

entitled to appointed counsel. Accordingly,

It is ordered, That the general counsel for the Commission take all necessary and appropriate measures to secure adequate legal representation for the above-named respondents.

Commissioners Dixon and Thompson would have closed this matter for lack of public interest in further proceedings.

IN THE MATTER OF

CUBCO, INC., ET AL.

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

Docket C-2670. Complaint, May 22, 1975-Decision, May 22, 1975

Consent order requiring a Nutley, N.J., manufacturer and distributor of ski bindings and related items, among other things to cease anticompetitive practices having the effect of enforcing and fixing the dealers' resale prices for certain of respondents' products.

Appearances

For the Commission: *David W. DiNardi*

For the Respondents: *Richard F. McMahon, Lafferty, Rowe, McMahon, McKeon*, Newark, N.J.

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 Cubco, Inc., a corporation, and Mitchell H. Cubberley, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated and are 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 Cubco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located on Baltimore St., Nutley, N.J.

Respondent Mitchell H. Cubberley is an officer of the corporate

respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein-after set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents have been and are now engaged in the manufacture, sale and distribution of Cubco ski bindings and related items, hereinafter referred to as said products. Respondents' products are subsequently distributed and sold to authorized dealers throughout the United States for resale to the general public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have been and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that respondents have sold and caused and now cause 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 authorized dealers.

PAR. 4. Except to the extent that competition has been hampered or restrained as set forth in this complaint, respondents have been and are now in competition with other persons, firms and corporations engaged in the manufacture, sale and distribution of said products.

PAR. 5. Respondents, in combination, agreement or understanding with certain of their authorized dealers, or with the cooperation or acquiescence of other of their dealers, have 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, respondents have for the past several years engaged in the following acts and practices, among others:

(a) Regularly furnishing their dealers with price lists and necessary supplements thereto containing certain resale or retail prices;

(b) Establishing agreements, understandings, arrangements with their dealers, one or more 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 certain resale or retail prices;

(c) Informing their dealers, by direct and indirect means, that respondents expect and require such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated.

(d) Requiring their dealers to agree not to sell or otherwise supply or furnish their products to anyone who is not an authorized dealer of the respondents;

(e) Soliciting and obtaining from their dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or

offers to sell, or sells said products at prices lower than certain resale or retail prices; and

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

PAR. 6. By means of such acts and practices, including but not limited to the foregoing, respondents, in combination, agreement, or understanding with certain of their authorized dealers and with the acquiescence of other authorized dealers, have established, maintained and pursued a planned course of action to fix and maintain certain resale or retail prices at which said products will be resold.

PAR. 7. The aforementioned acts and practices of respondents have been and are now having the effect of hampering and restraining competition in the resale and distribution of said products, 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 respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 Cubco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 20 Baltimore St., Nutley, N.J.

Respondent Mitchell H. Cubberley is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I. *It is ordered*, That respondents Cubco, Inc., a corporation, its successors and assigns, and its officers, and Mitchell H. Cubberley, individually and as an officer of said corporation, and respondents' 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 ski bindings, ski equipment and related items or any other product (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 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 or retail 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 or retail 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 any of respondents' salesmen, or any other agent, representative, or employee, directly or indirectly, to report any dealer who does not adhere to any resale or retail price for any of said products, or to act on such reports by refusing or threatening to refuse sales to dealers so reported.

E. Refusing or threatening to refuse any sales to any dealer or prospective dealer, either directly or indirectly, or threatening to cancel or terminate, or cancelling or terminating any dealer or prospective dealer because of any resale or retail price observed, maintained, or advertised by the dealer or prospective dealer for any of said products.

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

G. Requiring, from any dealer charged with price cutting or failure to adhere to any resale or retail price, a promise or assurance to adhere to any resale or retail 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 or retail price without stating on each page of such list, book, 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 respondents 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 corporation 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 Commonwealth of Puerto Rico, the District of Columbia, and in those states which now, or at any time in the future, do not permit fair trade contracts, 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 corporation 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.

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

V. *It is further ordered*, That the respondents 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 respondents' refusal to sell said products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondents' 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 hereof, submit a report to the Commission's Boston Regional Office listing the names and addresses of all dealers with whom respondents have 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 individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

VII. *It is further ordered*, That the respondents herein shall, within sixty (60) 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 this order.

EXHIBIT A

(Letterhead of Cubco, Inc.)

Dear Dealer:

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

Cubco, 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 Cubco, 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 Cubco, 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:

Order

85 F.T.C.

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

(2) Cubco, 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) Cubco, 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.

Sincerely yours,

Mitchell H. Cubberley
President

Enclosure

IN THE MATTER OF
CIRCULATION BUILDERS, INC., ET AL.

Docket 9004. Order, May 27, 1975

Denial of complaint counsel's motion to amend notice order in complaint to indicate possibility that consumer redress may be sought.

Appearances

For the Commission: *Ralph E. Stone* and *Paul D. Hodge*.

For the respondents: *Stephen M. Koolpe*, Mill Valley, Calif.

ORDER DENYING MOTION TO AMEND NOTICE ORDER

By order of Apr. 28, 1975, the administrative law judge certified to the Commission complaint counsel's motion to amend the notice order accompanying the complaint in this matter to indicate the possibility that the Commission may seek consumer redress against respondents pursuant to Section 206 of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act. While complaint counsel is generally free in Section 5 actions to ask for relief over and beyond that described in the notice order, if any, consumer redress under the Magnuson-Moss Act for acts or practices that occurred prior to its enactment is permitted by statute only where the Commission's intent to seek such relief is set out in the complaint or notice order. The law judge has accordingly certified complaint counsel's motion to amend to the Commission.

No information was presented to the Commission at the time this complaint was issued as to why consumer redress should be sought and none is now offered. Accordingly,

It is ordered, That the aforesaid motion to amend the notice order in this matter be, and it hereby is, denied.
