fixing, establishing or maintaining or attempting to fix, establish and maintain the prices at which such products may be sold by dealers or distributors;

(c) Terminating or threatening to terminate any person as a dealer or distributor of the Hammermill line of printing and fine papers because such dealer or distributor carries, lists or sells a product which competes with any of respondent's products at or below the price of respondent's competing product.

2. Entering into, continuing or enforcing, or attempting to enforce, any contract, agreement or understanding with any dealer in or distributor of its products for the purpose or with the effect of establishing or maintaining any merchandising or distribution plan or policy prohibited by paragraph 1 of this order.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its wholesale distributors.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of

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subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days of service 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