

Modifying Order

102 F.T.C.

IN THE MATTER OF

BULOVA WATCH COMPANY, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1887. Consent Order, April 1, 1971—Modifying Order, Dec. 12, 1983*

This order reopens the proceeding and modifies the Commission's order issued on April 1, 1971 (78 F.T.C. 556), by deleting Paragraphs 2 and 4.B. from the order. The modification allows the company to prevent transshipping of its watch and clock products by its dealers.

ORDER REOPENING AND MODIFYING CEASE AND DESIST ORDER

By petition of August 11, 1983, respondent Bulova Watch Company, Inc. ("Bulova") requests that the Commission vacate its April 1, 1971 Order against Bulova in its entirety or, in the alternative, suspend the Order for a ten-year period, at the end of which period Bulova would have the burden of demonstrating that the Order should be permanently vacated. The Order in this matter prohibits Bulova from engaging in certain acts and practices, including resale price maintenance and restricting transshipment by sellers of its watch or clock products. Pursuant to Section 2.51 of the Commission Rules of Practice, Bulova's petition was placed on the public record for comment. No comments were received.

Upon consideration of Bulova's petition and supporting materials, the Commission has determined that the petition makes a satisfactory showing that changed conditions of fact and law and the public interest require reopening the Order and modifying it by deleting its transshipment provisions. The Supreme Court has now determined that non-price vertical restraints such as transshipment restrictions are not *per se* illegal, but instead should be evaluated pursuant to the rule of reason. *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 364, 57-59 (1977). From that perspective, the Commission has determined that the transshipment provisions in the Order are no longer necessary to prevent injury to competition in this industry, and that Bulova will likely suffer significant competitive injury unless those provisions are eliminated. The Commission also finds that Bulova has failed to demonstrate that the remaining provisions of the Order should be modified or set aside. Bulova's petition does not point to changes in law or fact or public interest considerations sufficient to require modifying or deleting those provisions. Accordingly,

BULOVA WATCH CO., INC.

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Dissenting Statement

It is ordered, That this matter be reopened and that the order be modified, as of the effective date of this Order, by deleting paragraph 2 of the Order, which reads:

2. Entering into, maintaining, or enforcing any contract, agreement, combination, understanding, or course of conduct which has as its purpose restricting the persons to whom any Bulova dealer or other person may resell Bulova watch or clock products;

and by deleting paragraph 4.B. of the Order, which reads:

B. because the dealer transshipped or sold Bulova watch or clock products to a retailer.

Commissioners Pertschuk and Bailey voted in the negative.

DISSENTING STATEMENT OF COMMISSIONER PATRICIA P. BAILEY

A Commission majority has voted to allow Bulova to impose transshipping bans on its dealers: that is, Bulova can now order its dealers not to sell to discounters. Indeed, Bulova admits that it wants the order modification for this very purpose. (Bulova petition, p. 9) My motion to reject Bulova's petition having failed, I now dissent from the majority's vote.

Bulova claims that it needs to ban transshipping in order to prevent "free riding" on the pre- and post-sale services offered by authorized dealers. There is, however, nothing in Bulova's petition which demonstrates that its inability to prevent transshipment decreases dealer loyalty and sales efforts.

There are only two pre-sale "services" which Bulova expects of its dealers: (1) that their displays be kept "clean and neat"; (2) a very nebulous commitment to its cooperative advertising program. The extent of this participation is determined by the retailer; Bulova requires only that the dealer be "capable" of using "some" of the company's advertising or promotion. The advertising samples included in the petition merely picture the watch, sometimes with a description and price. This is not surprising. As I noted in *Lenox, Inc.*, D. 8718 there are many products whose function or esthetic appeal is self evident. Sales of these goods do not require a blandiloquent persona sales effort or major consumer education program. I would put watches (both digital and mechanical) in this category. Authorize and non-authorized watch dealers advertise in the same way. There are no special promotional efforts which are discouraged by transshipping.* It follows, then, that the only pre-sale "service" which

* Even the seminal "Chicago School" exploration of the free rider theory limited its applicability to services "specific to the commodity and unrelated to the retailers' methods of generally doing business. . . ." argument applies to products which are unfamiliar to the mass of consumers either because the product is

fostered by this ban on transshipping is a non-discountable price, which some would say conveys an image of quality. I have never accepted this argument because it leads very logically to the position that resale price maintenance is an even stronger guarantee of that precious "prestige image".

Bulova demands the following of its authorized dealers in post-sale service capabilities: "The Bulova dealer must be capable of servicing and repairing the Bulova product or to [sic] expeditiously forward the product to Bulova corporate headquarters for service". Sixty percent of Bulova's authorized dealers fulfill their service obligations via the mailbox option. (Bulova petition pp. 4-5) Under these circumstances, I fail to see how a discount house's "no frills" sale tarnishes Bulova's image by allegedly offering the consumer less than is provided by authorized dealers.

bodies new features) or because it is purchased infrequently by a relatively small proportion of households." ; "Why Should Manufacturers Want Fair Trade," J. Law and Econ. 86, 89, 105 (October, 1960).

IN THE MATTER OF
BENTON & BOWLES, INC.

VACATING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2403. Consent Order, May 22, 1973—Vacating Order, Dec. 28, 1983

On Dec. 28, 1983 the Federal Trade Commission vacated the Decision and Order issued against Benton & Bowles on May 22, 1973 (82 F.T.C. 1444).

ORDER GRANTING REQUEST TO REOPEN THE PROCEEDING
AND VACATE THE DECISION AND ORDER

Respondent, Benton & Bowles, Inc., requested on August 30, 1983, that the Commission reopen the proceeding in Docket No. C-2403 and vacate the Decision and Order entered in that matter on May 22, 1973.

The Commission placed this request upon the public record, for a period of thirty days, pursuant to Section 2.51 of its Rules of Practice.

The Commission is of the opinion that the public interest would be served by reopening the proceeding and vacating the Decision and Order. The charges against Benton & Bowles in this proceeding were based upon certain advertisements for Vanquish, a non-prescription internal analgesic product manufactured by Sterling Drug, Inc. In its decision in the matter of *Sterling Drug, Inc.*, Docket No. 8919 (July 5, 1983) [102 F.T.C. 395], the Commission dismissed similar charges against Sterling Drug and Lois Holland Callaway, Inc., that were based on advertisements for Vanquish nearly identical to those that were the subject of the complaint against Benton & Bowles. Thus, the Commission's decision in *Sterling Drug, Inc.*, constitutes a change in law which requires that the Order against Benton & Bowles be vacated.

Now therefore, it is ordered, That the proceeding in Docket No. C-2403 is hereby reopened, and the Decision and Order issued on May 22, 1973, is hereby vacated.