

IN THE MATTER OF

ADOLPH COORS COMPANY

MODIFYING ORDER, IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT

Docket 8845. Decision, July 24, 1973 - Modifying Order, Feb. 4, 1975

Order modifying an earlier order dated July 24, 1973, 83 F.T.C. 32, 38 F.R. 23399, pursuant to decision and judgment of June 4 and 21, 1974, respectively, of the United States Court of Appeals for the Tenth Circuit,* by deleting Paragraphs 12 and 13 of the order which rewrite the termination provisions of respondent's distributor contracts.

Appearances

For the Commission: *Anthony Low Joseph and Thomas V. Vakerics.*
For the respondent: *Leo N. Bradley, Earl K. Madsen, Bradley, Campbell & Carney, Golden, Colo.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent, having filed in the United States Court of Appeals for the Tenth Circuit on Aug. 15, 1973, a petition to review and set aside an order to cease and desist issued herein on July 24, 1973, and the Court having rendered its decision on June 4, 1974, and its judgment on June 21, 1974, affirming the order to cease and desist, except for numbered Paragraphs 12 and 13 of the order which it directed be set aside.

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court to read as follows:

ORDER

It is ordered, That respondent Adolph Coors Company and its subsidiaries, successors, assigns, officers, directors, agents, representatives and employees, individually or in concert with others, directly or indirectly, or through any corporate or other device, in connection with the brewing, distribution, offering for sale or sale of beer in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, maintaining or enforcing any contract, agreement, combination, understanding or course of conduct which has as its purpose or effect the fixing, maintaining, establishing or setting of the

* *Cert. denied*; Jan. 13, 1975, 419 U.S. 1105.

prices at which distributors sell Coors beer to retailers or the prices at which retailers sell Coors beer to consumers.

2. Publishing, disseminating or providing any price list or other document indicating suggested or mandatory prices for the sale of Coors beer by any distributor to any retailer or any price list or other document indicating suggested or mandatory prices for the sale of Coors beer by any retailer to any consumer.

Provided, however, That nothing contained in this paragraph of the order shall prohibit respondent from complying with the requirements of any state law, provided that when respondent purports to be complying with the state law regarding price suggestions, respondent will specifically advise the Commission of the statute and all court decisions and administrative agency decisions and rulings interpreting said statute pursuant to which it is purporting to act.

3. Publishing, disseminating or providing to any distributor or any retailer any information or suggestions concerning what Coors may believe to be an appropriate or proper markup or profit for Coors beer when the distributor sells to the retailer or when the retailer sells to the consumer or a markup or profit below which the distributor or retailer is advised not to sell Coors beer.

Provided, however, That nothing contained in paragraphs two (2) and three (3) of the order shall prohibit respondent from publishing, disseminating, or providing any price list or other document indicating suggested prices for the sale of Coors beer or suggested markups or profits for Coors beer after three years from the effective date of this order. Two years following the effective date of this order respondent may petition the Commission, upon a showing that competition in the resale of its products has been restored, to be permitted to publish, disseminate or provide suggested prices, markups, and profits as set forth in this proviso.

4. Refusing to sell beer to any Coors distributor or terminating or threatening to terminate any Coors distributor because:

A. the distributor has in the past or might in the future sell Coors beer at prices, markups, or profits different from those approved or recommended by respondent;

B. one or more of the distributor's customers sold Coors beer or advertised Coors beer for sale at prices, markups, or profits different from those approved or recommended by respondent;

C. the Coors distributor sold Coors beer to another distributor or to a retailer whose business is located outside of the territory granted to the distributor; or

D. the Coors distributor distributes, has distributed, or proposes to distribute in the future the product of another brewer.

5. Entering into, maintaining or enforcing any contract, agreement, combination, understanding or course of conduct to fix, establish, limit or restrict the territory in which or the persons to whom a distributor may sell Coors beer.

Provided, however, That nothing contained in this paragraph of the order shall prohibit respondent from complying with the requirements of any state law, *Provided,* That when respondent purports to be complying with a state law requiring the restriction of territories or customers, respondent will specifically advise the Commission of the statute and all court decisions and administrative agency decisions and rulings interpreting said statute pursuant to which it is purporting to act.

6. Allocating Coors beer among its distributors in times of beer shortage at the Coors brewery, by any means other than by allocating shares to distributors equal to their proportionate purchases of Coors beer from the brewery during the last three months before the allocation or when the distributor has not been in business for more than a year as a Coors distributor, on some other equitable basis.

7. Refusing to deliver all of a distributor's order because the distributor has made sales to customers outside of the territory granted the distributor or because the distributor or the distributor's customer is selling Coors beer at prices, markups or profits lower than those approved by respondent.

8. Prohibiting its distributors from selling for central warehouse delivery; *Provided, however,* That respondent can establish refrigeration standards for the central warehouse which are substantially similar to those established for distributors and can require its distributors to be responsible, directly or indirectly, for maintenance of such refrigeration standards and for rotation of Coors beer in the central warehouse and at the retail delivery locations where the beer is redelivered from the central warehouse, if respondent changes its container dating system so that the retailer and the consumer will recognize the date without reference to a code or measuring stick.

9. Entering into, maintaining or enforcing any contract, agreement, combination, understanding or course of conduct with its distributors which has as its purpose or effect requiring that retailers serve Coors draught beer as their only light-colored draught beer.

10. Entering into, maintaining or enforcing any contract, agreement or understanding, or taking any action or course of conduct with any of its distributors which has as its purpose or effect the requirement that the distributor eliminate, or refrain from obtaining and handling rival brands of beer in order to become or remain a Coors distributor.

11. Hindering, suppressing or eliminating competition or attempt-

Order

85 F.T.C.

ing to hinder, suppress or eliminate competition between or among distributors or between or among retailers handling Coors beer.

It is further ordered, That respondent corporation shall forthwith distribute of copy of this order to each of its operating divisions, to its present and future sales representatives, to its present and future 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 subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

In the event that respondent proposes a change in the corporate respondent, as set forth above, respondent shall require said successor or transferee to file, with the Commission, at the time of respondent's notification, a written agreement to be bound by the terms of this order; *Provided,* That if respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, respondent shall submit to the Commission a written statement setting forth said reasons at least sixty (60) days prior to the consummation of said succession or transfer.

It is further ordered, That 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.

Commissioner Thompson did not participate.

IN THE MATTER OF

SIR CARPET, INC., ET AL.

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