

Modifying Order

97 F.T.C.

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:

I

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

merchandise, it must state clearly and conspicuously in conjunction therewith the following statement:

The prices quoted herein are suggested only. You are free to determine for yourself the prices you charge.

(b) If respondent suggests to its distributors discounts, rebates, overrides, commissions, fees or bonuses or other terms or conditions of sale to the extent, if at all, they relate to pricing of merchandise for resale, it must state clearly and conspicuously in conjunction therewith the following statement:

The (e.g.) discounts quoted herein are suggested only. You are free to determine for yourself the discount you grant.

2. Requiring, coercing, threatening or otherwise exerting pressure on any distributor, directly or indirectly, to observe, maintain or advertise established or suggested retail prices.

3. Requiring or requesting any distributor, directly or indirectly, to report any person or firm who does not observe the retail prices established or suggested by respondent, or acting upon reports so obtained by refusing or threatening to refuse sales to the distributor so reported.

4. Engaging in any of the following for the purpose of fixing or maintaining any resale price or in connection with the fixing or maintaining of any resale price:

(a) Requiring, contracting with, or coercing, directly or indirectly, any distributor to refrain from selling any merchandise in any quantity to or through any specified person, class of persons, business or class of businesses.

(b) Requiring, contracting with, or coercing, directly or indirectly, any distributor to refrain from establishing a fixed retail location for the sale or distribution of any merchandise in any quantity.

(c) Requiring or requesting any distributor, directly or indirectly, to report to respondent or to any person it designates, any person or firm who sells any of respondent's merchandise to a retail store or from a fixed retail location, or acting upon reports so obtained by refusing or threatening to refuse sales to the distributor so reported.

5. Preventing or discouraging, or attempting to prevent or discourage any distributor from selling or offering for sale products to retail customers on the grounds that such customer is the customer of another distributor.

6. Until March 1, 1986, restricting, prohibiting, taking any action against, threatening or otherwise interfering with a distributor's

operation of a retail store owned or, if leased by a distributor, during the remaining term of the lease (but no later than March 1, 1986), *provided*, that:

(a) For distributors as of July 1, 1980 the store was acquired or the lease was executed prior to July 1, 1980 and for those becoming distributors after July 1, 1980 the store was acquired or the lease was executed prior to notice of the May 8, 1981 Order to Show Cause in this matter;

(b) Shaklee products account for more than 35 percent of the store's retail sales;

(c) The distributor provides to the respondent, within 60 days of actual notice of this order, evidence of ownership or a copy of the lease and evidence that Shaklee products accounted for more than 35 percent of the facility's retail sales, during the six month period prior to notice of the May 8, 1981 Order to Show Cause in this matter.

Provided, however, that nothing contained in this paragraph shall prohibit respondent and a distributor from entering an agreement pursuant to which the distributor voluntarily agrees to discontinue such retail sales through an owned or leased facility. *Provided further*, that this paragraph shall not prohibit respondent from requiring a distributor to discontinue such retail sales through an owned or leased facility upon reimbursement by respondent for financial loss incurred by the distributor and attributable to the discontinuance of such retail sales. Such reimbursement shall consist of payment for (1) the cost of the portion of inventory in saleable condition (distributor net price less any bonuses paid by Shaklee) which was purchased prior to notice of the May 8, 1981 Order to Show Cause in this matter and exceeds \$50.00 at distributor's cost (2) losses from subleasing or any lease termination penalty, and (3) the costs of conversion of a store to non-Shaklee uses. Any irreconcilable disagreement between respondent and a distributor with respect to the amount owed to a distributor under this paragraph shall be resolved by binding arbitration (arbitrator's fees to be paid by Shaklee).

7. Until March 1, 1986, restricting, prohibiting, taking any action against, threatening or otherwise interfering with a distributor's sales to a retail store from any property owned or, if leased by the distributor, during the remaining term of the lease (but no later than March 1, 1986), and principally used for sales to retail stores, *provided*, that:

(a) The property was acquired or the lease was executed after February 18, 1976 and prior to July 1, 1980;

(b) The inventory exceeds \$200.00 in value and was acquired prior to notice of the May 8, 1981 Order To Show Cause in this matter;

(c) Shaklee products account for more than 35% of the gross dollar volume of sales from the distributor's property;

(d) More than 50 percent of the distributor's gross dollar volume of sales of Shaklee products were to retail stores;

(e) The distributor provides respondent within sixty days of actual notice of this order, evidence of ownership or a copy of the lease and evidence that more than 50 percent of the distributor's sales of Shaklee products were to retail stores during the six months prior to notice of the May 8, 1981 Order to Show Cause in this matter.

Provided, however, that nothing contained in this paragraph shall prohibit respondent and a distributor from entering an agreement pursuant to which the distributor voluntarily agrees to discontinue sales to retail stores. *Provided further,* that this paragraph shall not prohibit respondent from requiring a distributor to discontinue sales to retail stores upon reimbursement by respondent for the financial loss incurred by the distributor and attributable to the discontinuance of such sales to retail stores. Such reimbursement shall consist of payment for (1) the cost of the portion of inventory in saleable condition (distributor net price less any bonuses paid by Shaklee) which was purchased prior to notice of the May 8, 1981 Order To Show Cause in this matter and exceeds \$50.00 at distributor's cost, (2) losses from subleasing or any lease termination penalty, and (3) the cost of conversion of such property to non-Shaklee uses. Any irreconcilable disagreement between respondent and a distributor with respect to the amount owed to a distributor under this paragraph shall be resolved by binding arbitration (arbitrator's fees to be paid by Shaklee).

Complaint

97 F.T.C.

IN THE MATTER OF
AMERICAN HOSPITAL SUPPLY CORPORATION

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

Docket C-3067. Complaint, June 2, 1981—Decision, June 2, 1981

This consent order requires, among other things, American Hospital Supply Corporation ("AHSC"), an Evanston, Illinois manufacturer and distributor of health care products, to timely divest, in accordance with the terms of the order, either 100 percent of the stock of American Latex Corporation ("ALC") or, all assets and properties constituting ALC together with all the assets of American Cystoscope Makers, Inc. The order further requires respondents to maintain ALC as a viable business entity pending divestiture; offer to purchase for a period of one year all urological catheters from the acquirer of ALC; and refrain for five years from acquiring more than 1 percent of stock or any interest in an entity engaged in the manufacture and distribution of urological catheters.

Appearances

For the Commission: *Norman A. Drezin, Karen G. Bokar, Randall S. Leff and Peter A. Sklarew.*

For the respondent: *Seymour D. Lewis, Rosenman Colin Freund Lewis & Cohen, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent, subject to the jurisdiction of the Commission, has acquired all the assets of American Cystoscope Makers, Inc. in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and having found that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the term *urological catheters* means any flexible product designed, promoted, and sold for insertion into the urethral orifice of a human or other animal in order to