

IN THE MATTER OF
PENDLETON WOOLEN MILLS, INC.

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

Docket C-2985. Complaint, July 31, 1979 — Decision, July 31, 1979

This consent order, among other things, requires a Portland, Ore. manufacturer of wool products to cease fixing, maintaining, or enforcing resale prices for its products; soliciting the identity of dealers who fail to conform to such prices; and taking adverse action against recalcitrants. Respondent is also prohibited from restricting the use of product trademarks or other identification in the sale or advertising of such products; and barred from suggesting retail prices for any product until April 20, 1982.

Appearances

For the Commission: *Jeffrey Klurfeld.*

For the respondent: *James H. Clarke and William Lubersky, Spears, Lubersky, Campbell & Bledsoe, Portland, Oregon.*

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 Pendleton Woolen Mills, Inc., a corporation, hereinafter sometimes referred to as respondent, has 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 as follows:

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

"Product" is defined as any item which is manufactured, offered for sale or sold by respondent. Product shall not include any item which Jacques deLoux, Inc. manufactures or purchases from any third party, and which it sells to any person, partnership, corporation or firm other than to respondent.

"Dealer" is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

PARAGRAPH 1. Respondent Pendleton Woolen Mills, Inc. is a corpora-

tion organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 218 S. W. Jefferson St., Portland, Oregon.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of wearing apparel for men, women and children, blankets and wool fabric. Sales by respondent for fiscal year 1978 exceeded \$40 million.

PAR. 3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent sells and distributes its products directly to more than 5,000 retail dealers located throughout the United States who in turn resell respondent's products to the general public.

PAR. 5. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the manufacture, advertising, offering for sale, sale and distribution of merchandise of the same general kind and nature as merchandise manufactured, advertised, offered for sale, sold and distributed by respondent.

PAR. 6. In the course and conduct of its business as above described, respondent has for some time last past effectuated and pursued a policy throughout the United States, the purpose or effect of which is and has been to fix, control, establish, manipulate and maintain the resale prices at which its dealers advertise, offer for sale and sell its products.

PAR. 7. By various means and methods, respondent has effectuated and enforced the aforesaid practice and policy by which it can and does fix, control, establish, manipulate and maintain the resale prices at which its products are advertised, offered for sale and sold by its dealers. To carry out said practice or policy, respondent adopted and employed, and still employs, the following means and methods among others:

(a) It requires prospective dealers as a condition of becoming dealers, and requires dealers as a condition of remaining dealers, to enter into oral agreements or understandings with respondent, or to give oral assurances to respondent, that they will sell products at prices suggested by respondent.

(b) It requires prospective dealers as a condition of becoming dealers, and requires dealers as a condition of remaining dealers, to enter into

oral agreements or understandings with respondent, or to give oral assurances to respondent, that, in the event they sell any product at less than respondent's suggested retail price, they will not identify such product in any advertisement as having been manufactured by respondent.

PAR. 8. By means of the aforesaid acts and practices and more, respondent, in combination, agreement, understanding and conspiracy with certain of its dealers and with the acquiescence of other of its dealers, has established, maintained and pursued a planned course of action to fix and maintain certain specified uniform prices at which products will be resold.

PAR. 9. The aforesaid acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of respondent's products, and, thus, are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

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 San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 Pendleton Woolen Mills, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 218 S.W. Jefferson St., in the City of Portland, State of Oregon.

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

"Product" is defined as any item which is manufactured, offered for sale or sold by respondent. Product shall not include any item which Jacques deLoux, Inc. manufactures or purchases from any third party, and which it sells to any person, partnership, corporation or firm other than to respondent.

"Dealer" is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

It is ordered, That respondent Pendleton Woolen Mills, 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, advertising, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I

1. Fixing, establishing, controlling or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product.

2. Establishing, exacting any assurance to comply with, continuing, enforcing, or announcing the terms of any contract, agreement, understanding, or arrangement with any dealer which fixes, establishes, maintains or enforces, directly or indirectly, the resale price at which any product is to be sold or advertised.

