

IN THE MATTER OF
HUK-A-POO SPORTSWEAR, INC., ET AL.

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

Docket C-2962. Complaint, April 25, 1979 — Decision, April 25, 1979

This consent order, among other things, requires two New York City wearing apparel manufacturers to cease establishing, maintaining or enforcing resale price agreements; suggesting retail prices or issuing price lists for a three-year period; pre-ticketing products with recommended retail prices; soliciting the identity of non-conformers and taking any adverse action against them. Additionally, respondents are required to reinstate customers who were terminated since January 1, 1974 for failing to maintain suggested prices; and keep records regarding reinstatement requests for five years.

Appearances

For the Commission: *Judith Braun and Sandra Bird.*

For the respondents: *Gilbert S. Edelson, Rosenman, Colin, Freund & Cohen, 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 the parties identified in the caption hereof, 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:

PARAGRAPH 1. Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

PAR. 2. Respondents are now, and have been engaged in the manufacture, sale and distribution of wearing apparel. In 1977 respondents had net sales in excess of \$ 70,000,000.

PAR. 3. Respondents sell and distribute their products to retail dealers located throughout the United States who in turn resell respondents' products to the general public.

PAR. 4. In the course and conduct of their business as aforesaid, respondents cause and have caused apparel and related products to be shipped from the states in which they are manufactured or warehoused to purchasers in other states. Respondents maintain and

at all times mentioned herein have maintained a substantial course of trade in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended.

PAR. 5. For purposes of the complaint, the following definitions shall apply:

"Reseller" is defined as any person, firm or corporation which sells any product sold or distributed by any respondent.

"Prospective reseller" is defined as any person, firm or corporation which requests to purchase any product from 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.

"Sale period" is defined as any break date, end of season or period for selling or advertising any product at a price other than the suggested, established or customary price.

PAR. 6. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondents have been and are in substantial competition with persons or firms engaged in the manufacture, distribution or sale of apparel and related products.

PAR. 7. Respondents, unilaterally or in combination, agreement or understanding with some resellers or with the cooperation or acquiescence of other resellers, have engaged in the following acts or practices, among others:

(a) establishing agreements, understandings, or arrangements with resellers or prospective resellers that such resellers or prospective resellers will maintain certain resale prices or sale periods;

(b) informing resellers or prospective resellers, by direct and indirect means, that respondents expect or require such resellers or prospective resellers to maintain or adhere to certain resale prices or sale periods;

(c) suggesting resale prices to resellers or prospective resellers or otherwise informing them of the resale prices respondents deem appropriate;

(d) entering agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective resellers will not advertise any respondent's first-line quality products at resale prices other than those established, suggested or deemed appropriate by such respondent;

(e) entering agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective

resellers will not advertise any respondent's close-out or promotional products or second-line quality or irregular products as having been manufactured by such respondent;

(f) directing, soliciting or encouraging resellers, salespersons, employees or agents to cooperate and assist in identifying and reporting any reseller or prospective reseller who is engaged in any of the following activities:

(1) offering for sale or selling any product at a resale price other than that which any respondent has established, suggested or deemed appropriate.

(2) advertising any first-line quality product at a resale price other than that which any respondent has established, suggested or deemed appropriate.

(3) advertising any close-out or promotional product or second-line quality or irregular product as having been manufactured by any respondent.

(g) threatening to terminate, terminating, warning, intimidating and harassing resellers engaged in, or suspected of engaging in, any of the activities set forth in subparagraph (f) (1)-(3) above and using various forms of coercion and discipline, including but not limited to delaying order shipments, limiting the frequency of visits by salesmen and restricting the availability of products, against such resellers; or,

(h) refusing to deal with certain prospective resellers who may engage in any of the activities set forth in subparagraph (f) (1)-(3) above.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, as hereinabove alleged, have the capacity, tendency or the effect of:

(a) fixing, maintaining or stabilizing the resale prices for respondents' products;

(b) suppressing or eliminating competition between or among resellers of respondents' products;

(c) depriving resellers of their freedom to function as free and independent businessmen; and

(d) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition constitute unfair methods of competition and unfair acts and practices in or affecting commerce 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 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 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, 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. Respondents Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 48 West 38th St., New York, New York.

