

Modifying Order

97 F.T.C.

IN THE MATTER OF

JAMES B. LANSING SOUND, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1785. Decision, Aug. 24, 1970—Modifying Order, May 20, 1981*

This order reopens the proceeding and modifies the order issued by the Commission on August 24, 1970, 77 F.T.C. 1165, 35 FR 15807, by replacing Paragraph I(2) of the original order with one containing additional language which permits the firm to establish lawful, reasonable and non-discriminatory minimum standards for its dealers and to withhold its products from dealers who fail to maintain those standards.

REOPENING AND MODIFICATION OF ORDER

By petition of April 10, 1981, respondent James B. Lansing Sound, Inc. ("JBL") requests that Paragraph I(2) of the Commission's order issued against JBL on August 24, 1970 be modified so that the order would no longer prohibit JBL from establishing performance standards for sellers of its loudspeakers. Pursuant to Section 2.51 of the Commission's Rules of Practice the petition was placed on the public record for comment. Attorneys for Best Products Co., Inc. filed the only comment requesting that the Commission deny JBL's petition.

JBL had previously petitioned the Commission to modify the consent order; the Commission denied this petition by order dated August 29, 1978. The Commission found that although there had been a change of law since the order was issued the petition had made an inadequate showing of the need for the requested relief.

Upon consideration of JBL's petition and supporting materials and the public comment, the Commission now finds that JBL has a very small market share and that JBL would likely suffer significant competitive injury unless the order is modified. Further the Commission notes that the proposed modification relates only to a nonprice vertical restraint that the Commission's complaint had not alleged to be a reinforcing mechanism for resale price fixing. For these reasons the Commission has determined that the order should be modified.

Accordingly,

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist be, and it hereby is, modified by substituting the following for Paragraph I(2).

2. Preventing or prohibiting any independent dealer or distributor from reselling his products to any person or group of persons,

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business or class of businesses, except as expressly provided herein. This order shall not prohibit James B. Lansing Sound, Inc. from establishing lawful, reasonable, and non-discriminatory minimum standards for its dealers, including standards that relate to promotion and store display, demonstration, inventory levels, service and repair, volume requirements and financial stability; nor shall this order prohibit respondent from requiring its dealers who sell JBL products for resale to make such sales only to dealers who maintain such minimum standards.

Commissioner Pertschuk did not participate. Commissioner Bailey voted in the negative.

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IN THE MATTER OF
SHAKLEE CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2790. Decision, Feb. 18, 1976—Modifying Order, June 1, 1981

This order reopens the proceeding and modifies the order issued by the Commission on February 18, 1976, 87 F.T.C. 239, 41 FR 11480, by modifying Paragraph I of the Order so as to eliminate the provisions prohibiting the firm from restricting retail store sales or cross-group sales, except when related to resale price maintenance; and by providing certain protections for existing distributors.

ORDER REOPENING PROCEEDING AND MODIFYING CEASE AND DESIST
ORDER

The Commission on May 8, 1981, having issued an order against respondent to show cause why the proceeding herein should not be reopened for the purpose of modifying Paragraph I of the consent order to cease and desist entered on February 18, 1976; and Respondent having answered that it has no objection to the reopening of the proceeding and the modification of the consent order, as set forth in the order to show cause.

Accordingly, *it is ordered*, That the matter is reopened and that Paragraph I of the order herein is modified so that it will read:

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It is ordered, That respondent Shaklee Corporation, 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 offering for sale, sale or distribution of goods or commodities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Fixing, establishing, maintaining or otherwise controlling, or attempting to fix, establish, maintain or otherwise control, directly or indirectly, the prices and to the extent, if at all, they relate to the pricing of merchandise for resale, discounts, rebates, overrides, commissions, fees or bonuses or other terms or conditions of sale; *provided*, that from the date this Order becomes final:

(a) If respondent suggests to its distributors prices for resale of its