

Complaint

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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 the order to cease and desist.

Commissioner Nye not participating.

IN THE MATTER OF

COLT INDUSTRIES OPERATING CORP.

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

Docket C-2520. Complaint, July 12, 1974—Decision, July 12, 1974

Consent order requiring a Hartford, Conn., manufacturer, seller and distributor of sporting firearms and firearm accessories, among other things to cease fixing its dealers' retail prices of firearm products; requiring dealers, through any means, to agree to resell at specified retail prices; using cancellation threats to induce dealers to observe its retail prices; and requesting dealers or salesmen to report persons who do not adhere to its suggested retail prices.

Appearances

For the Commission: *James D. Tangiers.*

For the respondent: *John Linsenmeyer, Cravath, Swaine & Moore,*
New York, N.Y.

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 Colt Industries Operating Corp., a corporation, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of said 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, stating its charges in respect thereto as follows:

PARAGRAPH 1. Respondent Colt Industries Operating Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its Firearms Division is a successor in interest to Colt's Inc., an Arizona corporation, with its office and principal place of business located at 150 Huyslope Ave., in Hartford, Conn.

PAR. 2. Respondent, through its firearms division, has been and is now engaged in the manufacture, sale and distribution of sporting firearms and firearm accessories, with gross sales in 1970 in excess of \$17,000,000. Respondent manufactures sporting firearms and firearm accessories at its plants located in Hartford, Conn. and Rocky Hill, Conn., and sells such products directly to as many as 7,000 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" is defined in the Federal Trade Commission Act, in that respondent has caused and now causes its various products to be shipped from the state of manufacture thereof 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 sporting firearms and firearm accessories.

PAR. 5. Respondent, in combination, agreement, and understanding 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 suggested retail prices at which certain of 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 suggested retail prices;

(b) Establishing agreements, understandings and arrangements with certain of 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 suggested retail prices;

(c) Informing certain of its dealers, by direct and indirect means, that it expects and requires such dealers to maintain and enforce its suggested retail 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 certain of 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 suggested retail prices;

(f) Directing its salesmen, representatives, and other employees to secure and report information identifying any dealer who fails to adhere to and maintain its suggested retail prices; and,

(g) Threatening to terminate and terminating authorized dealers who fail or refuse to observe and maintain respondent's suggested retail prices.

PAR. 6. By means of the aforesaid acts and practices, and more, respondent, in combination, agreement, and understanding 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 suggested retail 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 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 sixty (60)

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 Colt Industries Operating Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its officers and principal place of business located at 150 Huyslope Ave. in Hartford, Conn.

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

I

It is ordered, That respondent, Colt Industries Operating Corp., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division 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 "firearm products"), in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Requiring any dealer or prospective dealer to enter into oral or written agreements or understandings that such dealer or prospective dealer will resell or offer for resale respondent's firearms products at any price;

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

4. Threatening dealers, either directly or indirectly, with cancellation in order to induce them to observe, maintain, or advertise the respondent's suggested retail prices;

5. Requiring from dealers charged with price cutting or failure to adhere to suggested retail prices, promises or assurances of the

observance of respondent's suggested retail prices as a condition precedent to future sales to said dealers;

6. Directing or requiring respondent's salesmen, or any other agents, representatives, or employees, directly or indirectly, from requiring its dealers to adhere to its suggested retail prices, to report dealers who do not adhere to such suggested retail prices, or to act on such reports by refusing or threatening to refuse sales to dealers so reported;

7. Requiring or inducing by any means, dealers or prospective dealers, to refrain, or to agree to refrain from reselling respondent's firearm products to any other dealers or distributors which are authorized by law to sell firearm products; and

8. Publishing, disseminating or circulating any price lists, price books, price tags, advertising or promotional material, or other documents indicating any retail prices without stating on each page of such price lists, price books, price tags, advertising or promotional material, or other documents that the prices are suggested or approximate.

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 Acts amendments to said Act to disseminate or circulate to any of its dealers and distributors suggested retail prices for the sale of its firearm products.

II

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 under cover of the letter annexed hereto as Exhibit A, and furnish the Commission proof of the mailing thereof.

III

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

IV

It is further ordered, That the 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 subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

V

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 compiled with this order.

EXHIBIT A

(Letterhead of The Firearms Division of
Colt Industries Operating Corporation)

Dear Dealer:___

Colt has entered into an agreement with the Federal Trade Commission relating to its distributional activities and pricing policy. A copy of the consent order entered into pursuant to that agreement is enclosed herewith.

Colt has entered into this agreement solely for the purpose of settling a dispute with the Commission, and the agreement and order is not to be construed as an admission by Colt that it has violated any of the laws administered by the Commission. Instead, the order merely relates to the activities of Colt in the future.

In order that you may readily understand the terms of the order, we have set forth the essentials of the agreement with the Commission, although you must realize that the order itself is controlling rather than the following explanation of its provisions:

(1) While Colt may suggest retail prices for its products, distribute suggested retail price lists, and preticket with suggested retail prices, Colt will not solicit the agreement of its dealers to adhere to those suggested retail prices or take any other action to require such dealers to follow those suggested retail prices since they are not binding. Dealers are free to set their own retail prices on Colt products.

(2) Colt will not solicit, invite or encourage dealers to report any person not following its suggested retail prices, and furthermore, will not act on any such reports sent to it.

(3) Colt will not require or induce its dealers to refrain from advertising Colt products at any price they choose or from selling Colt products at any price to any person of their choice.

Sincerely yours,
David C. Eaton
President

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IN THE MATTER OF

LINCOLN UPHOLSTERY COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket C-2521. Complaint, July 12, 1974—Decision, July 12, 1974*

Consent order requiring a Chicago, Ill., seller and installer of carpeting and other goods and services, among other things to cease using any sales plan employing false, misleading or deceptive statements or representations to obtain leads to potential customers; using bait advertising; disparaging advertised products; using misleading savings claims; failing to provide customers with a three-day cooling-off period within which they may cancel their contracts with full refund rights. Further, respondents are required to include a statement on all notes of indebtedness that any third-party is bound by the terms and conditions of the contract, and to cease violating the Truth in Lending Act by failing to disclose to customers, in connection with the extension of customer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Kozo Fukuda.*

For the respondents: *Robert S. Atkins, Freeman, Freeman & Atkins,*
Chicago, Ill.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Lincoln Upholstery Company, a partnership, and Isadore Shapiro and Howard Kaufman, individually and as co-partners trading and doing business as Lincoln Upholstery Company, Lincoln Upholstery and Furniture Company, Lincoln Upholstery and Carpet Company, Lincoln Carpet Company, and Commercial Contract Carpet Company, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation 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 Lincoln Upholstery Company, a partnership, is organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business at 7170 West Grand Avenue, Chicago, Ill.

Respondents Isadore Shapiro and Howard Kaufman are individuals