

IN THE MATTER OF
NIKKO ELECTRIC CORPORATION OF AMERICA

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

Docket C-2829. Complaint, July 12, 1976—Decision, July 12, 1976

Consent order requiring a Van Nuys, California, manufacturer, importer and distributor of high fidelity audio components, among other things to cease maintaining resale prices and engaging in restrictive trade practices. The order further requires respondent to maintain records; reinstate dealers terminated for non-conformance with previously required pricing schedules and to take appropriate action against those distributors found to be in violation of the provisions of the order.

Appearances

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg*.

For the respondent: *H. David Schmerin, Rotkin, Schmerin & MacIntyre*, Los Angeles, California.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appears that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Nikko Corporation of America is a corporation organized under the laws of the State of California, with its principal office located at 16270 Raymer St., Van Nuys, California.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these products to retail dealers.

PAR. 3. Respondent distributes and sells its products to distributors and to retail dealers (hereinafter distributors and retail dealers are referred to as dealers) located in all fifty States and in the District of Columbia, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and other products to be shipped from the State in which they are

manufactured or warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the manufacture, importation, distribution or sale of high fidelity audio components and related products.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain the prices at which certain of its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) Establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain certain resale or retail prices;

(b) Informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated or shipments will be delayed.

(c) Requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers.

(d) Soliciting and obtaining from its 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.

(e) Directing, soliciting or encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying any dealer who (1) advertises, offers to sell or sells respondent's products at prices below the prices suggested or established by respondent; or (2) sells respondents' products to other dealers in high fidelity audio components;

(f) Threatening to terminate and terminating certain dealers who fail or refuse to observe and maintain respondent's suggested prices, or who advertise respondent's products at prices below the prices

established by respondent or who supply respondent's products to other dealers; and

(g) Regularly furnishing dealers with pricelists and supplements thereto containing established or suggested prices for respondent's products.

PAR. 7. In the course and conduct of its business as aforesaid, respondent has entered into combinations, agreements, understandings, or arrangements which have the purpose or effect of prohibiting dealers from selling respondent's products to certain potential customers.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondent, as hereinabove alleged, are unfair methods of competition and unfair acts or practices because they have the tendency to, or the actual effect of:

(a) fixing, maintaining or stabilizing the prices at which respondent's products will be resold;

(b) suppressing or eliminating competition among dealers selling respondent's products;

(c) inflating the prices paid by consumers for respondent's products;

(d) depriving dealers of their freedom to select their customers and otherwise to function as free and independent businessmen; and

(e) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition, constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 New York 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 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 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, and 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 Nikko Electric Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 16270 Raymer St., Van Nuys, California.

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 Nikko Electric Corporation of America, a corporation, its successors and assigns and respondent's employees, agents, representatives, including sales representatives or other independent contractors, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, importation, distribution, offering for sale and sale of high fidelity audio components and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Establishing, continuing or enforcing any contracts, agreements, understandings or arrangements with distributors or retail dealers of respondent's products (hereinafter distributors and retail dealers are referred to in this order as "dealers") which have the purpose or effect of fixing, establishing, maintaining, or enforcing the prices at which respondent's products are to be resold.

2. Fixing, establishing, controlling or maintaining the prices at which dealers may advertise, promote, offer for sale or sell respondent's products.

3. Publishing, disseminating, circulating or providing by any other means, any suggested resale prices; *provided, however*, that subsequent to two (2) years after the date on which this order becomes final, respondent may suggest resale prices if it is clearly and conspicuously stated on each page of any pricelist, book, tag, advertising or promotional material or other document that the price is suggested.

4. Requiring any dealer to enter into written or oral agreements or

understandings that such dealer will adhere to established or suggested prices for respondent's products as a condition to receiving or retaining its dealership.

5. Refusing to sell or threatening to refuse to sell to any dealer who desires to engage in the sale of respondent's products for the reason that such dealer will not enter into an understanding or agreement with respondent to advertise or sell said products at respondent's established or suggested resale price.

6. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer because said dealer advertises respondent's products at retail prices other than that which respondent deems appropriate or has approved.

7. Disseminating or circulating any warranty registration form or any other document which requires or requests that the retail price paid by the ultimate consumer for respondent's products be stated and reported to respondent.

8. Securing or attempting to secure any promises or assurances from dealers or prospective dealers regarding the prices at which such dealers will advertise or sell respondent's products or requesting or requiring any dealer or prospective dealer to obtain approval from respondent for prices offered by said dealers in advertisements for respondent's products.

9. Requiring, soliciting or encouraging any dealer, person or firm either directly or indirectly to report the identity of any dealer, person or firm who does not adhere to any resale or retail price for any of respondent's products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

10. Terminating, threatening, intimidating, coercing, delaying shipments, or taking any other action to prevent the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such products at other than prices that respondent may deem to be appropriate or has approved.

11. Establishing, continuing or enforcing, by refusal to sell, termination or threat thereof, delay in shipment or threat thereof, or in any other manner, any contract, agreement, understanding, or arrangement or method of doing business which has the purpose or effect of restricting or limiting in any manner the customers or classes of customers to whom dealers may sell respondent's products.

12. Convening or participating in any meeting for the purpose of undertaking or engaging in any of the acts or practices prohibited by this order.

13. Guaranteeing, promising, through agreements or advertising or

by any other means the profit margins of its dealers, selective franchising, or limited distribution of its products.

In connection with the foregoing provisions under Part I of this order, *it is further provided*, that after the expiration of five (5) years from the date this order becomes final, nothing contained in this order shall prohibit respondent from lawfully exercising such rights, if any, as it may have to distribute and establish resale prices for its products under fair trade laws then in effect.

II

It is further ordered, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts therefor, copies of this order to every present dealer, to every dealer terminated by respondent since January 1, 1972 and to every new dealer for period of three (3) years.
2. Forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies and secure from each such entity or person a signed statement acknowledging receipt of said order.
3. Within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, written notice to all of respondent's sales personnel, sales agents and sales representatives and advertising agencies informing such persons that their violation of any provision of this order may result in the termination of said employment or business relationship. Respondent shall obtain prior approval from the New York Regional Office of the Federal Trade Commission of said written notification.
4. Forthwith terminate the employment or business relationship with any person or firm willfully violating any provision of this order and take appropriate disciplinary and corrective action, which may include termination, for nonwillful violation.
5. Within sixty (60) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, a written offer of reinstatement upon the same terms and conditions available to respondent's other dealers, to any distributor or dealer located in an area where resale prices were not or could not be lawfully controlled who was terminated by respondent from January 1, 1972 to the effective date of this order unless respondent can establish that the dealer terminated does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling respondent's products, and forthwith reinstate any

such distributor or dealer who within thirty (30) days thereafter requests, in writing, reinstatement.

III

It is further ordered, That respondent:

1. Notify the Commission at least thirty (30) days prior to any proposed change in the 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.

2. For a period of three (3) years from the date this order becomes final, establish and maintain a file of all records referring or relating to respondent's refusal during such period to sell its 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 three (3) years from the date hereof, submit a report to the Commission's New York Regional Office listing the names and addresses of all dealers with whom respondent has refused to deal during the preceding year, a description of the reason for the refusal and the date of the refusal.

IV

It is further ordered, That in the event the Commission hereafter issues any order which is less restrictive than the provisions of paragraphs I, II, or III, sections 1 through 12, of this order, in any proceeding involving alleged resale price maintenance of a manufacturer or supplier of audio components subject to investigation by the Commission pursuant to File No. 741 0042, then the Commission shall, upon the application of Nikko Electric Corporation of America reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraphs into conformity with the less stringent restrictions imposed upon respondent's competitors.

Complaint

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IN THE MATTER OF

NORTHERLIN CO., INC. T/A VULCAN BASEMENT
WATERPROOFING COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2830. Complaint, July 12, 1976—Decision, July 12, 1976*

Consent order requiring a Flushing, N.Y., franchisor of residential basement waterproofing products, among other things to cease misrepresenting the nature and effectiveness of its products or services; failing to respond to requests for service or maintenance; failing to maintain adequate records; failing to disclose relevant facts concerning its two forms of waterproofing services; misrepresenting guarantees; misrepresenting the size of its business; using misleading sales plans and furnishing means and instrumentalities of misrepresentation or deception.

Appearances

For the Commission: *William F. Connolly.*

For the respondent: *Mark Weinstein, Norwalk, Conn.*

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 Northerlin Co., Inc., a corporation, doing business as Vulcan Basement Waterproofing Company, hereinafter referred to as respondent, has violated the provisions of said Act, 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 76-78 Parsons Boulevard, Flushing, New York. Respondent has established and operated a substantial number of wholly-owned corporate subsidiaries for the purpose of engaging in the business of selling residential basement waterproofing products and services. Respondent currently operates subsidiaries which are located in the States of Massachusetts, Connecticut, New York, Georgia, Maryland, Illinois, Ohio, Wisconsin, North Carolina, and Virginia. Respondent, in the operation of certain of these subsidiaries, does business as Vulcan Basement Waterproofing Company.