

IN THE MATTER OF
GREAT DANE TRAILERS, INC.

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

Docket C-3120. Complaint, Oct. 13, 1983—Decision, Oct. 13, 1983

This consent order prohibits the manufacturer and seller of Great Dane truck trailers, among other things, from taking any action which frustrates or eliminates competition in the sale of new Great Dane truck trailers. Great Dane Trailers, Inc. is barred from entering into any agreement with the Great Dane Distributor Council, a dealer's association, or its members, to restrict sales to certain territories or customers; and from formulating or utilizing exclusive territories until Dec. 1, 1984. The manufacturer must make available to dealers and customers a brochure listing all independent dealers and advise customers that any dealer may be contacted regarding the purchase of a new Great Dane truck trailer.

Appearances

For the Commission: *Douglas B. Brown and Phyliss W. Richardson.*

For the respondent: *John M. Hewson, III, Hunter, Maclean, Exley & Dunne, Savannah, Ga. and Barry J. Brett, Parker, Chapin, Flattau & Klimpe, 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 Great Dane Trailers, Inc., a corporation, and Great Dane Distributor Council, an unincorporated association, and its members, hereinafter sometimes referred to as respondents, have 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:

I. DEFINITIONS

For the purpose of this complaint, the following definitions shall apply:

A. *Truck trailer* is a property-carrying vehicle, or chassis thereof, drawn by a truck or truck tractor and having one or more axles with a rating of 10,000 pounds or more per axle.

B. *Dealer* is any proprietorship, partnership, firm or corporation authorized by Great Dane Trailers, Inc., to sell its new truck trailers but which is not owned or controlled by Great Dane Trailers, Inc. *Provided, however,* That two or more dealers that are majority-owned subsidiaries of a common parent shall not be regarded as separate dealers for the purposes of this complaint.

C. *Factory branch* is any corporation which is controlled by, or a division of, Great Dane Trailers, Inc., and which sells new Great Dane truck trailers.

D. *Area of primary responsibility* is a geographic area or customer or customers assigned to a dealer on a nonexclusive basis for which the dealer is responsible for sales penetration.

E. *Historic trading area* is a geographic area or specific customer for which primary responsibility has been assigned at some time in the past.

II. RESPONDENTS AND TRADE AND COMMERCE

PARAGRAPH 1. Respondent Great Dane Trailers, Inc., (hereinafter "Great Dane") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia with its offices and principal place of business located at East Lathrop Avenue, Savannah, Georgia.

PAR. 2. Respondent Great Dane is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of truck trailers.

PAR. 3. Respondent Great Dane 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 Great Dane sells and distributes its products directly to dealers and to factory branches located throughout the United States, who in turn resell respondent Great Dane's products to the general public.

PAR. 5. Approximately 50 percent of respondent Great Dane's new truck trailers are sold and distributed by dealers, with the remainder being sold and distributed by factory branches.

PAR. 6. Respondent Great Dane's sales for fiscal year 1980 were in excess of 200 million dollars.

PAR. 7. Respondent Great Dane Distributor Council (hereinafter "Distributor Council," also known as the Great Dane Dealer's Association) is an unincorporated association formed in 1976, with membership comprised of dealers for respondent Great Dane located throughout the United States.

PAR. 8. Respondent Distributor Council was formed and has operated for the purpose of mutual economic benefit of its members. Its members conduct a substantial course of business, including the acts and practices hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

III. COUNT I: ALLOCATION OF MARKETS BY
GREAT DANE DISTRIBUTOR COUNCIL

PAR. 9. In the course and conduct of its business, respondent Distributor Council and some or all of its members have engaged in acts and practices that have hindered, frustrated, restrained and tended to eliminate competition among Great Dane dealers. As part of the foregoing, respondent Distributor Council and some or all of its members have acted in some or all of the following ways:

A) Agreed among themselves that no member will make or solicit sales for new Great Dane truck trailers outside of its respective area of primary responsibility or historic trading area.

B) Encouraged each member dealer not to solicit or make sales outside of its area of primary responsibility or historic trading area.

C) Encouraged or requested respondent Great Dane to prohibit or discourage sales of new Great Dane truck trailers by factory branches or dealers in another dealer's area of primary responsibility or to a customer with whom another dealer had a historic relationship.

D) Agreed among themselves that dealers will quote prices consistent with those of competing dealers when customers solicit competing bids.

E) Facilitated the allocation of territories by serving as a conduit for complaints by a dealer regarding sales or solicitation of sales of new Great Dane truck trailers outside of areas of primary responsibility or historic trading area.

