

IN THE MATTER OF
NATIONAL FIRE HOSE CORP., ET AL.

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

Docket C-2935. Complaint, Nov. 1, 1978—Decision, Nov. 1, 1978

This consent order requires a Compton, Calif. manufacturer and seller of fire hose and accessories to cease, in connection with the sale and distribution of their products, from entering into agreements, or taking any other action that would impose territorial or customer restrictions on their distributors.

Appearances

For the Commission: *John Hankins.*

For the respondent: *Earl P. Willens, Buchalter, Nemer, Fields & Savage, Los Angeles, Calif.*

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 the parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent National Fire Hose Corp. is a corporation organized under the laws of the State of California, with its executive office, plant, and principal place of business located at 516 East Oaks St., Compton, California.

PAR. 2. Respondent Raymond L. Pepp is Chairman of the Board of Directors of respondent corporation. Together with the other individual respondent, respondent Raymond L. Pepp has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent, including those hereinafter set forth. Mr. Pepp's office address is the same as that of respondent corporation.

PAR. 3. Respondent Dudley H. Pepp is an officer of respondent corporation. Together with the other individual respondent, respondent Dudley H. Pepp has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent, including those

hereinafter set forth. Mr. Pepp's office address is the same as that of respondent corporation.

PAR. 4. Respondent corporation is engaged in the manufacture, distribution and sale of fire hose to distributors located throughout the United States. These distributors in turn resell to others, including users of fire hose such as fire departments and industrial customers. For the purposes of this proceeding, a "distributor" is defined as any person or firm which buys fire hose directly from respondent corporation for the purpose of resale.

PAR. 5. In the course and conduct of its business of manufacturing and distributing fire hose, respondent corporation ships or causes such products to be shipped from its plant in the State of California to customers in various other States throughout the United States. The respondent corporation is therefore engaged in "commerce" and the business of respondent corporation affects "commerce" as commerce is defined in the Federal Trade Commission Act.

PAR. 6. Except to the extent that competition has been restrained by reason of the practices hereinafter alleged, respondent corporation's distributors, in the course and conduct of their business of distributing, offering for sale, and selling fire hose purchased from respondents, are in substantial competition in or affecting commerce with one another and with other firms or persons engaged in the distribution and sale of other brands of fire hose; and respondent corporation is likewise in substantial competition in or affecting commerce with other persons or firms engaged in the manufacture, sale and distribution of fire hose.

PAR. 7. In the course and conduct of their business, respondents have engaged and continue to engage in the unfair methods of competition, and unfair acts and practices, in or affecting commerce, enumerated in this paragraph:

1. Respondents have established agreements, understandings or arrangements with their distributors whereby such distributors are granted exclusive territories in which to market respondents' fire hose;

2. Respondents have contacted distributors selling respondents' fire hose outside these defined territories and have attempted by various means to coerce such distributors to refrain from making further sales outside their assigned territories; as a result of such coercion respondents' distributors have agreed to refrain from selling respondents' fire hose outside their assigned territories;

3. Respondents have acted in concert with their distributors to foreclose the entry of new distributors into competition with respondents' distributors; and

4. Respondents have established agreements, understandings or arrangements whereby their distributors refrain from selling to particular customers.

PAR. 8. In the manner above described, respondents have entered into and maintained agreements with their distributors which have had and do have the tendency of unduly hindering and restraining competition between such distributors in the sale of respondents' products. Said agreements and respondents' acts and practices in furtherance of them have had and now have the following effects among others:

1. Distributors have been deprived of their freedom to act as independent businessmen;

2. Distributors have refrained from selling respondents' fire hose outside the distributors' assigned territories thereby eliminating or severely restricting competition between such distributors in the sale of respondents' products;

3. Willing buyers and sellers of respondents' fire hose have been prevented from consummating sales;

4. Competition among distributors of respondents' fire hose and companies dealing in other brands of fire hose has been restricted;

5. Buyers of fire hose have been deprived of the benefits of free competition.

PAR. 9. The aforesaid acts, practices and methods of competition have the tendency unduly to restrict and restrain competition and have injured, hindered, suppressed, lessened or eliminated actual and potential competition, are to the prejudice and injury of the public, and constitute unfair methods of competition and unfair acts or practices in or affecting commerce, within the intent and meaning 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 Denver 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;

The respondents 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, 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 National Fire Hose Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 516 East Oaks St., Compton, California.

Respondent Raymond L. Pepp is a director of said corporation. Respondent Dudley H. Pepp is an officer of the corporation. Together, they formulate, direct and control the acts and practices of the corporation. Their address is the same as that of the corporation.

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 National Fire Hose Corp., its subsidiaries, successors, assigns, officers and directors, and Raymond L. Pepp and Dudley H. Pepp individually and as officers or directors of National Fire Hose Corp., and respondents' agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, offering for sale or sale of fire hose or fire hose accessories (hereinafter "products") in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving or enforcing any contract, agreement, combination, or understanding which fixes, establishes, limits or restricts the territory in which a distributor may sell any of respondents' products;

2. Requiring any distributor or potential distributor to enter into a written or oral agreement or understanding, concerning the

territory in which such distributor or potential distributor may sell any of respondents' products, as a condition to receiving or retaining a distributorship;

3. Refusing to sell, delaying shipment, threatening to refuse to sell or to delay shipment, or taking any other action to limit or restrict the territory in which a distributor may sell any of respondents' products;

4. Consulting or communicating with any distributor of respondents' products concerning the establishment of a new distributorship;

5. Entering into, maintaining, preserving or enforcing any contract, agreement, combination, or understanding which limits or restricts the customers to whom a distributor may sell any of respondents' products;

6. Restricting or attempting to restrict, in any manner, the customers to whom a distributor may sell any of respondents' products or the territory in which a distributor may sell such products.

