

Complaint

IN THE MATTER OF

DARVEL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3034. Complaint, Aug. 12, 1980—Decision, Aug. 12, 1980*

This consent order requires, among other things, a Bellgarden, Calif. manufacturer and distributor of wearing apparel and related accessories to cease fixing or otherwise controlling the resale prices at which its products are sold or advertised; seeking the identity of dealers who fail to adhere to suggested resale prices and sales periods; and taking any adverse action against them. Respondent is barred from restricting the lawful use of brand names and trademarks in the advertising and sale of its products, and from granting any consideration, service or benefit to any dealer because of the resale price that another dealer has advertised or sold a product. Additionally, the order prohibits the firm from suggesting retail prices for its products for a period of one year.

Appearances

For the Commission: *Jeffrey A. Klurfeld.*

For the respondent: *J. Eddstepp Jr., Gibson, Dunn & Crutcher, Los Angeles, Calif. and Hal L. Cofkey, Cofkey, Cofkey & Boxer, 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 Darvel, 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 suggested, established or customary resale price as well as 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 Darvel, Inc. 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 6891 Florence Place, Bellgarden, California.

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 \$6 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 2,000 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, and has employed various means and methods in furtherance thereof, 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. 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 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 Darvel, Inc. 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 6891 Florence Place, in the City of Bellgarden, State of California.

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 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 suggested, established or customary resale price as well as 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 Darvel, 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. Making any payment or granting any consideration, service or

benefit to any dealer because of the resale price at which any other dealer has advertised or sold any product.

7. 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.

8. 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.

II

1. For a period of one (1) year 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 one (1) year 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 one (1) 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 within ninety (90) days after service of this Order, mail 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.

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 Retailer:

Without admitting any violation of the law, Darvel, Inc. has agreed to the entry of an Order by the Federal Trade Commission regulating certain distribution practices. In connection therewith, the Company is required to send you this letter describing the Order.

The Order provides, among other things, as follows:

1. You can advertise and sell Darvel and Zeppelin products at any price you choose.
2. Darvel will not take any action against you, including termination, because of the price at which you advertise or sell Darvel and Zeppelin products.
3. Darvel will not suggest retail prices for any product until [1 year from the date of service of the Order].
4. The price at which you sell or advertise Darvel or Zeppelin products will not affect your right to use Darvel or Zeppelin trademarks or other identification in your sale or advertising of products bearing Darvel or Zeppelin trademarks or identification.

If you have any questions regarding the Order or this letter, please call

for Darvel, Inc.

IN THE MATTER OF
BRUNSWICK CORPORATION, ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9028. Complaint, April 15, 1975 —Final Order, August 14, 1980*

This order requires, among other things, a Skokie, Ill. manufacturer and marketer of outboard motors and other products and its subsidiary, Mariner Corp., to dissolve their joint venture agreement with Yamaha Motor Co., Ltd. ("Yamaha"); sell all their interests in Sanshin Kogyo Co., Ltd. to Yamaha, within 90 days; and remove their representatives on Sanshin's board of directors immediately. Further, the firms are prohibited for three years from acquiring, without prior Commission approval, any interest in a company manufacturing outboard motors for sale in the United States.

Appearances

For the Commission: *Steven R. Newborn.*

For the respondents: *Henry Y. Ota, Mori & Ota, Los Angeles, Calif., James H. Wehrenberg, Skokie, Ill., Mindy Liss, Mayer, Brown & Platt, Wash., D.C., and John R. Ferguson, Pettit & Martin, Wash., D.C.*

FINAL ORDER

For the purposes of this Order:

a) "Brunswick" shall mean the Brunswick Corporation, together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations (including Mariner Corp.), and corporations controlled by Brunswick Corporation; and all successors to Brunswick Corporation and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Brunswick Corporation.

b) "Yamaha" shall mean Yamaha Motor Co., Ltd., together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporation, and corporations controlled by Yamaha Motor Co., Ltd.; and all successors to Yamaha Motor Co., Ltd. and their domestic and foreign subsidiaries, affiliates, joint

* Complaint, Initial Decision, Opinion of the Commission, and Order Remanding for Additional Evidence previously published in 94 F.T.C. 1174.