3. Securing or attempting to secure any promise or assurance from

any dealer regarding the resale price at which such dealer will or may advertise or sell any product, or requiring or requesting any dealer to obtain approval from respondent for any resale price at which such dealer may or will advertise or sell any product.

4. Requiring, requesting, or soliciting any dealer to report the identity of any other dealer, because of the price at which such dealer is advertising, offering to sell or selling any product; or acting on any reports or information so obtained by threatening, intimidating, coercing or terminating any dealer.

5. Conducting any surveillance program to determine whether any dealer is advertising, offering for sale or selling any product at a resale price other than that which respondent has established or suggested, where such surveillance program is conducted to fix, maintain, control or enforce the retail price at which any product is sold or advertised.

6. Terminating or taking any other action to restrict, prevent, or limit the sale of any product by any dealer because of the resale price at which said dealer has sold or advertised, is selling or advertising, or is suspected of selling or advertising any product.

7. Restricting any dealer who has purchased any product which bears any of respondent's trademarks or identifications affixed thereto from using any trademark or other identification so affixed in the sale or advertising of such product.

II

Publishing, disseminating, circulating, providing or communicating, orally or in writing or by any other means, any suggested retail price from the date of service of this order until April 20, 1982; *provided, however*, that if, after April 20, 1982, respondent suggests any retail price, respondent shall:

a. Clearly and conspicuously state on any material on which such suggested price is stated that such price is suggested only.

b. Mail to all dealers a letter stating that no dealer is obligated to adhere to any suggested retail price and that such suggested retail price is advisory only.

III

It is further ordered, That respondent shall:

1. Within thirty (30) days after service of this order, mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to each of its present accounts. An affidavit shall be sworn to by an official of respondent verifying that the attached Exhibit A was so mailed.

2. Mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to any person, partnership, corporation or firm that becomes a new account within three (3) years after service of this order.

IV

It is further ordered, That the respondent shall forthwith distribute a copy of this order to all operating divisions of said corporation, and to present or future personnel, agents or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this order, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

V

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

VI

It is further ordered, That respondent 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 this order.

EXHIBIT A

Dear Retailer:

Pendleton Woolen Mills, without admitting any violation of the law, has agreed to the entry of an order by the Federal Trade Commission regulating certain distribution practices. In connection therewith, the company has agreed to send you this letter describing the order.

The order provides, among other things, as follows:

1. You can advertise and sell Pendleton products at any price you choose.
2. Pendleton will not take any action against you, including termination, because of the price at which you advertise or sell its products.
3. Pendleton will not suggest retail prices for any product until April 20, 1982.
4. The price at which you sell or advertise our products will not affect your right to use Pendleton trademarks or other identification in your sale or advertising of products bearing Pendleton trademarks or identification.

If you have any questions regarding the order or this letter, please call Mr. Pedley at Pendleton.

for Pendleton Woolen Mills, Inc.

Complaint

94 F.T.C.

IN THE MATTER OF

MACK TRUCKS, INC.

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

Docket C-2978. Complaint, Aug. 1, 1979 — Decision, Aug. 1, 1979

This consent order, among other things, requires an Allentown, Pa. manufacturer of heavy-duty trucks and other vehicles to cease "updating" any document, or otherwise misrepresenting the model year of trucks, truck-tractors, vans, chassis, and incomplete vehicles. The company is effectively required to assign model years to vehicles shipped to all states except Hawaii, following written standards set for each model before the start of the model year. A label indicating the model year or date of manufacture must be permanently affixed to each vehicle and specified information concerning the label disclosed in Owners' Manuals. Additionally, the company is required to maintain, for four years, records regarding model year designation standards for each vehicle it manufactures.

Appearances

For the Commission: *Paul Sailer.*

For the respondent: *Daniel K. Mayers, Wilmer, Cutler & Pickering, Wash., D.C.*

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 Mack Trucks, Inc., a corporation, hereinafter sometimes referred to as respondent, has 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.

DEFINITIONS

(a) "The Beginning of a Model Year"

For purposes of this complaint, the beginning of a model year (for example, "the beginning of the 1973 model year") for a particular model vehicle is defined as the moment in time when a vehicle of that