

Complaint

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IN THE MATTER OF  
JAYMAR-RUBY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-2997. Complaint, Nov. 8, 1979—Decision, Nov. 8, 1979*

This consent order, among other things, requires a Michigan City, Ind. manufacturer of wearing apparel and related accessories, to cease fixing, maintaining or compelling adherence to suggested resale prices and sale periods for its products. Respondent is prohibited from soliciting the identity of dealers who fail to conform to suggested prices; and from taking any adverse action against them. Additionally, respondent is prohibited from restricting the use of product trademarks or other identification in the advertising and sale of its products; and barred from suggesting retail prices and sales periods for its products for a period of two years.

*Appearances*

For the Commission: *Jeffrey Klurfeld* and *Karen E. Chandler*.

For the respondent: *Lee N. Abrams, Mayer, Brown & Platt*,  
Chicago, Ill.

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 Jaymar-Ruby, 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 of wearing apparel or related accessory which is manufactured, offered for sale or sold by respondent.

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

“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 dealer for pricing any product. Such term includes, but is not limited to, any retail price suggested or established by respondent, any customary resale price or the retail price in effect at any dealer.

“Sale Period” is defined as any time during which any dealer

offers to sell any product at resale prices lower than those in effect during the usual and ordinary course of said dealer's business; or any suggested, authorized or customary time for selling or advertising any product at prices lower than the suggested, established or customary resale prices.

PARAGRAPH 1. Respondent Jaymar-Ruby, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 5000 South Ohio St., Michigan City, Indiana.

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 and related accessories. Sales by respondent for fiscal year 1978 exceeded \$63 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 5,600 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.

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 respondent 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 the 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 Jaymar-Ruby, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 5000 South Ohio St., in the City of Michigan City, State of Indiana.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding, of respondent Jaymar-Ruby, Inc., 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 of wearing apparel or related accessory which is manufactured, offered for sale or sold by respondent Jaymar-Ruby, Inc.

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

"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 dealer for pricing any product. Such term includes, but is not limited to, any retail price suggested or established by respondent, any customary resale price or the retail price in effect at any dealer.

"Sale Period" is defined as any time during which any dealer offers to sell any product at resale prices lower than those in effect during the usual and ordinary course of said dealer's business; or any suggested, authorized or customary time for selling or advertising any product at prices lower than the suggested, established or customary resale prices.

*It is ordered*, That respondent Jaymar-Ruby, 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, or the sale period of any dealer.

2. Requesting, requiring or coercing, directly or indirectly, any dealer to maintain, adopt or adhere to any resale price or sale period.

3. Requesting or requiring, directly or indirectly, any dealer to report the identity of any other dealer who deviates from any resale price or sale period; or acting on any reports or information so

obtained by threatening, intimidating, coercing or terminating said dealer.

4. Requesting or requiring that any dealer refrain from or discontinue selling or advertising any product at any resale price.

5. Hindering or precluding the lawful use by any dealer of any brand name, trade name or trademark of respondent in connection with the sale or advertising of any product at any resale price.

6. Conducting any surveillance program to determine whether any dealer is advertising, offering for sale or selling any product at any resale price, where such surveillance program is conducted to fix, maintain, control or enforce the resale price at which any product is sold or advertised.

7. 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.

8. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program for which it would otherwise qualify, because of the resale price at which said dealer advertises or sells any product, or proposes to sell or advertise any product.

9. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program for which it would otherwise qualify, because said dealer has advertised or sold, or proposes to advertise or sell, any product using or featuring any resale price comparison.

## II

1. 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 dealer.

2. 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 dealer; *provided, however*, that after said three (3) year period, respondent shall not suggest any resale price or sale period on any list, or in any advertising, book, catalogue or promotional material, unless it is clearly and conspicuously stated on each page where any suggested resale price or sale period appears, the following:

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

## 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 the 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 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 Customer:

Jaymar-Ruby, Inc. has agreed with the Federal Trade Commission to the entry of an order concerning certain distribution practices. Our agreement was solely for the purpose of settling a dispute with the Commission, and does not constitute any admission on our part that we have violated any law. The agreed-to order provides, among other things, as follows:

1. You are free to charge whatever retail prices you deem appropriate for Jaymar-Ruby products, including Sansabelt, and you may advertise those prices as you see fit.

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2. You can be assured that Jaymar-Ruby will not take any action against you for any prices which you may charge or advertise.

3. Jaymar-Ruby will continue not to suggest retail prices for any product until [3 years from the date of service of the Order].

4. You may continue to use our trademarks or tradenames in any legal and lawful manner in your sale or advertising of our products.

5. You continue to be free to participate in our cooperative advertising programs regardless of the prices at which you advertise Jaymar-Ruby products.

If you wish a copy of the full text of the agreed-to order, or if you have any questions concerning it, please call \_\_\_\_\_. As always, we appreciate your business and we will continue providing you with the finest merchandise available.

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for Jaymar-Ruby, Inc.

## IN THE MATTER OF

## ROOFING CONTRACTORS ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2998. Complaint, Nov. 8, 1979—Decision, Nov. 8, 1979*

This consent order, among other things, requires a Seattle, Wash. roofing association to cease entering into agreements with others to establish and maintain terms of guarantees, prices, or other conditions of sale in connection with the sale of roofs and related services; suggesting or urging adherence to particular prices, guarantees, or other conditions of sale; or restricting by any means a member's right to give any guarantee, price or other condition of sale to its customers. The order additionally bars the association from investigating and/or policing its members with regard to prices charged or guarantees imposed in the sale of their products and services.

*Appearances*

For the Commission: *Stevan D. Phillips.*

For the respondent: *James M. Martin, Seattle, Washington.*

## 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 Roofing Contractors Association, a non-profit corporation hereinafter sometimes referred to as proposed respondent, has violated the provisions of the Federal Trade Commission Act, as amended, as more particularly set forth herein, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Roofing Contractors Association is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1000 Aurora Ave. North, Seattle, Washington. It consisted of approximately sixteen (16) roofing contractors at the time the events referred to herein occurred.

PAR. 2. The respondent is a trade association established for the benefit of its members. It acts as the bargaining agent for and negotiates labor contracts on behalf of its members with certain labor unions. The Association handles grievances and other administrative problems under the terms and conditions of any collective