

IN THE MATTER OF
BRUNSWICK CORPORATION, ET AL.

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

Docket 9028. Final Order, Aug. 14, 1980—Modifying Order, April 29, 1982

This order modifies the Commission's final order issued on August 14, 1980, 96 F.T.C. 151, by adding Paragraphs IX and X to the order, in accordance with the decision and judgment of the Eighth Circuit Court of Appeals. The new paragraphs: (1) limit Yamaha's liability in this matter solely to violations of Section 5 of the Federal Trade Commission Act; and (2) insures that nothing in the order prevents respondents from imposing upon themselves, their dealers and distributors, vertical restraints in connection with the sale by them for resale in the U.S. of outboard motors.

MODIFIED ORDER TO CEASE AND DESIST

The Commission having issued a final cease and desist order herein on August 14, 1980, and such order having been modified and affirmed by the United States Court of Appeals for the Eighth Circuit, and the Supreme Court having denied the petition for certiorari filed by respondents Brunswick Corporation and Mariner Corp.:

Now, therefore, *it is ordered*, that the aforesaid order to cease and desist be, and hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

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 corporations, and corporations controlled by Yamaha Motor Co., Ltd.; and all successors to Yamaha Motor Co., Ltd. and their domestic and foreign subsidiaries, affiliates, joint ventures

and related corporations; and all corporations controlled by the successors of Yamaha Motor Co., Ltd.

c) *Mariner* shall mean Mariner Corp., together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations, and corporations controlled by Mariner Corp.; and all successors to Mariner Corp. and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Mariner Corp.

I.

It is ordered, That within 90 days of the date this Order becomes final, Brunswick and Mariner shall sell to Yamaha, and Yamaha shall buy from Brunswick and Mariner, all capital stock, bonds, debentures, and other securities and other interests held by Brunswick and Mariner in Sanshin Kogyo Co., Ltd. ("Sanshin"). The purchase price shall be equal in dollars to the value of the net tangible assets per share, computed and adjusted to the last day of the six month term immediately preceding the date of the sale.

II.

It is further ordered, That, on or before 90 days from the date this Order becomes final, Brunswick, Yamaha, and Mariner shall rescind in all respects the Joint Venture Agreement, and the agreements attached thereto, entered into on November 21, 1972, and all agreements modifying the Joint Venture Agreement and the agreements attached thereto, shall consider them null and void, and shall cease and desist from observing or enforcing the terms of said agreements.

III.

It is further ordered, That from the date this Order becomes final, Brunswick and Mariner shall cease any and all representation on the board of directors of Sanshin, cease and desist from taking any steps to nominate, seat, or admit any representatives of Brunswick and Mariner to the board of directors of Sanshin, and cease and desist from exercising any of the rights of a shareholder of Sanshin except the right to receive dividends.

IV.

It is further ordered, That from the date this Order becomes final, neither Brunswick nor Mariner shall enter into, continue to be a party to, or enforce any agreement which in whole or in part prevents a manufacturer, seller, or distributor of outboard motors from manufacturing, selling, or distributing such motors in the United States, its territories or possessions.

V.

It is further ordered, That from the date this Order becomes final, Yamaha shall not enter into, continue to be a party to, or observe any agreement which in whole or in part prevents Yamaha from manufacturing, selling, or distributing outboard motors in the United States, its territories or possessions.

VI.

It is further ordered, That Brunswick, Yamaha, and Mariner shall, for a period of three years from the date this Order becomes final, cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, all or any part of the stock or share capital of any concern, corporate or noncorporate, engaged in the production, distribution or sale of outboard motors in or for the United States, or capital assets pertaining to such production, distribution or sale of such motors in or for the United States.

VII.

It is further ordered, That Brunswick, Yamaha, and Mariner notify the Federal Trade Commission at least 30 days prior to any proposed change in its corporate structure such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any change in the corporation which may affect compliance obligations arising out of this Order.

VIII.

It is further ordered, That Brunswick, Yamaha, and Mariner shall within 120 days of the date this Order becomes final, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Brunswick, Yamaha,

and Mariner each intends to comply or has complied with this Order. Brunswick, Yamaha, and Mariner shall submit such other information as may from time to time be requested by the Commission.

IX.

Nothing in this Order or in the opinions of the Commission in this case shall be construed as a finding or conclusion that Yamaha has violated Section 7 of the Clayton Act. All findings and relief against Yamaha are based solely on Section 5 of the Federal Trade Commission Act.

X.

Nothing in this Order, including in particular Paragraphs IV or V hereof, shall prevent either Brunswick, Mariner, or Yamaha, respectively, from imposing upon itself, its dealers, or its distributors, ancillary vertical restraints in connection with the sale by it for resale in the United States of outboard motors.

IN THE MATTER OF
VINYL IMPROVEMENT PRODUCTS COMPANY
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3087. Complaint, April 30, 1982—Decision, April 30, 1982

This consent order requires Vinyl Improvement Products Company (VIPCO), a manufacturer and seller of residential vinyl siding products, among other things, to cease paying for or disseminating any advertisement for vinyl siding that contains an energy-related claim. The order requires the firm to distribute a copy of the order to all personnel engaged in the promotion of vinyl siding. Further, VIPCO must mail to each business entity which has sold or distributed its products during the previous year a letter which advises that vinyl siding by itself does not save energy.

Appearances

For the Commission: *Steven H. Meyer and Michael Dershowitz.*

For the respondent: *Joseph J. Lyman, Lyman, Kyhos & Rales,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Vinyl Improvement Products Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Vinyl Improvement Products Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1441 Universal Drive, Columbus, Ohio.

PAR. 2. Respondent is now, and for some time past, has been engaged in the manufacture, advertising, promotion, offering for sale, sale and distribution of residential vinyl siding products.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time has caused, its residential vinyl siding products, when sold, to be shipped from its manufacturing plant in Columbus, Ohio to its distributors and retailers in various States of