IV. COUNT II: GREAT DANE'S FACILITATION OF
DEALER EFFORTS TO ALLOCATE MARKETS

PAR. 10. In the course and conduct of their business, respondent Great Dane, respondent Great Dane Distributor Council, and some or all of its members have engaged in acts and practices that have caused a horizontal division of markets which have hindered, frustrated, restrained and tended to eliminate competition among Great Dane dealers and between dealers and factory branches. As part of the

foregoing, respondent Great Dane has acted in some or all of the following ways:

A) Agreed with the Great Dane Distributor Council and its members not to make sales or solicit sales of new Great Dane truck trailers through its factory branches in the area of primary responsibility of its dealers.

B) Despite a contractual provision that areas of primary responsibility are nonexclusive, fostered a belief or otherwise encouraged dealers to view areas of primary responsibility as exclusive territories for the solicitation or sale of new Great Dane truck trailers.

C) In some instances, assigned specific customers or classes of customers to named dealers or factory branches for the solicitation or sale of new Great Dane truck trailers.

D) Suggested that a dealer or factory branch maintains or has had a historic relationship with a specified customer and that no other dealer or factory branch should solicit that customer for sales of new Great Dane truck trailers.

E) Discouraged dealers from making sales of new Great Dane truck trailers outside their areas of primary responsibility or from making sales of new Great Dane truck trailers to specified customers.

F) Encouraged dealers not to solicit sales for new Great Dane truck trailers in specified geographic areas or not to solicit specified customers for sales of new Great Dane truck trailers.

G) Encouraged or suggested that dealers resolve territorial disputes among themselves.

H) Facilitated resolution of disputes between dealers concerning sales to specified customers or sales in specified geographic areas of new Great Dane truck trailers.

I) Facilitated the policing of sales by serving as a conduit for complaints by a dealer or factory branch regarding sales or solicitation of sales of new Great Dane truck trailers by a dealer or factory branch in the complainant's area of responsibility.

J) Facilitated a policy of policing sales by aiding a dealer in the identification of the seller of new Great Dane truck trailers to a specified customer.

K) In certain instances, paid a dealer a commission or share of profits on sales of new Great Dane truck trailers made by another dealer or factory branch to a customer located in the recipient's area of primary responsibility.

L) Suggested or encouraged a dealer or factory branch to contact another dealer before soliciting sales for new Great Dane truck trailers in the second dealer's area of primary responsibility.

V. EFFECTS

PAR. 11. By agreeing together and engaging in the aforesaid acts and practices as alleged, respondents have agreed to a division of territories among dealers and between dealers and factory branches that has unreasonably hindered, restricted, and restrained competition. The aforesaid acts and practices, therefore, constitute unfair methods of competition and unfair acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45). The aforesaid acts and practices will continue in the absence of the relief herein specified.

Commissioners Miller and Douglas dissented.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent Great Dane Trailers Inc., named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Atlanta 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

Respondent Great Dane Trailers, Inc., its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent Great Dane Trailers, Inc., 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 Great Dane Trailers, Inc., 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 Great Dane Trailers, Inc., 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Great Dane Trailers, Inc., is a corporation organized,

existing and doing business under and by virtue of the laws of the State of Georgia, with its offices and principal place of business located at East Lathrop Avenue in Savannah, Georgia.

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 purpose of this order, the following definitions shall apply:

A. *Truck trailer* is a property-carrying vehicle, or chassis thereof, drawn by a truck or truck tractor and having one or more axles with a rating of 10,000 pounds or more per axle.

B. *Dealer* is any proprietorship, partnership, firm, or corporation authorized by Great Dane Trailers, Inc., to sell its new truck trailers but which is not owned or controlled by Great Dane Trailers, Inc. *Provided, however,* That two or more dealers that are majority-owned subsidiaries of a common parent shall not be regarded as separate dealers for the purposes of this order.

C. *Factory branch* is any corporation which is controlled by, or a division of, Great Dane Trailers, Inc., and which sells new Great Dane truck trailers.

D. *Area of primary responsibility* is a geographic area or customer or customers assigned to a dealer on a nonexclusive basis for which the dealer is responsible for sales penetration.

E. *Exclusive territory* is any agreement restricting or prohibiting a dealer from making sales outside of its territory, area of primary responsibility, or historic trading area.

F. *Profit-pass-over* is any agreement which provides compensation to a dealer by a second dealer directly or indirectly for sales made within the first dealer's area of primary responsibility or historic trading area by the second dealer, except for services actually performed in preparing new Great Dane truck trailers for delivery, including but not limited to clean up costs, repairs, demurrage, transportation, or any other costs related to the handling of such trailers.