II

It is further ordered, That respondents, for a period of three years from the date of service upon them of this order, establish and maintain a file of all records referring or relating to respondents' refusal to sell any product to any distributor or respondents' termination of any distributor, which file shall contain a copy of any written communication to any such distributor concerning such refusal to sell or such termination. The file shall be made available for Commission inspection upon reasonable notice.

III

It is further ordered, That respondents shall, within thirty days after service upon them of this order, distribute a copy of the order to each of the corporate respondent's operating divisions, to its present corporate officers, to its present sales representatives, and to its future corporate officers and sales representatives within five days of their assumption of office or employment with respondent corporation.

IV

It is further ordered, That respondents shall:

1. Within thirty days after service upon them of this order, distribute a copy of the letter attached as Appendix "A" to each

existing distributor who has purchased municipal type fire hose from respondents within the past three years;

2. Distribute a copy of the letter attached as Appendix "A" to each newly established distributor who purchases municipal type fire hose from respondents within the three year period commencing from the date of service of this order upon respondents; this letter to be distributed prior to the first such sale;

3. The distribution of copies of the letter attached as Appendix "A" as provided in this part of the order shall not be construed as a limitation on the other parts of this order.

V

It is further ordered, That respondents shall notify the Commission at least thirty days prior to any proposed change in the organization of the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

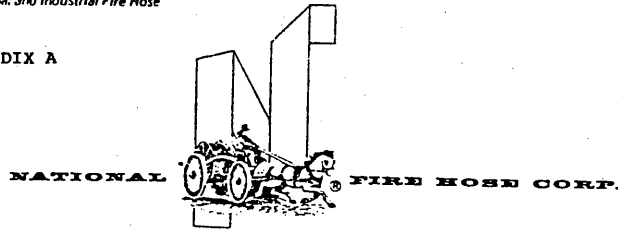
VI

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture, distribution or sale of fire hose or fire hose accessories or of his affiliation with a new business or employment in which his own duties and responsibilities involve the manufacture, distribution or sale of fire hose or fire hose accessories. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein shall within sixty 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.

Custom Manufacturers of Municipal and Industrial Fire Hose

APPENDIX A



Date:

TO: ALL DISTRIBUTORS OF MUNICIPAL HOSE

National Fire Hose and the Federal Trade Commission have been engaged in discussions concerning the Company's distribution practices as they relate to certain of our distributors. While the Company has continued to defend its practices in light of relevant factors in the marketplace, we have determined that it is in the best interests of National and you, our distributor, that the matter be put to rest in as simple a fashion as possible causing the least disruption to our distributors and to customers of our distributors. Therefore, for settlement purposes only and without admitting that any acts to this date have violated any law, we have consented to an order issued by the Commission prohibiting us from:

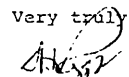
1. Imposing territorial restrictions on our distributors or coercing distributors in any manner to limit the territory in which they sell National's products;
2. Restricting the customers to whom distributors may sell National's products;
3. Communicating or consulting with our distributors concerning the establishment of new distributors.

If, in the future, you believe that National has engaged in any of the practices listed above, you should report the details in writing to:

Federal Trade Commission
Washington, D.C. 20580

All of us at National look forward to serving you on all of your fire hose requirements in the years to come. Your continuing support of National products and policies is greatly appreciated.

Very truly yours,


D. H. Pepp

IN THE MATTER OF
GOLD BULLION INTERNATIONAL, LTD., ET AL.

ORDER CLARIFYING AND MODIFYING OPINION IN REGARD TO
ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND
HOBBY PROTECTION ACTS

Docket 9094. Decision, July 25, 1978 — Modifying Order, Nov. 3, 1978

This order clarifying and modifying the opinion of the Commission, 92 F.T.C. 196, deletes any finding of liability with respect to the 10 Mark 1887 Kaiser Wilhelm I coin, and deletes the words "by respondents" at the appropriate places, to make clear that the only relationship of individual respondents to the importation of the offending coins was in their roles as owners, officers, and directors of the respondent corporation.

ORDER CLARIFYING AND MODIFYING OPINION OF THE
COMMISSION

By motion filed November 1, 1978, respondents have requested that the Commission modify its opinion in two respects, neither of which affects the final order previously entered. Complaint counsel have not objected to the requested modifications. The first requested modification would delete any finding of liability with respect to the German 10 Mark 1887 Kaiser Wilhelm I coin, on grounds that there is record proof of only one specimen of the coin having been imported. (In its opinion the Commission concluded that no liability should be found for another coin, the German 20 Mark 1887 Kaiser Wilhelm I, for the same reason; the change would, therefore, treat the two coins consistently.) The second modification relates to the role of the individual respondents, making clear that their only relationship to the importation of the offending coins was in their roles as owners, officers, and directors of Gold Bullion. The modifications appear warranted. Therefore,

It is ordered, That this matter be reopened, and that the opinion of the Commission be modified in the following two respects:

1. The conclusion at p. 15 of the Commission's opinion (first paragraph) is modified to delete reference to the 10 Mark Wilhelm I (1887) coin, and that coin is dropped from consideration as a basis for the Commission's finding of liability, for the same reasons noted with respect to the 20 Mark Wilhelm I (1887) coin discussed at p. 5, n. 5 of the Commission's Opinion.
2. On p. 23 of the initial decision, the words "by respondents" are deleted from findings 3-5 of the "Summary" of the administrative law judge, and Finding 2 on p. 23 is modified to read: