

IN THE MATTER OF
DECORATING PRODUCTS ASSOCIATION OF
CENTRAL FLORIDA

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

Docket C-3159. Complaint, July 26, 1985—Decision, July 26, 1985

This consent order requires Decorating Products Association of Central Florida (DPACF), an association composed of wallcovering retailers and suppliers, among other things, to cease, individually or in concert with others, engaging in conduct having the purpose or effect of fixing prices, terms or conditions of sale of wallcoverings; coercing sellers of wallcoverings to adopt or abandon any practice or policy concerning pricing, conditions of sale, distribution method, or choice of customers. DPACF is also barred from suggesting or recommending to its members that they refuse to deal or otherwise attempt to affect a supplier's pricing or distribution methods; and from assisting any affiliated organization or its members in engaging in the prohibited conduct. The organization is further required to mail a copy of the order to each of its members and to publish it in its newsletter in a timely fashion. Finally, the order obligates DPACF to require its members to agree in writing to be bound by the terms of the order as a condition of membership; and to terminate for a period of one year any member believed to have engaged in the prohibited practices after the effective date of the order.

Appearances

For the Commission: *Kevin T. Cronin and Joseph Eckhaus.*

For the respondents: *J. Thomas Cardwell, Akerman, Senterfitt & Eidson, Orlando, Fla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondent named in the above caption 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 this complaint stating its charges as follows:

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

and commercial walls, such as simple wallpapers, vinyls, fabrics and foils.

B. *Supplier* means a manufacturer or a distributor of wallcoverings or an entity engaged in the sale of wallcoverings to others for resale to consumers.

PAR. 2. Respondent Decorating Products Association of Central Florida ("DPACF") is an unincorporated association, organized in or about May, 1980, with its mailing address at Post Office Box 183, Orlando, Florida. DPACF is a local affiliate of the National Decorating Products Association ("NDPA"). Membership in DPACF constitutes membership in NDPA. NDPA and DPACF are composed of full voting members, which are retail businesses engaged in the promotion and sale of wallcoverings, and non-voting associate members, which are suppliers of wallcoverings.

PAR. 3. DPACF was organized, *inter alia*, to facilitate the exchange of information among its members concerning methods for conducting business in the sale and distribution of wallcoverings. Its affairs are discussed and policy determined at monthly meetings presided over by DPACF's president.

PAR. 4. Full voting members of respondent are engaged in the operation of retail decorating products stores where wallcoverings are sold. Annual retail sales of wallcoverings in the United States are approximately \$1.5 billion. Except to the extent that competition has been restrained as herein alleged, full voting members of respondent have been and are now in competition among themselves and with other retail sellers of wallcoverings.

PAR. 5. Respondent engages in substantial activities which further the pecuniary interests of its members. By virtue of its purposes and its activities, respondents are corporations within the meaning of Section 4 of the Federal Trade Commission Act, *as amended*, 15 U.S.C. 44.

PAR. 6. Respondent, and its members, engage in acts and practices, including the acts and practices described below, which are in or affect commerce within the meaning of the Federal Trade Commission Act, *as amended*.

COUNT I

PAR. 7. Respondent DPACF has acted as a combination of, or has conspired with, at least some of its members to restrain competition by refusing to deal with a supplier that was planning to open a chain of retail wallcovering stores.

PAR. 8. Respondent DPACF and at least some of its members have engaged in various acts or practices in furtherance of this combination or conspiracy, including, among other things:

A. Removing, or urging and encouraging members and others to remove, certain wallcovering sample books from their store shelves;

B. Discontinuing, or urging and encouraging members and others to discontinue, promotion of the products of certain suppliers;

C. Not placing, or urging and encouraging members and others not to place, customer orders for wallcoverings through certain suppliers.

PAR. 9. The combination or conspiracy and the acts and practices alleged in Paragraphs Seven and Eight have had, or have the tendency or capacity to have, the following effects, among others:

A. Restraining competition in connection with the sale and distribution of wallcoverings;

B. Restraining the ability of suppliers to distribute wallcoverings in a manner that would place suppliers in competition with respondents' members and other retail sellers of wallcoverings;

C. Depriving consumers of the benefits of additional price, quality and service competition in connection with the purchase and sale of wallcoverings.