I

It is ordered, That respondent, Great Dane Trailers, Inc., (hereinafter referred to as "Great Dane"), a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary,

division or other device used in connection with the manufacture, advertisement, offer for sale, sale or distribution of any new Great Dane truck trailer in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Entering into a contract, combination or conspiracy among any of its dealers or with any dealer association, or aiding and abetting any such contract, combination or conspiracy, which has the purpose or effect of limiting, allocating or restricting the territory, customer or class of customers in which or to whom a dealer may solicit or sell new Great Dane truck trailers. The foregoing shall not be deemed to limit or prohibit Great Dane's ability to take any unilateral action that is otherwise lawful, with respect to the marketing or distribution of its products, even though it has been suggested or encouraged by one or more dealers.

2. From the date this order is served upon respondent until December 1, 1984, imposing or attempting to impose any limitation or restriction (including but not limited to exclusive territories and profit-pass-over restrictions) respecting the geographic area, customer, or class of customers in which or to whom a dealer may solicit or sell new Great Dane truck trailers.

3. From the date this order is served upon respondent until December 1, 1984, entering into, attempting to enter into, continuing, maintaining or enforcing any contract, understanding, or agreement to limit, allocate, or restrict the territory, customer, or class of customers in which or to whom a dealer may solicit or sell new Great Dane truck trailers (including but not limited to exclusive territories and profit-pass-over restrictions).

Provided, however, That nothing in this order shall prohibit Great Dane Trailers, Inc., from utilizing areas of primary responsibility.

Provided further, however, That nothing in this order shall prohibit Great Dane from terminating any dealer, or deciding not to renew any dealer's contract, for failure to achieve adequate levels of sales performance, to pay accounts promptly, to provide adequate services and warranty repair, or any other legal business reason, *provided* that paragraphs I(1), I(2), or I(3) of this order have not been violated as to such dealer by such termination.

Provided further, however, That nothing in this order shall prohibit Great Dane from agreeing with any dealer that it will not authorize a new dealer or establish a factory branch within a distance of up to 150 miles of that dealer.

II

A. *It is further ordered*, That respondent shall distribute a copy of this order to all operating divisions of said corporation and to present and future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondent shall secure from each such person a signed statement acknowledging receipt of said order. The signed acknowledgement must be obtained within sixty (60) days of the service upon them of this order or thirty (30) days after the employment of new personnel.

B. *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, or any other change in the corporation which may affect compliance obligations arising out of the order.

C. *It is further ordered*, That respondent shall send a copy of this order to all present dealers within sixty (60) days after the date of service of this order and that an additional copy be sent attached to contract renewals until January 1, 1984. All new dealers must also be given copies of this agreement prior to entering into a distributor sales agreement with Great Dane Trailers, Inc.

D. *It is further ordered*, That respondent shall, within sixty days of this order being served upon it, make available to all dealers and customers a brochure identifying all independent dealers and stating that a customer may contact any dealer regarding the purchase of a new Great Dane truck trailer. All Great Dane advertisements in trade publications shall disclose the availability of that brochure from the service date of this order until December 1, 1984.

E. *It is further ordered*, That the respondent herein shall, within ninety (90) 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. An additional report shall be filed within sixty (60) days after Great Dane Trailers, Inc., begins to utilize, if it so chooses, additional territorial or customer restrictions. That latter report shall include a copy of all new Distributor Sales Agreements, as well as a list of all Great Dane's distributors who have been terminated or not renewed for any reason since January 1, 1982.

Commissioners Miller and Douglas dissented.

IN THE MATTER OF
GREAT DANE DISTRIBUTOR COUNCIL

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

Docket C-3121. Complaint, Oct. 13, 1983 —Decision, Oct. 13, 1983*

This consent order prohibits an unincorporated association of truck trailer dealers, and its individual members, from taking any action which frustrates or eliminates competition in the sale of new Great Dane truck trailers. The dealer's association must distribute a copy of the order to all current and future members and ensure that members' sales personnel are provided with a copy of the order.

Appearances

For the Commission: *Douglas B. Brown and Phyliss W. Richardson.*

For the respondents: *John M. Hewson, III, Hunter, Maclean, Exley & Dunne*, Savannah, Ga. and *Barry J. Brett, Parker, Chapin, Flattau & Klimpe*, New York City.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent Great Dane Distributor Council and its members named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondent Great Dane Distributor Council and respondent members and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent Great Dane Distributor Council and respondent members 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 respondents 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

* Complaint previously published at 102 F.T.C. 1307.