

IN THE MATTER OF
ONKYO U.S.A. CORPORATION

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

Docket C-3092. Complaint, July 2, 1982—Decision, July 2, 1982

This consent order requires a Ramsey, New Jersey manufacturer and seller of audio components to cease, among other things, attempting to fix the resale prices at which its products are advertised or sold, through coercion or otherwise. The firm is also barred from restricting the lawful use of its trademarks and brand names; seeking the identity of dealers who deviate from suggested resale prices; and disseminating suggested resale prices for a period of two years, unless such prices are accompanied by a specified disclosure statement. The order further requires the firm to send a copy of the order to all sales and advertising personnel and, for a three-year period, to mail to all present and future accounts, a letter describing the order.

Appearances

For the Commission: *Jeffrey A. Klurfeld.*

For the respondent: *Richard R. Lury, Seki, Jarvis & Lynch, New York City.*

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 Onkyo U.S.A. Corporation, 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 audio component, including but not limited to any tuner, amplifier, tape deck, receiver, speaker, changer, turntable or headphone, or any related product, which is manufactured, offered for sale or sold by respondent Onkyo U.S.A. Corporation.

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 retail price suggested or established by respondent, any customary resale price or the retail price in effect at any dealer.

PARAGRAPH 1. Respondent Onkyo U.S.A. Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 200 Williams Drive, Ramsey, New Jersey.

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 products as hereinabove defined.

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, as amended.

PAR. 4. Respondent sells and distributes its products directly to retail dealers located throughout the United States who 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 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. By various means and methods, respondent has effectuated and enforced a practice and policy in various States of the United States by which it can and does fix, control, establish, manipulate and maintain the resale prices at which its products are advertised, offered for sale and sold by certain of its dealers.

PAR. 7. By means of the aforesaid acts and practices and more, respondent, by agreement or understanding, express or implied, with certain of its dealers has established, maintained and pursued a planned course of action to fix and maintain the resale prices at which its products will be resold.

PAR. 8. 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.

STATEMENT REGARDING MODIFICATION OF CONSENT AGREEMENT
WITH ONKYO U.S.A. CORPORATION

The Federal Trade Commission provisionally accepted and sought public comment on a consent agreement negotiated by its staff and Onkyo U.S.A. Corporation. That agreement was entered to settle proposed charges that Onkyo engaged in resale price maintenance in the sale of audio components. As originally presented to the Commission, the proposed consent order contained a two-year ban on Onkyo's use of suggested resale prices, as well as a prohibition against Onkyo's restriction of dealers' prices. Upon final consideration, the Commission has determined that the moratorium on suggested resale prices constitutes relief that is inappropriate under the circumstances of this particular case. Therefore, the Commission has removed the prohibition on the use of suggested resale prices from the order.* In modifying the proposed consent order in this fashion, the Commission continues to recognize that, in some circumstances, the use of suggested resale prices may serve procompetitive purposes. For example, suggested resale prices may be especially beneficial to manufacturers seeking to enter markets in which essential information about products—such as relative quality and value—is complex. Thus, the Commission will continue to evaluate the need for a ban on suggested resale prices as a remedy on a case-by-case basis.

In prohibiting Onkyo from restricting its dealers' prices, the Commission intends to prohibit only those actions that are aimed at maintaining specific resale prices (or maintaining prices within a particular range). However, the order does not preclude Onkyo from initially selecting its dealers and establishing performance criteria that are otherwise reasonable under the antitrust laws. The fact that a dealer who failed to live up to those criteria might also be a discounteer would not necessarily preclude Onkyo from taking corrective action against the dealer, so long as the termination was undertaken for legitimate reasons related to those criteria and not as a means of coercing resale price maintenance.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation

* Under the order, Onkyo will still be required clearly and conspicuously to label any suggested resale prices as such.

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 attorneys, 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 the 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 Onkyo U.S.A. Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 200 Williams Drive, in the City of Ramsey, State of New Jersey.

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 audio component, including but not limited to any tuner, amplifier, tape deck, receiver, speaker, changer, turntable or headphone, or any related product, which is manufactured, offered for sale or sold by respondent Onkyo U.S.A. Corporation.

