

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

I.B and I.C were intended as a remedy for the alleged anticompetitive effects of transshipment and location restrictions independent of RPM, the Supreme Court's ruling in *Continental T.V. Inc. v. GTE Sylvania, Inc.*, 433 U.S. 26 (1977), constitutes a change in law that justifies reexamination of the provisions. Such a reexamination, based on the record presented by Salomon and other information, demonstrates that transshipment and location restraints by Salomon would pose no threat to interbrand competition.

Salomon's inability to ban transshipping and sales from unauthorized locations would likely cause Salomon significant competitive injury by, among other things, lessening the efficiency of Salomon's distribution system, discouraging dealers from remaining with Salomon, exposing Salomon's customers to increased risk of injury and, consequently, exposing Salomon to personal injury claims.

The transshipment and location restriction provisions in question appear to have served their remedial purpose. There is no indication that Salomon has engaged in RPM (or has breached the order's transshipping and location restriction provisions) from January 6, 1977, to date, and nothing in the record suggests that there is a need to continue the order's transshipment and location restriction provisions to ensure that RPM is not reinstituted by Salomon.

Accordingly, *it is ordered* that this matter be, and it hereby is, reopened and that subparagraphs I.B, I.C and Paragraph II of the order be, and they hereby are, deleted.

IN THE MATTER OF
SOUTHWEST SUNSITES, INC., ET AL.

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

Docket 9134. Complaint, April 29, 1980—Decision, Aug. 9, 1985*

This consent order requires Porter Realty, Inc. and Irvin Porter, among other things, to cease, in connection with the advertising or sale of land or the inducement of payments for land, representing that the purchase of any land is a sound financial investment; involves little monetary risk; is a way to achieve financial security; and will result in economic benefit to the purchaser stemming from an increase in the value of the land as a result of mineral rights, exploration, profitable resale or as a hedge against inflation. Respondents are prohibited from representing that any land is currently usable as a homesite, farm or ranch, unless that land is immediately usable for the cited purpose without any substantial improvement or development by the purchasers; and from misrepresenting in any manner the cost of obtaining or availability of electric power, telephone service, potable water, sewage disposal, or any utility; and any interest in land by respondents or others. Respondents are further required to prepare a "Fact Sheet" containing specified information and to distribute a copy to all purchasers in a prescribed manner. Advertisements, promotional material and sales presentations must include statements warning that investment is risky and that prospective buyers should consult a qualified professional before purchasing; and that substantial expenditures may be necessary to make lots suitable for use. Contracts must contain a seven-day right-to-cancel provision and a disclosure that refunds will be made within 30 days after the seller receives a cancellation notice. Additionally, respondents are required to provide consumers with cancellation forms; honor all valid cancellation requests; and make refunds in a timely manner. The order further requires that sales representatives receive a copy of the order; that respondents institute a surveillance program designed to reveal those who fail to comply with the provisions of the order and discontinue dealing with any person who engages in any prohibited act or practice.

Appearances

For the Commission: *Gary D. Kennedy.*

For the respondents: *Aninslee R. Ferdie, Ferdie & Gouz, Coral Gables, Fla.*

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respond-

* Complaint previously published at 105 F.T.C. 7 (1985).