

IN THE MATTER OF
INTERCO INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket C-2929. Complaint, Sept. 26, 1978 — Decision, Sept. 26, 1978

This consent order, among other things, requires a St. Louis, Mo. distributor of footwear, wearing apparel and accessories and its subsidiaries to cease suggesting resale prices for their products; maintaining price fixing agreements; compelling price adherence and exclusive dealings through coercion, and penalizing recalcitrant dealers. The firms are also required to reinstate terminated resellers; and maintain relevant records for a five-year period.

Appearances

For the Commission: *Elliot Feinberg, Richard Gately, Judith K. Braun, Paul Eyre and Carole I. Danielson.*

For the respondents: *Ronald L. Aylward, Ephraim Jacobs and E.C. Heininger, St. Louis, Mo.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Interco Incorporated, Londontown Corporation, and Queen Casuals, Inc., corporations, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5(a)(1) of the Federal Trade Commission Act, and Sections 2(d), 2(e) and 3 of the Clayton Act, and that a proceeding by it in respect thereof is in the public interest, issues this complaint stating its charges as follows:

RESPONDENTS

PARAGRAPH 1. Respondent Interco Incorporated is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its executive offices located at Ten Broadway, St. Louis, Missouri.

Respondent Londontown Corporation is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business located at Londontown Boulevard, Eldersburg, Maryland.

Respondent Queen Casuals, Inc. is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business located at 10175 Northeast Ave., Philadelphia, Pennsylvania.

PAR. 2. Interco Incorporated is engaged, directly or through its

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subsidiaries, in the manufacture, sale, and distribution of various consumer products. Among said products are footwear and wearing apparel bearing trademarks, brands, and names owned by Interco Incorporated, including, but not limited to, "Florsheim" and "Thayer McNeil" footwear, and "London Fog," "Clipper Mist," "Queen Casuals," "Devon" and "College-Town" wearing apparel.

Florsheim Shoe Company and International Shoe Company are operated as divisions of Interco Incorporated. By and through these divisions Interco Incorporated manufactures, distributes, and sells men's, women's and children's footwear.

Interco Incorporated is a substantial nationwide seller of medium-to-high priced dress and casual leather footwear in the United States. Interco Incorporated distributes its footwear products through numerous company-owned outlets as well as through independent retailers.

College-Town and Devon are operated as divisions of Interco Incorporated. By and through these divisions Interco Incorporated manufactures, distributes, and sells wearing apparel.

Londontown Corporation and Queen Casuals, Inc. are wholly-owned subsidiaries of Interco Incorporated. By and through these subsidiaries Interco Incorporated manufactures, distributes, and sells wearing apparel.

In 1976, Interco Incorporated had net sales in excess of \$1,000,000,000. Sales of footwear and apparel constituted more than 78 percent of earnings in 1976.

COMMERCE

PAR. 3. Respondents are engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, and are engaged in or their business affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

DEFINITIONS

PAR. 4. For the purpose of this complaint, the following definitions shall apply:

(a) "*Dealer*" — any person, partnership, firm, or corporation which engages in the retail sale of footwear and wearing apparel, except a company-owned store.

(b) "*Company-owned store*" — any retail outlet or lease department owned or operated by any of the respondents.

(c) "*Sale period*" — any time during which company-owned stores offer to sell products at prices lower than those in effect during the

usual and ordinary course of business; or, any suggested, authorized, or customary time for selling or advertising footwear or apparel at prices lower than suggested, established, or customary resale prices.

COMPETITION

PAR. 5. Except to the extent that competition has been restrained by reasons of the practices hereinafter alleged, respondents are in competition with other persons, partnerships, or corporations engaged in the manufacturing, offering for sale, sale, or distribution of various products, including but not limited to footwear and wearing apparel.

COUNT I

PAR. 6. The allegations of Paragraphs 1 through 5 are incorporated herein by reference.

PAR. 7. Respondents are engaged and have engaged in the following acts or practices, some of which individually constitute unlawful acts or practices:

(a) Entering into combinations, agreements, or understandings with dealers or prospective dealers to adhere to certain resale prices.

(b) Disseminating price lists and supplements thereto containing suggested resale prices or resale prices in effect at company-owned stores, or otherwise informing dealers of suggested, established, or customary resale prices.

(c) Informing dealers or prospective dealers, by direct or indirect means, that respondents expect or desire such dealers to adhere to certain resale prices.

(d) Entering into combinations, agreements, or understandings with dealers or prospective dealers to adhere to certain sale periods.

(e) Disseminating information regarding sale periods, including the dates of such periods.