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 retail price suggested or established by respondent, any customary resale price or the retail price in effect at any dealer.

It is ordered That respondent Onkyo U.S.A. 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 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.
2. Requesting, requiring or coercing, directly or indirectly, any dealer to maintain, adopt or adhere to any resale price.
3. Requesting or requiring, directly or indirectly, any dealer to report the identity of any other dealer who deviates from any resale price; 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. 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.
6. Terminating, coercing 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.
7. Taking any action to hinder or preclude the lawful use by any dealer of any of respondent's trademarks in conjunction with the sale or advertising of any product.

II

It is further ordered, That respondent shall clearly and conspicuously state the following on each page of any list, advertising, book, catalogue or promotional material where respondent has suggested any resale price to any dealer:

THE RESALE PRICES QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN RESALE PRICES.

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 of its present accounts. An affidavit shall be sworn to by an official of 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 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 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 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 Dealer:

Onkyo U.S.A. Corporation has agreed with the Federal Trade Commission to the entry of an order concerning certain distribution practices. Our agreement was solely for the purpose of settling a dispute with the Commission, and does not constitute any admission on our part that we have violated any law. The agreed-to order provides, among other things, as follows:

With respect to resale prices:

1. You are free to charge whatever retail prices you deem appropriate for any Onkyo audio component or related product, and you may advertise those prices as you see fit.
2. You can be assured that Onkyo will not take any action against you for any prices which you may charge or advertise.

If you wish a copy of the full text of the agreed-to order, or if you have any questions concerning it, please call [name of Onkyo official].

for Onkyo U.S.A. Corporation

Interlocutory Order

100 F.T.C.

IN THE MATTER OF

BELTONE ELECTRONICS CORPORATION, ET AL.

*Docket 8928. Interlocutory Order, July 6, 1982*ORDER EXTENDING INTERIM *IN CAMERA* TREATMENT AND ORDERING
MOVANTS TO SHOW CAUSE

By order of October 19, 1979, the Administrative Law Judge granted *in camera* treatment to certain exhibits in this record which is to expire on the date of the Commission's Final Order in this matter unless extended by the Commission. The respondent and a number of non-party corporations have now filed requests for extension of that *in camera* coverage.¹ Some of them requested permanent extensions, others requested ten years, and still others specified no period of time.

The information held *in camera* consists mainly of sales and profit data for the years 1970-1978 as well as certain other equally old information about selling methods and product plans. In addition, respondent's income statements, accountants' reports, warranty card analysis and advertising expenses for that period of time were placed in the *in camera* record.

While the ALJ made public some *in camera* information in his Order Certifying the Record on Remand, June 27, 1980, we have found it unnecessary to use any additional *in camera* data in our Opinion. The only question before us, therefore, is whether the protected information should remain *in camera* and, if so, for how long.

Based upon our analysis of this market and the nature and especially the age of the information in question, we do not believe that the material is so secret and material to the business submitting it that "clearly defined, serious injury" is likely to result from its disclosure at this point. *H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *General Foods Corporation*, 95 F.T.C. 352 (1980). Nonetheless, we find it appropriate to extend the *in camera* treatment for the present and permit the movants to show cause why the exhibits in question should not be placed on the public record. Therefore,

It is ordered, That the exhibits and information presently in the *in*

¹ "Respondents' Motion for Continued In Camera Treatment," October 15, 1980; Dahlberg Electronics Corp., "Request for Continuation of Confidential Status of Documents Produced Pursuant to Subpoena in Beltone Electronics Corp., Dkt. No. 8928," July 28, 1980; Maico Hearing Instruments, Inc., "Motion for an Order Granting In Camera Treatment for Certain Exhibits," September 10, 1980; Audiotone (Lear Siegler, Inc.), untitled letter of August 14, 1980; Siemens Hearing Instruments Inc., "Motion for Continued Special In Camera Treatment for Documents Containing Non-Party Sales and Profit Data," September 22, 1980; Fidelity Electronics, Ltd., untitled letter of August 20, 1980.