

It is further ordered, That, as so modified, the initial decision and order be, and they hereby are, adopted as the decision and order of the Commission.

IN THE MATTER OF
DUOFOLD, INC.

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

Docket C-2632. Complaint, Feb. 10, 1975 - Decision, Feb. 10, 1975

Consent order requiring a Mohawk, N.Y., manufacturer and distributor of 2-layer underwear, regular or quilted underwear, sportswear, pajamas, parkas, and related items, among other thing to cease establishing or enforcing resale prices; threatening to terminate dealers who fail to observe suggested resale prices; suggesting resale prices to dealers not lawfully under respondent's control; and publishing price lists, etc., which indicate resale prices without stating on each page that such prices are suggested or approximate.

Appearances

For the Commission; *David DiNardi.*

For the respondent: *Evans, Pirnie & Burdick*, Utica, 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 Duofold, Inc., a corporation, and more particularly described and referred to herein-after 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 Duofold, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located on Canal St., Mohawk, N.Y.

PAR. 2. Respondent has been and is now engaged in the manufacture,

sale and distribution of 2-layer underwear, regular or quilted underwear, sportswear, pajamas, parkas, tenniswear, golf shirts, turtlenecks and related items, hereafter referred to as said products. Respondent distributes and sells said products to authorized dealers throughout the United States for resale to the general public.

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 sold and caused and now causes said products to be shipped from the state in which they are manufactured 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 hampered or restrained 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 2-layer underwear, regular or quilted underwear, sportswear, pajamas, parkas, tenniswear, golf shirts, turtlenecks and related items.

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 authorized 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 said 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 of 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 established resale prices, or such dealerships will be terminated;

(d) Permitting its dealers a maximum deviation of five cents from the established resale price on each item without conflicting with respondent's existing policies;

(e) Requiring its dealers to agree not to sell or otherwise supply or furnish said products to anyone who is not an authorized dealer of the respondent;

(f) Soliciting and obtaining from its dealers cooperation and assistance in identifying and reporting dealers who advertise, offer to

sell or sell said products at prices lower than the established resale prices, or the maximum five cents deviation;

(g) 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, or the maximum five cents deviation; and

(h) In certain instances threatening to terminate and terminating dealers who fail or refuse to observe, maintain or advertise respondent's established resale prices, or the maximum five cents deviation.

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 said products will be resold.

PAR. 7. The aforesaid acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of said products, and, thus, are to the prejudice and injury of the public, constitute unfair methods of competition in commerce or unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Exhibit A

(Letterhead of Duofold, Inc.)

Dear Dealer:

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

Duofold, Inc. 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 Duofold, Inc. 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 Duofold, Inc. 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, although you must realize that the consent order itself is controlling rather than the following explanation of its provisions:

(1) Our dealers in your area are free to set their own retail or resale prices for said products.

(2) Duofold, Inc. will not solicit, invite or encourage dealers, or any other persons to report any dealer in your area not following any retail or resale price for any of said products, and, furthermore, will not act on any such reports sent to it.

(3) Duofold, Inc. will not require or induce its dealers in your area to refrain from advertising said products at any price or from selling or offering said products at any price to any person.

Decision and Order

85 F.T.C.

Sincerely yours,

/s/ Thompson H. Billington,
President

Enclosure

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 Boston 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 any 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 place 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 Duofold, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located on Canal St., Mohawk, N.Y.

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 Duofold, Inc., a corporation, its subsidiaries, successors and assigns, and its officers and directors, and

respondent's agents, representatives and employees, individually or in concert, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, distribution, offering for sale or sale of 2-layer underwear, regular or quilted underwear, sportswear, pajamas, parkas, tenniswear, golf shirts, turtlenecks and related items or any other products (hereinafter referred to in this order as "said products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing with any dealer any contract, agreement, understanding or arrangement fixing, establishing, maintaining, controlling, influencing or enforcing in any way or to any extent, directly or indirectly, the price at which any of said products is advertised, sold or offered for sale at retail.

B. Requiring any dealer or prospective dealer to enter into an oral or written agreement or understanding that such dealer or prospective dealer will maintain any resale price for any of said products as a condition of buying any of said products.

C. Requesting or requiring any dealer or prospective dealer, either directly or indirectly, to report any dealer, person or firm who does not adhere to any resale price for any of said products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

D. Directing or requiring respondent's salesmen, or any other agent, representative or employee, directly or indirectly, to report any dealer who does not adhere to any resale price for any of said products, or to act on such reports by refusing or threatening to refuse sales to any dealer so reported.

E. Threatening to terminate and terminating, either directly or indirectly, dealers who fail to observe, maintain or advertise the respondent's suggested resale prices.

F. Suggesting, for three (3) years from the date on which this order becomes final, to any reseller whose resale prices are not or cannot lawfully be controlled by respondent in the manner prescribed by law and this order any resale price whatsoever to be charged by such reseller for said products, by price list, discount schedule, invoicing procedure, pre-pricing of commodities or their containers, or by any other means.

G. Requiring from any dealer charged with price cutting or failure to adhere to any suggested resale price, a promise or assurance to adhere to any resale price for any of said products as a condition precedent to any future sales to said dealer.

H. Publishing, disseminating or circulating any price list, price book, price tag, advertising or promotional material, or other document

indicating any resale price without stating on each page of such price list, price book, price tag, advertising or promotional material, or other document that the price is suggested or approximate.

I. Requiring or inducing by any means any dealer or prospective dealer to refrain, or to agree to refrain from reselling any of said products to any other dealer or distributor.

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.

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 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, and, during the five (5) year period of time following the date of service of this order, to all future dealers in these jurisdictions at the time said dealers are opened as accounts, 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 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 salesperson 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 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 for a period of five (5) years from the date of this signing establish and maintain a file of all records referring or relating to respondent's refusal to sell said products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of five (5) years from the date thereof, submit a report to the Commission's Boston Regional Office listing the names of all dealers with whom respondent has

refused to deal over the preceding year, a description of the reason for the refusal and the date of the refusal.

VI. *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.