(f) Informing dealers or prospective dealers, by direct or indirect means, that respondents expect or desire such dealers to adhere to sale periods.

(g) Withholding allowances or other benefits from dealers who promote respondents' products at prices deviating from suggested, established, or customary resale prices or from prices in effect at company-owned stores.

(h) Identifying dealers who:

(1) Offer for sale or sell respondents' products at prices or terms deviating from established, suggested, or customary resale prices or from prices or terms in effect at company-owned stores; or

(2) Advertise respondents' products at prices or terms deviating from established, suggested or customary resale prices or from prices or terms in effect at company-owned stores; or

(3) Advertise closeout, promotional, clearance or irregular products as having been manufactured by respondents.

(i) Contacting dealers who engage in any of the activities referred to in (h)(1) through (3).

(j) Urging, inducing, persuading, compelling, or coercing dealers to cease engaging in any of the activities referred to in (h)(1) through (3).

(k) Threatening to terminate or terminating certain dealers who engage in any of the activities referred to in (h)(1) through (3).

(l) Granting rebates, credits, benefits, or allowances to dealers who sell respondents' products at suggested, established, or customary resale prices.

(m) Disseminating or assisting in the dissemination of resale price information between or among competing dealers.

(n) Refusing to sell to any existing dealer who will not adhere to certain resale prices or sale periods.

PAR. 8. The capacity, tendency, or effect of the acts and practices of respondents alleged in Count I is, or may be, to:

(a) Maintain, control or establish the prices at which respondents' products are sold; or

(b) Lessen, eliminate, frustrate, reduce, or hinder competition in the sale and distribution of respondents' products; or

(c) Deprive consumers of the benefits of free and open competition.

Therefore, the acts and practices alleged in Count I constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 9. The allegations of Paragraphs 1 through 5 are incorporated herein by reference.

PAR. 10. Interco Incorporated has sold or contracted for the sale of footwear products to certain dealers on the condition, agreement, or understanding that such dealers shall not purchase the products of one or more competitors of Interco Incorporated.

PAR. 11. Interco Incorporated suggests, recommends, advises, persuades, or induces dealers to refrain from selling the footwear products of one or more competitors of Interco Incorporated.

PAR. 12. The capacity, tendency, and effect of the acts and practices of Interco Incorporated alleged in Count II is, or may be, to:

(a) Substantially lessen, hinder, restrain, or suppress competition

in the sale of medium-to-high priced dress or casual leather footwear; or

(b) Exclude or tend to exclude, competitors of Interco Incorporated from selling footwear to a substantial number of dealers.

PAR. 13. Therefore, the acts and practices alleged in Count II violate Section 3 of the Clayton Act and constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

PAR. 14. The allegations of Paragraphs 1 through 5 are incorporated herein by reference.

PAR. 15. Interco Incorporated has paid or contracted for the payment of money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the processing, handling, sale, or offering for sale of its products and Interco Incorporated has not made such payments available on proportionally equal terms to all customers competing with the customers so favored in the sale and distribution of its footwear products.

For example, Interco Incorporated is now granting and has granted advertising allowances to some of its dealers in connection with the opening of additional retail outlets or special promotional activities such as anniversary sales. Said allowances are not and were not made available on proportionally equal terms to all other dealers competing with the dealers so favored in the sale and distribution of its footwear products.

PAR. 16. Interco Incorporated has discriminated in favor of some of its purchasers against other competing purchasers of its products bought for resale by contracting to furnish or furnishing or by contributing to the furnishing of services and facilities connected with the processing, handling, sale, or offering for sale of such products so purchased upon terms or conditions not accorded to all competing footwear purchasers on proportionally equal terms.

For example, Interco Incorporated has provided to some dealers the opportunity to purchase closeout merchandise or to return unsold product inventory.

PAR. 17. Therefore, the acts and practices alleged in Count III violate Sections 2(d) and 2(e) of the Clayton Act and constitute unfair methods of competition or unfair acts or practices 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Cleveland Regional Office and the New York 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 Clayton Act; and

The respondents, their attorneys, 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 has reason to believe that the respondents have violated the said acts, 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. Respondent Interco Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at Ten Broadway, St. Louis, Missouri.

Respondent Londontown Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Londontown Boulevard, Eldersburg, Maryland.

Respondent Queen Casuals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 10175 Northeast Ave., Philadelphia, Pennsylvania.

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

For purposes of this order, the following definitions shall apply:

"Reseller" is defined as any person, partnership, firm or corporation which purchases any product from any respondent or any person, partnership, firm or corporation owned or operated by any respondent. "Reseller" shall not include any retail outlet or lease department owned or operated by any respondent.

