

IN THE MATTER OF

SALOMON/NORTH AMERICA, INC.

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

Docket C-2859. Complaint, Jan. 6, 1977 — Decision, Jan. 6, 1977

Consent order requiring a Peabody, Mass., manufacturer and distributor of ski bindings and related ski equipment, among other things, to cease establishing and maintaining resale prices; soliciting the identities of dealers failing to observe respondent's sales policy; threatening the termination of those dealerships; and restricting product sales only to authorized dealers. Additionally, the order requires respondent to indicate on each page of disseminated material containing retail prices, that these prices are suggested or approximate; and to maintain a five-year file containing correspondence and explanations of refusals to deal.

Appearances

For the Commission: *David W. DiNardi.*

For the respondent: *Blair L. Perry and John H. Morton, Hale & Dorr, Boston, Mass.*

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 Salomon/North America, Inc., a corporation, hereinafter referred to 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 Salomon/North America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7 Dearborn Road, Peabody, Massachusetts.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of ski bindings and related items, hereinafter referred to as said products. Respondent's 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 its business as aforesaid,

respondent has been and is now engaged in commerce or its acts and practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 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 authorized dealers to the general public.

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 said products.

PAR. 5. Respondent, in combination, agreement or arrangement with certain of its authorized dealers, or with the cooperation or acquiescence of other 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 its dealers with price lists and necessary supplements thereto containing certain resale or retail prices;

(b) Establishing contracts, agreements and arrangements with its 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 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;

(d) 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;

(e) 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; and

(f) Directing its 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, respondent, in combination, agreement, or arrangement with certain of its authorized dealers and with the

acquiescence of other authorized dealers, has 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 respondent 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 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 attorneys, 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, 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 Salomon/North America, Inc. (Salomon), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at 7 Dearborn Road, Peabody, Massachusetts.

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 Salomon/North America, Inc., a corporation (hereafter Salomon), its subsidiaries, successors and assigns, and its officers and directors and Salomon'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 ski bindings, ski equipment and related items or any other product (hereinafter the "Products") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Making or enforcing any oral or written contract, agreement or arrangement pursuant to which such dealer, distributor or retailer agrees not to sell the Products at prices less than minimum retail prices established by Salomon.

B. Making or enforcing any oral or written contract agreement or arrangement which restricts the class or type of customer to whom such dealer, distributor or retailer may sell the products.

C. Making or enforcing any oral or written contract, agreement or arrangement which restricts the site or location at which such dealer, distributor or retailer may sell the Products.

D. Making or enforcing any oral or written contract, agreement or arrangement which prohibits such dealer, distributor or retailer from advertising, promoting or offering for sale any of the Products at less than minimum prices specified by Salomon.

E. 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 suggested retail price for any of said Products, or acting on reports so obtained by refusing or threatening to refuse sales of the Products to any dealer, person or firm so reported.

F. Publishing, disseminating or circulating any pricelist, price book, price tag, advertising or promotional material, or other document ("Promotional Material") indicating any resale or retail prices for the Products without stating on each page of such Promotional Material which includes a list or statement of the suggested retail prices of any or all of the Products that the price is a suggested or an approximate retail price.

II

Nothing contained in this order shall be construed as limiting or restricting the rights of Salomon (a) to require that each dealer or retailer who sells the Products at retail shall be fully qualified to perform Proper Fitting Services (as that term is hereafter defined); and (b) to require that each dealer or retailer who sells the Products at retail actually shall provide Proper Fitting Services to retail customers who purchase the Products; and (c) to require that distributors, dealers and retailers refrain from reselling the Products to dealers or retailers who are not fully qualified and willing to provide Proper Fitting Services to retail customers; *provided* that Salomon shall make available to all present and prospective dealers an opportunity for instruction in performing Proper Fitting Services, except where Salomon has lawful business reasons (other than the inability to perform Proper Fitting Services) for not selling the Products to any particular dealer. As used in this paragraph II, the term "Proper Fitting Services" means the mounting and installing of the Products upon the skis of a retail or rental customer, and the fitting and adjustment of the Products to the boots of such customer, in a workmanlike and proper manner, having due regard for the physical qualifications and skiing abilities of such customer, in order to minimize the risk of injury to such customer and other persons and property and to minimize the potential liabilities of Salomon and its distributors, dealers and retailers.

