

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.

Respondent Allen-A Company is engaged in the business of manufacturing, distributing and selling a wide variety of items of wearing apparel such as underskiwear, turtlenecks, stylized, recreational tenniswear, outerskiwear including parkas, ski pants and ski sweaters. Some of these items are sold under the name "Innsbruck." It distributes and sells to selected retail dealers located throughout the United States, who then resell to the general public.

Respondent Allen-A Company, under a license from Anba of Austria, is engaged in the business of manufacturing, distributing and selling fashion ski wear, stylized, recreational tenniswear, ski pants, parkas and other related items of wearing apparel. It distributes and sells these products under the name "Anba" to selected retail dealers located throughout the United States, who then resell 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 or their acts and practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 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 selected retail dealers.

PAR. 4. In the course and conduct of their business in or affecting commerce, except to the extent that competition has been hampered or restrained by reason of the practices hereinafter alleged, 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 resale or retail 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 or 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, or 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 or 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) Permitting their dealers a maximum deviation of five cents from certain resale or retail prices on each item "in order to conform to store policy;"

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

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

(g) 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, or the maximum five cents deviation, for said products.

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 of their 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 aforesaid 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 or affecting commerce, all in derogation of the public interest and 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 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Medalist Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business at 735 N. 5th St., Milwaukee, Wisconsin.

Respondent Allen-A Company (Allen-A) is a wholly-owned subsidiary of Medalist Industries, Inc., and was organized as a corporation under the laws of the State of Delaware. Its office and principal place of business is located at 803 North Downing St., Piqua, Ohio.

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 Medalist Industries, Inc., and Allen-A Company, and their subsidiaries, divisions, affiliates, successors, assigns, officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, advertising, offering for sale, or sale of underskiwear, turtlenecks, stylized, recreational tenniswear, outerskiwear including parkas, ski pants, ski sweaters, or related products (hereinafter referred to in this order as "said products") in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, shall 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. Threatening to terminate or terminating, either directly or indirectly, any dealer for failure to observe, maintain or advertise the respondents' suggested resale prices for 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 pricelist, discount schedule, invoicing procedure, prepricing 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. After the expiration of the three-year period of time stipulated in order provision I (F) above, publishing, disseminating or circulating any pricelist, 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 respondents shall within sixty (60) days after the service upon them of this order, mail a copy of this order

to each of their dealers of said products in the Commonwealth of Puerto Rico, the District of Columbia, and in those States which now, or during the five (5) year period of time following the service of this order, 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 respondents shall forthwith distribute a copy of this order to each of their operating divisions engaged in the manufacture, sale, marketing and distribution of said products and to all of their sales personnel connected with the sale, marketing, and distribution of said products and shall instruct each salesperson employed by them 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 respondents 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 said products, 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 Federal Trade Commission 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 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.

Commissioner Dole did not participate by reason of absence.

EXHIBIT A

(Letterhead of Medalist-Allen-A-Company)

Dear Dealer:

Allen-A Company has entered into an agreement with the Federal Trade Commission

Decision and Order

88 F.T.C.

relating to our distributional activities and pricing policy. A copy of the consent order entered into pursuant to that agreement is enclosed herewith.

Our parent company, Medalist Industries, Inc., is also a party to this consent agreement with the Federal Trade Commission, and the terms of the Agreement Containing the Consent Order to Cease and Desist and the Commission's Decision and Order are fully and equally applicable to our parent company, its subsidiaries and divisions.

Furthermore, we have 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 that we have 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 our activities 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 the products covered by the consent order.

(2) We will not solicit, invite or encourage any dealer or any other person 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 us.

(3) We will not require or induce our 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,

Alexander S. Flesh
Executive Vice-President
Allen-A Company

Enclosure

IN THE MATTER OF
HALEAKALA MOTORS, LTD.

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

Docket C-2852. Complaint, Nov. 15, 1976—Decision, Nov. 15, 1976

Consent order requiring a Wailuku, Maui, Hawaii, automobile dealer, among other things, to cease altering any invoices or other documents containing manufacturer's suggested retail price information; misrepresenting suggested retail prices; and including on extension stickers, any charges not specifically itemized.

Appearances

For the Commission: *Charles S. Litzof.*

For the respondent: *James Krueger*, Wailuku, Maui, Hawaii.

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 Haleakala Motors, Ltd., 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 Haleakala Motors, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its office and principal place of business at Main and High Sts., Wailuku, Maui, Hawaii.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of new automobiles at retail.

PAR. 3. Respondent's volume of business is substantial and its acts and practices, as hereinafter set forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its business, respondent receives, and has received, "delivery order" invoices from its supplier, General Motors Corporation. Each such invoice relates to an automobile which is delivered by the manufacturer to respondent, for sale to consumers. Each such invoice itemizes the factory equipment contained on said automobile, and shows the manufacturer's suggested list price for the basic automobile and for each item of factory equipment, transportation charges, and the total manufacturer's suggested retail price. Such