"Prospective reseller" is defined as any person, partnership, firm or corporation which seeks to purchase any product from a respondent or any person, partnership, firm or corporation owned or operated by any respondent. "Prospective reseller" shall not include any retail outlet or lease department owned or operated by any respondent.

"Resale price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any reseller for pricing any product. Such term includes but is not limited to any suggested, established or customary resale price as well as the retail price in effect at any retail outlet or lease department owned or operated by any respondent.

"Sale period" is defined as any time during which any retail outlet or lease department owned or operated by any respondent offers to sell any product at resale prices lower than those in effect during the usual and ordinary course of business; or any suggested, authorized or customary time for selling or advertising any product at prices lower than suggested, established or customary resale prices.

"Product" is defined as any footwear, apparel, or apparel accessories including but not limited to handbags, belts, gloves, scarves, hats and jewelry.

I

It is ordered, That respondents Interco Incorporated, Londontown Corporation and Queen Casuals, Inc., corporations, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacture, offering for sale, sale, distribution or advertising of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Establishing, exacting assurances to comply with, continuing or enforcing any combination, agreement, understanding or arrangement to fix, establish, control, maintain or enforce, directly or

indirectly, any resale price at which any product is to be sold or advertised by any reseller or prospective reseller.

2. Requiring or coercing any reseller or prospective reseller to establish, maintain, issue, adopt or adhere to any resale price or sale period.

3. For a period of three (3) years from the date of service of this order, orally suggesting or recommending any resale price or sale period to any reseller or prospective reseller. The advertising to consumers of actual resale prices by any retail outlet or lease department owned or operated by any respondent shall not be deemed a violation of this paragraph.

4. For a period of three (3) years from the date of service of this order, communicating in writing any resale price or sale period to any reseller or prospective reseller. The advertising to consumers of actual resale prices by any retail outlet or lease department owned or operated by any respondent shall not be deemed a violation of this paragraph. After this three (3) year period, it shall be clearly stated on the pages of any list, book, advertising, promotional material or other document where any suggested resale price or sale period appears:

THE [RESALE PRICES OR SALE PERIODS] QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN [RESALE PRICES OR SALE PERIODS].

A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller.

5. Requiring or soliciting, directly or indirectly, any reseller, prospective reseller, person or firm to report the identity of any reseller who deviates from any resale price or sale period.

6. Communicating with any reseller or prospective reseller concerning its deviation or alleged deviation from any resale price or sale period.

7. Suggesting or requiring that any reseller or prospective reseller refrain from or discontinue advertising any product at a certain resale price.

8. Representing that any action may or will be taken against any reseller if it deviates from any resale price or sale period.

9. Threatening to withhold or withholding advertising allowances or any other assistance, payment, service or consideration from any reseller, or limiting or restricting the eligibility of any reseller to receive such benefits because said reseller advertises or sells at a certain resale price.

10. Making any payment or granting any other consideration or benefit to a reseller because another reseller has sold at a certain resale price.

11. Hindering or precluding the lawful use by a reseller of any brand name of any respondent in conjunction with the sale or advertising of any product at any price.

12. Terminating, suspending, delaying shipments to or taking or threatening any action against any reseller because the reseller has, or was alleged to have, sold or advertised any product at a certain resale price, or because the reseller may engage in any such activity in the future. Provided that each of the respondents retains the right to terminate any reseller for lawful business reasons not inconsistent with this paragraph or any other paragraph of this order.

13. Attempting to secure any promise or assurance from any reseller or prospective reseller regarding the price at which such reseller or prospective reseller will or may advertise or sell any product; or requesting or requiring any reseller or prospective reseller to obtain approval from any respondent for any price at which such reseller or prospective reseller may or will advertise or sell any product.

II

It is further ordered, That respondents, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device in connection with the manufacture, offering for sale, sale, distribution or advertising of any footwear product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act and the Clayton Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving or enforcing by refusal to sell, termination or threat thereof or otherwise, any agreement, understanding or arrangement which precludes or prevents a reseller or prospective reseller from stocking or selling a footwear product supplied by anyone other than a respondent or from independently determining the volume of a footwear product to be purchased from such other suppliers.

2. Requiring, coercing or inducing any reseller to cancel orders for or not purchase any footwear product supplied by anyone other than a respondent.

3. Making or contracting to make to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any services or facilities furnished by or through

such customer in connection with the handling, sale or offering for sale of footwear products unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the sale or distribution of such products.

4. Discriminating in favor of any purchaser against any other competing purchaser or purchasers of any footwear product bought for resale by contracting to furnish or furnishing or by contributing to the furnishing of any services or facilities connected with the handling, sale or offering for sale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

It is further ordered, That nothing in Part II of this order shall be construed to prevent any respondent from asserting all rights and defenses legally available to a respondent under Section 2 of the amended Clayton Act.

It is further ordered, That in any enforcement action brought to enforce the provisions of Part II of this order, respondents shall assume the burden of proving all such defenses.

III

It is further ordered, That respondents shall:

1. Within sixty (60) days after the date of service of this order, mail under separate cover a copy of either this order or the Federal Trade Commission's news release in this matter to every present reseller of the Florsheim, Devon or College-Town divisions of Interco Incorporated or of the Londontown Corporation or Queen Casuals, Inc. subsidiaries of Interco Incorporated. An affidavit of mailing shall be sworn to by an official of respondents verifying that said mailing was completed.

2. Mail a copy of either this order or the Federal Trade Commission's news release in this matter to every reseller that purchases any product from the Florsheim, Devon or College-Town divisions of Interco Incorporated or from the Londontown Corporation or Queen Casuals, Inc. subsidiaries of Interco Incorporated within five (5) years after the date of service of this order. The mailing required by this paragraph shall occur within thirty (30) days after the first purchase by said reseller.

3. Within thirty (30) days after the date of service of this order distribute a copy of this order to each of their operating divisions and subsidiaries in the United States and to each of their officers, and to sales personnel, sales agents and sales representatives of the Florsheim, Devon and College-Town divisions of Interco Incorporated and of the Londontown Corporation and Queen Casuals, Inc.

subsidiaries of Interco Incorporated engaged in the sale of products to resellers and secure from each entity or person a signed statement acknowledging receipt of said order.

4. Upon written request received within six (6) months from the date of service of this order, reinstate any reseller terminated by a respondent since January 1, 1974 for failing to maintain a certain resale price or sale period, provided that such reseller meets the credit requirements applied by respondents in the retention of resellers.

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

6. For a period of five (5) years from the date of service of this order maintain complete business records which fully disclose the manner and form of respondents' compliance with the order, including but not limited to any records referring or relating in whole or in part to:

(a) any communication between any respondent and any reseller or prospective reseller relating to the price at which any reseller or prospective reseller is selling, proposes to sell, is advertising or proposes to advertise any product;

(b) the termination or suspension of any reseller for any reason;

(c) the refusal to deal with any prospective reseller for any reason;

or

(d) any request for reinstatement pursuant to Part III Paragraph (4) of this order.

The records required by this paragraph shall be made available to Commission staff upon reasonable notice.

7. File with the Commission within sixty (60) days and within one hundred and eighty (180) days after service of this order reports, in writing, setting forth in detail the manner and form in which they have complied with this order.

Final Order on Remand

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IN THE MATTER OF

KRAFTCO CORPORATION, ET AL.

FINAL ORDER ON REMAND, OPINION, ETC., IN REGARD TO
ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND
CLAYTON ACTS*Docket 9035. Complaint,¹ June 17, 1975 — Decision, Oct. 4, 1978*

This order on remand from the Second Circuit Court of Appeals is identical to that issued by the Commission on January 11, 1977, 42 FR 10979, corrected at 13820, 89 F.T.C. 46, and requires the SCM Corporation, a New York City producer of margarine, edible oils and barbecue sauce, among other things, to cease seating on its board of directors, any individual who is simultaneously serving on the board of the Kraftco Corporation, or any other competitive company.

ORDER ON REMAND

FINAL ORDER

This matter has been heard by the Commission upon remand from the Second Circuit Court of Appeals. The Commission, for the reasons stated in the accompanying opinion, has determined that an order to cease and desist should be entered. Therefore,

It is ordered, That the following order to cease and desist be, and it hereby is, entered:

ORDER

The following definitions shall apply in this order:

"Subsidiary" of SCM means any corporation, 50 percent or more of the voting stock of which is owned or controlled, directly or indirectly, by SCM.

"Parent" of SCM means any corporation which owns or controls, directly or indirectly, 50 percent or more of the voting stock of SCM.

"Sister" of SCM means any subsidiary of a parent of SCM.

1. *It is ordered,* That respondent SCM Corporation and its successors and assigns shall forthwith cease and desist from having, and in the future shall not have, on their board of directors any individual who either:

(a) serves at the same time as a director of Kraftco Corporation, its successors or assigns (so long as Kraftco and SCM Corporation compete in the production or sale of any product or service), or

¹ For complaint, see 88 F.T.C. 362.