III

It is further ordered, That Salomon shall, within fifty-nine (59) 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 as of February 28, 1975, did not permit fair trade contracts, under cover of the letter annexed hereto as Exhibit A, and furnish the Commission proof of the mailing thereof.

IV

It is further ordered, That Salomon notify the Commission at least thirty (30) days prior to any proposed change in Salomon 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 Salomon 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 and to comply with it. The failure of such sales person to comply with this order shall be grounds for immediate dismissal.

VI

It is further ordered, That Salomon 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 Salomon's refusal to sell the Products to any dealer, which file shall contain a copy of any written communication to any such dealer explaining Salomon's refusal to sell, and which file will be made available for Commission inspection on reasonable notice.

VII

It is further ordered, That Salomon 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.

EXHIBIT A

Letterhead of Salomon/North America, Inc.)

Dear Dealer:

Enclosed is a copy of a consent order which Salmon/North America, Inc. has signed with the Federal Trade Commission. The consent order concerns our pricing policies and distribution activities.

Salomon has entered into this agreement solely to settle a dispute with the Commission and to avoid the expense and delays of litigation. The agreement and enclosed consent order should not be considered as an admission that we have violated any of the laws administered by the Commission. Moreover, you should not assume that any of the allegations in the complaint are true or that any statements in the consent order reflect prior pricing or marketing practices of Salomon. Instead, the order merely reflects the terms of Salomon's agreement with the Federal Trade Commission and relates to Salomon's activities in the future.

It is important that you read and understand the terms of the enclosed consent order. There are, however, three essential points for you to remember:

- (1) You are free to set your own retail or resale prices for Salomon products.

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(2) We will not solicit, invite or encourage any dealer, or any other person to report any dealer not following any retail or resale price for any Salomon products. Furthermore, we will not act on any such reports sent to us.

(3) We will not require or induce any dealer to refrain from advertising Salomon products at any price or from offering or selling our products at any price to any person.

You must realize, however, that the consent order itself is controlling rather than our summary of its essential points. If you should have any questions, please call me or John O'Malley at 800-225-6818 (Northeast) or 800-225-6850 (Other).

Growth and Happiness,

Fred Schaeffer
President

Enc.

IN THE MATTER OF

IDEA RESEARCH AND DEVELOPMENT, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9032. Complaint, May 6, 1975 — Decision, Jan. 11, 1977*

Consent order requiring a Mesquite, Tex., idea promotion firm, among other things, to cease misrepresenting the nature and value of its services; misrepresenting its ability to successfully promote ideas, inventions, or products; to its clients. Further, respondents are required to disclose, in contracts and promotional material, the lack of confidentiality afforded its clients' ideas, the ramifications of contracting with respondents prior to contacting an independent patent attorney, and the amount of monies earned by previous clients through respondents' endeavors. The order additionally requires a ten-day cooling-off period before the execution of contracts and prohibits respondents from accepting any fee other than a percentage of royalties resulting from its efforts.

Appearances

For the Commission: *Paul W. Turley, John J. Hemrick and Richard H. Gateley.*

For the respondents: *Melvyn Carson Bruder and Jack Kanz, Dallas, Tex.*

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 Idea Research and Development, Inc., a corporation, and Kellis Blakely Shanks and Jack Earnest Trout, individually and as officers of said corporation, and Walter Glenn Ford, individually and as an employee of said corporation, hereinafter sometimes referred to as respondents, have 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:

I. DEFINITIONS

PARAGRAPH 1. For purposes of this complaint the following definitions shall apply:

A. "Idea" shall mean any idea, invention or product;