PAR. 10. The combination or conspiracy and the acts and practices alleged in Paragraphs Seven and Eight constitute unfair methods of competition or unfair or deceptive acts and practices by respondent in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

COUNT II

PAR. 11. Respondent DPACF and others have combined or conspired between and among themselves, and with at least some of their members to restrain competition by attempting to fix or restrain the prices paid to wallcovering suppliers by retailers, and by refusing or threatening to refuse to deal with suppliers that imposed charges for cutting single rolls of wallcovering.

PAR. 12. Respondent DPACF and at least some of their members and others have engaged in various acts or practices in furtherance of these combinations or conspiracies, including, one or more of the following:

A. Threatening, and urging members to threaten, to refuse to deal with suppliers that imposed cutting charges;

B. Refusing to pay, or urging members to refuse to pay, cutting charges imposed by suppliers;

C. Publishing and circulating to suppliers, and others, statements implying that members would refuse to deal with suppliers imposing cutting charges, or urging members to refuse to pay cutting charges imposed by suppliers.

alleged in Paragraphs Eleven and Twelve have had, or have the tendency or capacity to have, the following effects, among others:

- A. Fixing, maintaining, or stabilizing prices of wallcoverings;
- B. Restraining competition in connection with the sale and distribution of wallcoverings;
- C. Depriving consumers of the benefits of additional price, quality and service competition in connection with the purchase and sale of wallcoverings.

PAR. 14. The combination or conspiracy and the acts and practices alleged in Paragraphs Eleven and Twelve constitute unfair methods of competition or unfair or deceptive acts and practices by respondent in violation of Section 5 of the Federal Trade Commission Act, *as amended*.

COUNT III

PAR. 15. Respondent DPACF has acted as a combination of, or has conspired with, at least some of its members to restrain competition by refusing or threatening to refuse to deal with suppliers engaged in the direct sale of wallcoverings to building contractors.

PAR. 16. Respondent DPACF and at least some of its members have engaged in various acts or practices in furtherance of this combination or conspiracy, including, among other things:

- A. Publishing statements urging members to refuse to deal with suppliers that sell directly to building contractors;
- B. Identifying in published statements a supplier involved in the direct sale of wallcoverings to building contractors and urging members to refuse to deal with such suppliers;
- C. Threatening and attempting to coerce suppliers into discontinuing their direct sales to building contractors.

PAR. 17. The combination or conspiracy and the acts and practices alleged in Paragraphs Fifteen and Sixteen have had, or have the tendency or capacity to have, the following effects, among others:

- A. Restraining competition in connection with the sale and distribution of wallcoverings;
- B. Depriving consumers of the benefits of additional price, quality and service competition in connection with the purchase and sale of wallcoverings.

PAR. 18. The combination or conspiracy and the acts and practices alleged in Paragraphs Fifteen and Sixteen constitute unfair methods of competition or unfair or deceptive acts and practices by respondent in violation of Section 5 of the Federal Trade Commission Act, *as amended*. These combinations or conspiracies, as well as those alleged

in Counts I and II, are continuing and will continue in the absence of appropriate relief.

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 Bureau of Competition 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, 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 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 respondents have 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 is an unincorporated association with its mailing address at P.O. Box 183, Orlando, Florida.
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

I.

It is ordered, That for purposes of this order the following definitions shall apply:

- A. *DPACF* means the Decorating Products Association of Central

P.O. Box 183, Orlando, Florida), its members, officers, directors, committees, representatives, agents, employees, successors and assigns.

B. *Wallcoverings* mean flexible materials used to cover residential and commercial walls, such as simple wallpapers, vinyls, fabrics and foils.

II.

It is further ordered, That DPACF, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, shall cease and desist from:

A. Conduct having the purpose or effect of:

1. fixing, maintaining, or stabilizing prices, terms or conditions of sale of wallcoverings;

2. coercing any seller of wallcoverings to adopt, abandon, or refrain from adopting or abandoning any practice or policy concerning prices, terms or conditions of sale, or distribution methods or choice of customers.