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, firm or corporation which sells any product sold or distributed by any respondent.

"Prospective reseller" is defined as any person, firm or corporation which requests to purchase any product from 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.

"Sale period" is defined as any break date, end of season or period for selling or advertising any product at a price other than the suggested, established or customary price.

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

I

It is ordered, That each of the respondents Huk-A-Poo Sportswear, Inc. and Pranx Fashions, Inc., corporations, their successors and assigns, and each of the 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, the price at which any product is to be resold or advertised by any reseller or prospective reseller.

2. Communicating, publishing, circulating, disseminating or providing by any means any resale price or sale period to any reseller or prospective reseller for a period of three (3) years from the date of service of this order; *provided, however*, that after said three (3) year period, a respondent shall not resume suggesting any resale price or sale period until it has mailed to all its open accounts a letter stating that no reseller is obligated to adhere to any suggested resale price or sale period and that suggested resale prices or sale periods are for informational purposes only.

Provided further, however, that after said three (3) year period, a respondent shall not suggest resale prices or sale periods unless it is clearly and conspicuously stated on those pages of any list, book, advertising or 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].

Provided further, however, that after said three (3) year period, a

respondent shall not suggest resale prices on any tag, ticket or comparable marking affixed or to be affixed to any product.

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

4. Requiring or soliciting any reseller, prospective reseller, person or firm, either directly or indirectly, to report any reseller, prospective reseller, person or firm that does not adhere to any resale price or sale period.

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

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

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

8. 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 any product at a certain resale price.

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

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

11. Refusing to sell to, terminating, suspending, delaying shipments to or taking or threatening any action against any reseller or prospective reseller because the reseller or prospective reseller has, or was alleged to have, sold or advertised any product at a certain resale price or because the reseller or prospective reseller may engage in any such activity in the future.

12. 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 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 Huk-A-Poo Sportswear, Inc. or Pranx Fashions, Inc. 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 any reseller that purchases any product from Huk-A-Poo Sportswear, Inc. or Pranx Fashions, Inc. 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 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 respondents' operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies retained by each respondent and secure from each entity or person a signed statement acknowledging receipt of said order.

4. Within sixty (60) days from the date of service of this order, mail or deliver, and obtain a signed receipt therefor, an offer of reinstatement, to every reseller who was terminated for failing to maintain a certain resale price or sale period by any respondent during the period from January 1, 1974 to the date of service of this order, unless the reseller does not meet the credit requirements applied by respondents in the retention of accounts, and reinstate any such reseller who requests reinstatement within thirty (30) days after receiving the offer.

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 corporations 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, including the name and address of the prospective reseller; or
- (d) any request for reinstatement pursuant to Part II 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 after service of this order a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

RENAULT U.S.A., INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS
WARRANTY — FEDERAL TRADE COMMISSION IMPROVEMENT ACTS

Docket C-2960. Complaint, April 26, 1979 — Decision, April 26, 1979

This consent order, among other things, requires an Englewood Cliffs, N.J. seller and distributor of automobiles to cease limiting the duration of implied warranties; make available to purchasers who had been issued incorrect written limited warranties all relief provided by applicable state law; and refrain from raising any defense relating to the limitation of implied warranties in law suits brought by such purchasers. Additionally, the firm is required to notify all purchasers who had received incorrect written limited warranties that they have an implied warranty on the drive train of their vehicle for as long as four years, depending on state law; and furnish them with an explanation of how implied warranties protect consumers. The firm is also required to advise their dealers of servicing obligations to purchasers who had been issued improper written limited warranties.

Appearances

For the Commission: *Michael E.K. Mpras* and *Jeffrey M. Parp*.

For the respondent: *Joseph C. Truncale*, Englewood Cliffs, N.J. and *Milton D. Andrews, Rivkin, Sherman & Levy*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Warranty Act"), and by virtue of the authority vested in it by these Acts, the Federal Trade Commission having reason to believe that Renault U.S.A., Inc., a corporation, ("respondent") has violated the provisions of these Acts 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 100 Sylvan Ave., Englewood Cliffs, New Jersey.

PAR. 2. Respondent has been, and is now engaged in the distribution and sale of automobiles to the public.

PAR. 3. In the course and conduct of its business respondent is a