

IN THE MATTER OF
COPCO, INC.

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

Docket C-2900. Complaint, Sept. 7, 1977 — Decision, Sept. 7, 1977

This consent order, among other things, requires a New York City importer and distributor of gourmet cookware, to cease establishing, maintaining, and enforcing price maintenance agreements, and requiring such agreements as a precondition to dealing; soliciting reports of price cutters, and threatening or terminating those dealerships. Respondent is additionally required to cease withholding earned advertising credits, and restricting dealers from selling goods to unauthorized customers or classes of customers. Further, the order mandates that respondent clearly disclose in pricing materials that such prices are merely "suggested," and maintain prescribed files for a period of three years.

Appearances

For the Commission: *William F. Connolly and Raymond J. McNulty.*

For the respondent: *Alan Weinschel, Weil, Gotshal & Manges, 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 Copco, Inc., a corporation, hereinafter sometimes 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 Copco, 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 11 East 26th St. New York, New York.

PAR. 2. Respondent has been and is now engaged in the manufacture, importation, distribution, and sale of cookware and related products, hereinafter referred to as said products. Said products are subsequently distributed and sold to retail dealers throughout the United States for resale to the general public.

PAR. 3. Respondent distributes and sells its products to retail

dealers (hereinafter referred to as dealers) located in all fifty states and 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 said products 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 hampered, hindered, lessened 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, importation, sale, and distribution of said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 6. Respondent, in combination, agreement or understanding with certain of its retail dealers, or with the cooperation or acquiescence of other of its dealers, has for the last several years been engaged in a course of action to fix, establish, and maintain, certain resale or retail prices at which said products are resold to the general public. In furtherance of said course of action, respondent has for the last several years been engaged 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) Regularly furnishing its dealers with price lists and necessary supplements thereto containing certain resale or retail prices for said products;

(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 its products to other dealers;

(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;

(f) Directing, soliciting or encouraging salespersons, sales represen-

tatives, 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 retail prices suggested or established by respondent; or (2) sells respondent's products to other dealers;

(g) Contacting those dealers who fail to adhere to and maintain certain resale or retail prices for said products and securing, or attempting to secure, assurances from such dealers that they will adhere to and observe respondent's resale or retail prices;

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

PAR. 7. By means of such acts and practices, including but not limited to the foregoing, respondent, in combination, agreement or understanding with certain of its dealers, has established, maintained, and pursued a course of action to fix and maintain certain resale or retail prices at which said products will be resold.

PAR. 8. 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 and unfair acts and practices in or affecting 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 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 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Proposed respondent Copco, 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 11 East 26th St., 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.

DEFINITION

Dealer - For purposes of this complaint and order, "dealer" is defined as any person, partnership, corporation or other business entity who purchases Copco products for resale.

ORDER

I

It is ordered, That respondent Copco, 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 manufacture, importation, distribution, offering for sale and sale of cookware and other merchandise in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing with any dealer any contract, agreement, understanding or arrangement fixing, establishing, maintaining, controlling or enforcing, directly or indirectly, the price at which any of said products is advertised, sold or offered for sale at retail.

B. Publishing, disseminating, circulating or providing by any other means, any retail price, unless the word "suggested" is clearly and conspicuously stated on each page of any price list, book, tag, advertising or promotional material or other document that contains a retail price. In addition, all written communications by Copco to dealers intended for internal dealer use shall clearly and conspicu-

ously contain the following disclosure, or a disclosure of similar import, on each page of any document that contains a retail price: "Suggested retail prices are suggestions only. Copco dealers are completely free to resell Copco merchandise at prices and to customers of their own choosing."

C. 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.

D. Prior to selling to a prospective dealer, requiring assurances, whether by understanding, agreement or otherwise, from such person or persons that they will adhere to and observe suggested resale or retail prices for said products.

E. Requiring, directly or indirectly, any dealer to resell to respondent any unsold stock of said products in the event that business relations between respondent and the dealer are terminated, *provided*, that respondent shall not be prohibited from repurchasing such unsold stock with the consent of the dealer, or where respondent has a "security interest" in said products or where the dealer is unable to meet its financial obligations to the respondent.

F. Requesting or requiring any dealer or prospective dealer, either directly or indirectly, to report any dealer 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 so reported.

G. Refusing or threatening to refuse any sale to any dealer for the reason that said dealer had been reported as not adhering to or observing any resale or retail price for any of said products.

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

I. 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.

J. 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.

K. Requesting or requiring any salespersons, sales representatives, and any other employees or agents of respondent, either directly or indirectly, to report any dealer 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 so reported.

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

M. 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.

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

II

It is further ordered, That Respondent herein, during the three (3) year period of time following the effective date of this order, shall mail or deliver, and obtain signed receipts therefore, copies of this order to every present dealer and to all future dealers of said products at the time said dealers are opened as accounts.

III

It is further ordered, That respondent herein shall forthwith distribute a copy of this order to each operating division and subsidiary engaged in the manufacture, sale, and distribution of said products and to all officers and directors engaged in the manufacture, sale, and distribution of said products.

IV

It is further ordered, That respondent shall, within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefore, a copy of this order to all Copco sales personnel and Copco sales representatives engaged in the distribution, offering for sale or sale of said products.

V

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate

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Decision and Order

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.

VI

It is further ordered, That the respondent herein, for a period of three (3) years from the date of this signing, establish and maintain a file of all records referring or relating to respondent's refusal to sell said products to any existing dealer, which file shall contain a record of any written communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice.

VII

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

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

Docket 9074. Interlocutory Order, Sept. 9, 1977

Denial of complaint counsel's application for review of various provisions of a protective order issued by the administrative law judge.

ORDER DENYING APPLICATION FOR REVIEW

Complaint counsel apply for review of various provisions of a protective order (as to respondent General Motors) issued by the administrative law judge on March 29, 1977. The law judge has not determined that interlocutory review would be appropriate under the Commission's Rules, Section 3.23(b), but complaint counsel contend that the Commission should nevertheless exercise its inherent authority to review a "clear abuse of discretion or the exceeding of delegated authority."

It appears that the protective order may contravene the general policy the Commission has consistently pursued regarding the protection of confidential business information. However, complaint counsel have offered no cogent reasons why the Commission should depart from the requirements of Section 3.23(b) and entertain this appeal in the absence of certification by the law judge. Complaint counsel state that they could "work under" the ALJ's order and it is apparent that respondent did not comply with the Commission's process on the condition that the protective order be entered. We therefore decline to review the protective order at this time. The question, of course, may be taken up at such time as the Commission is presented the ALJ's initial decision for review or, perhaps, on other occasions when the order is found to interfere with proper use of the documents in question.

The aforesaid application for review is accordingly denied.¹

It is so ordered.

CONCURRING STATEMENT OF COMMISSIONERS COLLIER AND
CLANTON

We concur in the Commission's disposition of this appeal for the procedural reasons set forth in the order. We reach this conclusion even though we believe it is clear that the protective order is a clear abuse of the ALJ's discretion. Among other things, the order purports to require prenotification of respondent General Motors before

¹ The Commission has determined to treat complaint counsel's application as timely filed.