

IN THE MATTER OF
JONATHAN LOGAN, INC.

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

Docket C-2977. Complaint, July 25, 1979 — Decision, July 25, 1979

This consent order, among other things, requires a Secaucus, N.J. manufacturer of wearing apparel to cease establishing, maintaining and enforcing resale prices and sale periods; and recommending resale prices for a period of three years. All price lists disseminated by the firm after that period must note that the prices are merely suggested. Respondent is also prohibited from policing the retail prices of its customers; and threatening or taking adverse action against recalcitrants. Additionally, the order requires the firm to reinstate former customers who were terminated for failing to adhere to established prices; and maintain applicable records for five years.

Appearances

For the Commission: *Judith Braun.*

For the respondent: *Joshua F. Greenberg, Kay, Scholer, Furman, Hays & Handler, 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 Jonathan Logan, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 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. Respondent Jonathan Logan, 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 50 Terminal Road, Secaucus, New Jersey.

PAR. 2. Respondent is now, and has been engaged in the manufacture, sale and distribution of wearing apparel including Misty Harbor rainwear. In 1977, Jonathan Logan, Inc. had net sales in excess of \$400,000,000.

PAR. 3. Respondent sells and distributes wearing apparel to resellers located throughout the United States who in turn sell to the general public. In connection with the sale of its rainwear, respondent maintains a factory in Baltimore, Maryland and sells its products from

showrooms located in New York City, Boston, Chicago, San Francisco, Atlanta, Charlotte, Kansas City and Dallas.

PAR. 4. Respondent maintains and at all times mentioned herein has 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 any person, partnership, firm or corporation which purchases any product from respondent.

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

"Resale price" is 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.

"Sale period" is 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, respondent has been and is in substantial competition with persons or firms engaged in the manufacture, distribution or sale of apparel.

PAR. 7. Respondent unilaterally or in combination, agreement or understanding with some resellers has through its Misty Harbor Division 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 respondent expects or requires such resellers or prospective resellers to maintain or adhere to certain resale prices or sale periods;

(c) furnishing resellers or prospective resellers with price lists and supplements thereto containing established or suggested resale prices or sale periods for respondent's products and otherwise indicating the resale prices respondent deems appropriate;

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

(e) entering agreements, understandings or arrangements with resellers or prospective resellers that such resellers or prospective resellers will refrain from advertising respondent's close-out or promotional products or second-line quality or irregular products as having been manufactured by respondent;

(f) directing, soliciting or encouraging resellers 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 respondent has established, suggested or deemed appropriate.

(2) advertising any first-line quality product at a resale price other than that which 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 respondent.

(g) threatening to terminate, terminating or warning 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 sales personnel and restricting the availability of products, against such resellers;

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

(i) conditioning allowances or other benefits to resellers upon adherence to established, suggested or customary resale prices.

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

(a) fixing, maintaining or stabilizing resale prices for respondent's rainwear;

(b) suppressing or eliminating competition between or among resellers of respondent's rainwear;

(c) depriving resellers of their freedom to function as free and independent businesspersons in connection with the sale of rainwear; and

(d) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition constitute unfair methods of competition or unfair acts or 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 respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, 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. Respondent Jonathan Logan, 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 50 Terminal Road, Secaucus, New Jersey.

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

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 respondent.

"Prospective reseller" is defined as any person, partnership, firm or corporation which requests to purchase any product from 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 including but not limited to rainwear, coats, dresses and sportswear.

I

It is ordered, That respondent Jonathan Logan, Inc., a corporation, its successors and assigns, and respondent's 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, 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, 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, or employee or agent of respondent, 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. Stating directly or indirectly 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 respondent in conjunction with the sale or advertising of any product at any price.

11. 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 respondent retains the right to terminate any reseller for lawful business reasons not inconsistent with this paragraph or any other paragraph of this order.

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 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 respondent, its successors and assigns, 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 Jonathan Logan, Inc. An affidavit of mailing shall be sworn to by an official of respondent 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 Jonathan Logan, 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 respondent's operating divisions and subsidiaries in the United States and to all officers, sales personnel, sales agents and sales representatives 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 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 respondent in the retention of resellers.

5. Notify the Commission at least thirty (30) days prior to any proposed change in 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 respondent's compliance with the order, including but not limited to any records referring or relating in whole or in part to:

(a) any communication between 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 it has complied with this order.

IN THE MATTER OF

UNIVERSAL TRAINING SERVICE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9106. Complaint, Jan. 11, 1978 — Decision, July 27, 1979*

This consent order, among other things, requires eight affiliated vocational schools, headquartered in Miami, Fla., and five corporate officers to cease misrepresenting the prospective earnings, employment opportunities and demand for graduates of their respective courses; the effectiveness of their job placement service; and the extent of job placement assistance they provide to their graduates. They must furnish potential customers with prescribed disclosures concerning educational and other factors considered by employers in hiring; the job success of former graduates; and contracting party's right to cancellation and refund within the provided 14-day "cooling-off" period. Additionally, the schools are required to make restitution to former eligible students in a specified manner.

Appearances

For the Commission: *Charles Peterson, Arnold C. Celnicker, and H. Marshall Korschun.*

For the respondents: *David Yelen, Yelen & Yelen, Coral Gables, Fla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Universal Training Service, Inc., Universal Heavy Construction Schools, Inc., Universal Truck Drivers School, Inc., Universal Airlines Personnel Schools, Inc., Universal Motel Schools, Inc., Insurance Adjusters Schools, Inc., Universal Diesel Mechanic Schools, Inc., corporations, and E. McSwiggan & Associates, a partnership, and Edward McSwiggan, Edward W. McSwiggan, Jr., Gerald W. McSwiggan and Agnes McSwiggan, individually and as officers or directors of each of the above-listed corporations and as a partner in E. McSwiggan & Associates, and Marilyn Anne McSwiggan, individually and as an officer of each of the above-listed corporations, 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, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Universal Training Service, Inc., Univer-