

Complaint

88 F.T.C.

IN THE MATTER OF

PANDE, CAMERON & CO. OF NEW YORK, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2850. Complaint, Nov. 3, 1976—Decision, Nov. 3, 1976*

Consent order requiring a New York City importer and distributor of handmade rugs and carpets, among other things to cease enforcing and fixing established resale prices for its products. Further, respondent is prohibited from suggesting resale prices for the next three years and thereafter to indicate that any resale or retail price shown on pricing material is suggested or approximate only.

*Appearances*For the Commission: *Harold F. Moody.*For the respondent: *Edward G. Seitz, Gasperine & Savage*, New York City.

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 Pande, Cameron & Co. of New York, Inc., a corporation, 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 (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 Pande, Cameron & Co. of New York, 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 at 295 Fifth Ave., New York, New York.

PAR. 2. Respondent has been and is now engaged in the importation, distribution and sale of handmade rugs and carpets. Respondent distributes and sells these products to retail dealers. In fiscal year 1974, the gross sales of the respondent were in excess of \$5,000,000.

PAR. 3. Respondent distributes and sells its products to retail dealers (hereinafter referred to as dealers) in the continental United States 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, handmade rugs and carpets to be

shipped from the State in which they are 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 other persons, firms and corporations engaged in the importation, distribution and sale of handmade rugs and carpets.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its dealers, or with the cooperation or acquiescence of others of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain the suggested retail prices at which 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 its suggested retail prices;

(b) Informing certain of its dealers, by direct and indirect means, that respondent expects and requires such suggested retail prices, or such dealerships will be terminated;

(c) Obtaining from its dealers, cooperation and assistance in identifying and reporting dealers who advertise, or offer to sell, or sell said products at prices lower than its suggested retail prices;

(d) Encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying dealers who advertise, offer to sell or sell respondent's products at prices below the retail prices suggested by respondent;

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

(f) Regularly furnishing dealers with price lists and supplements thereto containing suggested retail prices for respondent's products.

PAR. 7. By means of the aforesaid acts and practices, and more, respondent, in combination, agreement, or understanding with certain of its dealers and with the acquiescence of other of its dealers, has established, maintained and pursued a course of action to fix and

maintain suggested retail prices at which respondent's products will be resold.

PAR. 8. The aforesaid acts and practices of respondent have had the effect of hindering, lessening, restricting, restraining and eliminating competition in the resale and distribution of said products, and, thus, are to the prejudice and injury of the public, and 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.

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 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, 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Pande, Cameron & Co. of New York, Inc. (Pande) 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 at 295 Park Ave., New York, New York.

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 Pande, Cameron & Co. of New York, Inc., 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 importation, distribution, offering for sale and sale of handmade rugs and carpets and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Establishing, maintaining or enforcing any contract, agreement, understanding or arrangement entered into with any distributor or retail dealer in respondent's products (hereinafter distributors and retail dealers are referred to as "dealers") fixing, establishing, maintaining or enforcing the suggested retail prices at which respondent's products are to be resold.

2. Requiring any dealer or prospective dealer to enter into any oral or written agreement or understanding that such dealer or prospective dealer will adhere to any resale price for respondent's products as a condition to receiving or retaining its dealership.

3. Requesting or requiring any dealer or prospective dealer, either directly or indirectly, to report any dealer, person or firm who does not adhere to the retail price suggested by respondent 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;

4. Refusing to sell or threatening to refuse to sell to any dealer or prospective 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 suggested retail price.

5. 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.

6. Terminating, threatening, intimidating, coercing, delaying shipments, or taking any other action to prevent or hinder 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.

7. 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.

8. Directing or requiring respondent's salesmen, or any other agents, representatives, or employees, directly or indirectly, 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.

9. Publishing, disseminating, circulating or providing by any other means, any suggested retail price, unless 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" and that the dealer is free to sell at whatever price he chooses.

10. 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 those which respondent deems appropriate or has approved.

II

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents and sales representatives, and secure from each such entity or person a signed statement acknowledging receipt of said order.

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 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.

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

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Decision and Order

report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Dole did not participate by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF

MEDALIST INDUSTRIES, INC., ET AL.

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

Docket C-2851. Complaint, Nov. 9, 1976—Decision, Nov. 9, 1976

Consent order requiring a Milwaukee, Wisc., manufacturer of industrial, athletic and leisure time products, among other things to cease enforcing and fixing established resale prices for its products. Further, respondent is prohibited from suggesting resale prices for the next three years and thereafter to indicate that any retail or resale price shown on pricing material is suggested or approximate only.

Appearances

For the Commission: *David W. DiNardi.*

For the respondents: *Richard T. O'Neil, Michael, Best & Friedrich*
Milwaukee, Wisc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. §41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Medalist Industries, Inc., a corporation, and Allen-A Company, a corporation, and more particularly described and referred to hereinafter as respondents, have violated 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 Medalist Industries, Inc., is a corporation organized under the laws of the State of Wisconsin, with its principal office and place of business at 735 N. 5th St., Milwaukee, Wisconsin.

Respondent Allen-A Company (hereinafter sometimes referred to as Allen-A), a wholly-owned subsidiary of Medalist Industries, Inc., was organized as a Delaware corporation, with its office and principal place of business at 803 North Downing St., Piqua, Ohio.

PAR. 2. Respondent Medalist Industries, Inc. is a diversified manufacturer of industrial, athletic and leisure time products including athletic uniforms, gymnasium equipment, athletic training accessories, ski clothing, stylized, recreational tenniswear and other related items of wearing apparel. Respondent Medalist's annual volume of sales in calendar year 1973 was \$85.5 million.