B. Expressly or impliedly advocating, suggesting, advising, or recommending that any of DPACF's members refuse to deal with any seller of wallcoverings on account of, or that any of DPACF's members engage in any other act to affect, or to attempt to affect, the prices, terms or conditions of sale, or distribution methods or choice of customers of any seller of wallcoverings.

C. Publishing or circulating the results of any survey of, or otherwise identifying, prices, terms or conditions of sale, distribution methods, or choice of customers of any seller of wallcoverings in order to coerce, compel or induce any seller of wallcoverings to adopt or abandon or to refrain from adopting or abandoning any practice or policy concerning prices, terms or conditions of sale, or distribution methods or choice of customers.

D. Aiding or assisting any affiliates of the National Decorating Products Association ("NDPA") or NDPA members in engaging in any of the acts prohibited by this Part II.

III.

It is further ordered, That this order shall not be construed to prevent DPACF from providing information or its members' views to other sellers of wallcoverings, provided, however, that the information or views are not presented in a manner constituting an actual or threatened refusal to deal.

IV.

It is further ordered, That DPACF shall:

A. Within 30 days following service of this order, mail a copy of this order to each of its members.

B. Within 60 days following service of this order, publish this order in an issue of DPACF's newsletter in the same type size normally used for articles in the DPACF's newsletter.

C. As a condition of continued membership in DPACF, require within 90 days following service of this order, or as a condition of initial membership in DPACF, require within 90 days of such membership, that any members agree in writing to be bound by the provisions of Part II of this order.

D. Terminate for a period of one year its affiliation with any DPACF member within one hundred and twenty (120) days after learning or having reason to believe that said member has engaged, after the date this order becomes final, in any act or practice that, if engaged in by DPACF would be prohibited by Part II of this order.

V.

It is further ordered, That DPACF shall:

A. Within sixty (60) days following service of this order, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to DPACF, require.

B. For a period of three (3) years following service of this order, maintain in its files a copy of all correspondence received from, or sent to, sellers of wallcoverings, associations of sellers of wallcoverings, or other DPACF members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request.

C. Notify the Commission at least thirty (30) days prior to any proposed change in DPACF's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change that may affect compliance obligations arising out of this order.

IN THE MATTER OF
SALOMON/NORTH AMERICA, INC.

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

Docket C-2859. Consent Order, Jan. 6, 1977—Modifying Order, July 30, 1985

This order modifies the 1977 consent order (89 F.T.C. 24) issued against respondent by deleting provisions in the original order that prohibited the company from barring transshipment (sales between retailers) or limiting the retail locations from which dealers may sell its products. The modifying order is the result of respondent's request to the Commission for modification of the terms of the original order.

ORDER REOPENING AND MODIFYING ORDER
ISSUED ON JANUARY 6, 1977

On March 25, 1985, respondent Salomon/North America, Inc. ("Salomon") filed its "Request of Salomon/North America, Inc. for Modification of Consent Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding in Docket No. C-2859 and to modify the order issued by the Commission in this case on January 6, 1977, by deleting the provisions that restrict Salomon's ability to limit the transshipping of its products and that prohibit Salomon from limiting the retail locations from which dealers may sell its products. Salomon also requests deletion of Paragraph II of the order which creates a limited exception to the order's provision that restricts Salomon's ability to limit the transshipment of its products. Salomon's Request was on the public record for thirty days and no comments were received.

After reviewing Salomon's request and other available information, the Commission has concluded that the public interest warrants reopening and modification of the order in the manner requested by Salomon. The transshipment and location restriction provisions of the order (subparagraphs I.B and I.C) were adopted principally as "fencing-in" restraints ancillary to the order's ban on resale price maintenance ("RPM"). Salomon has shown that it does not fix the prices at which its authorized dealers resell Salomon ski products, that Salomon ski product prices vary from dealer to dealer, and that the transshipment and location restriction provisions therefore have served their purpose to encourage the emergence of intrabrand price competition in Salomon products. To the extent that subparagraphs