

Complaint

IN THE MATTER OF
PALM BEACH COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3073. Complaint, Aug. 4, 1981—Decision, Aug. 4, 1981*

This consent order requires, among other things, a Cincinnati, Ohio manufacturer of men's apparel and accessories to cease attempting to fix the resale prices at which its products are advertised or sold, through coercion or otherwise. The order also prohibits respondent from withholding any earned advertising credit or benefit from recalcitrant dealers, and bars the firm from restricting the lawful use of its trademarks and brand names. Additionally, the firm is precluded from seeking the identity of dealers who deviate from suggested resale prices, and from disseminating suggested resale prices for a period of three years, unless such prices are accompanied by a specified disclosure statement.

Appearances

For the Commission: *David M. Newman* and *Jeffrey Klurfeld*.

For the respondent: *Walter L. Landergan, Jr.*, and *Michael T. Gengler, Rich, May, Bilodeau and Flaherty*, Boston, Mass.

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 Palm Beach Company, 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 the Men's Division of respondent.

Dealer is defined as any person, partnership, corporation or firm which sells any product at retail 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.

PARAGRAPH 1. Respondent Palm Beach Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine with its offices and principal place of business located at 400 Pike St., Cincinnati, Ohio. Respondent is a wholly-owned subsidiary of Palm Beach Incorporated, which also has its office and principal place of business located at 400 Pike St., Cincinnati, Ohio.

PAR. 2. Respondent's Men's Division is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of men's wearing apparel and related accessories. Sales by respondent's Men's Division exceeded \$60 million for fiscal 1979.

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's Men's Division sells and distributes its products directly to more than 4,000 retail dealers located throughout the United States who in turn resell such 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 or distribution of merchandise of the same general kind and nature as merchandise manufactured, advertised, offered for sale, sold or distributed by respondent.

PAR. 6. In the course and conduct of its business as above described, respondent's Men's Division has for some time last past engaged in the following acts and practices:

(a) It has published lists of suggested retail prices and has circulated such lists to its dealers;

(b) It has adopted a policy that it will sell products only to dealers who abide by respondent's published suggested retail prices and will unilaterally refuse to deal with any dealer who sells any product at less than the published suggested retail price for such product; and

(c) It has regularly and systematically announced and communicated to all of its dealers the policy set forth in subparagraph (b) above.

PAR. 7. By means of the aforesaid acts and practices, respond-

ent's Men's Division, in agreement with certain of its dealers and with the acquiescence of others of its dealers, has established, maintained and pursued a planned course of action, the purpose and effect of which have been and are to fix, maintain, control or stabilize certain specified uniform prices at which products will be resold.

PAR. 8. The aforesaid acts and practices of respondent have had 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 effects of the acts and practices of respondent's Men's Division, 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, admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of the 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 Palm Beach Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business at 400 Pike St., City of Cincinnati, State of Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, 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 the Men's Division of 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 Palm Beach Company, 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. Announcing to any dealer that respondent may or will refuse to deal with any dealer who does not abide by any resale price for any product.

4. 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.

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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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 present account of its Men's Division. 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 of its Men's Division 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 its Men's Division, and to present or future personnel, agents or representatives of its Men's Division 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, Palm Beach Company has agreed to the entry of an Order by the Federal Trade Commission regulating certain distribution practices of the Men's Division. In connection therewith, the Company is required to send you this letter describing the Order.

With respect to products of the Men's Division, the Order provides, among other things, as follows:

1. You can advertise and sell Palm Beach Company's Men's Division's products at any price you choose.
2. Palm Beach will not take any action against you, including termination, because of the price at which you advertise or sell Men's Division products.
3. Palm Beach will not suggest retail prices for any product until [3 years from the date of service of the Order].
4. The price at which you sell or advertise Palm Beach Men's Division products will not affect your right to use Palm Beach trademarks or other identification in your sale or advertising of products bearing Palm Beach trademarks or identification.
5. You are free to participate in any cooperative advertising program sponsored by Palm Beach for which you would otherwise qualify, and to receive any advertising credit or allowance allowed thereunder regardless of the price at which you advertise the Palm Beach Men's Division product.
6. If you feel that you have lost sales or been forced to mark down any Palm Beach Men's Division product because of the prices at which another retailer has sold those products, Palm Beach cannot offer any financial assistance to compensate you for such lost sales or markdowns.

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

for Palm Beach Company,
Men's Division

Complaint

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IN THE MATTER OF

SHERMAN A. HOPE, M.D., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9144. Complaint, July 30, 1980—Decision, Aug. 5, 1981*

This consent order requires, among other things, that five individual Brownfield, Tex. physicians each cease, for the ten-year duration of the order, from taking any concerted action with another person or entity which would improperly restrict, impede or otherwise interfere with a hospital's physician recruitment program or contractual arrangement with a physician.

Appearances

For the Commission: *Benjamin I. Cohen* and *Erika R. Wodinsky*.

For the respondent: *Jim Pete Hale*, Brownfield, Tex.

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 respondents Dr. Sherman A. Hope, Dr. Morris S. Knox, Dr. Carl R. Smith, Dr. Noah W. Stone, and Dr. Harlan L. Willis ("respondents") have violated and are violating Section 5 of the Federal Trade Commission Act, and that this proceeding is in the public interest, issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. During August and September 1979, respondents were the sole active members of the medical staff of the Brownfield Regional Medical Center (the "Hospital") in Brownfield, Texas and were the only physicians in full time, active practice in Brownfield.

PAR. 2. The Hospital is operated under the auspices of the Terry County Memorial Hospital District, whose Board of Directors is popularly elected pursuant to Texas law. The Hospital is the only hospital in Terry County, Texas, and serves the county's population of approximately 16,000 persons. The next nearest hospital is approximately 35 miles away.

PAR. 3. Respondents practice in the medical specialty fields of internal medicine (Dr. Smith), surgery (Dr. Willis), and family practice (Drs. Hope, Stone, and Knox). No other specialty field is represented on the current medical staff of the Hospital. In 1979, about half of the hospital admissions of residents of Terry County