

IN THE MATTER OF

INTERCO INCORPORATED, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket C-2929. Consent Order, Sept. 26, 1978—Modifying Order, Oct. 3, 1986

The Federal Trade Commission has modified a 1978 consent order with respondents by setting aside the portions of the order pertaining to the exclusive dealing prohibitions. The Commission concluded that respondents do not have the market power to exclude competitors.

ORDER REOPENING AND SETTING ASIDE PORTIONS OF ORDER
ISSUED SEPTEMBER 26, 1978

On May 6, 1986, respondents Interco Incorporated ("Interco"), Londontown Corporation ("Londontown") and Queen Casuals, Inc. ("Queen Casuals") filed a "Request As Supplemented To Reopen And Set Aside Part Of 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. Londontown and Queen Casuals are wholly owned subsidiaries of Interco. The Request asked the Commission to reopen the consent order issued on September 26, 1978, ("the order") and set aside paragraphs (1) and (2) of Part II of the order. [92 F.T.C. 404]

Paragraphs (1) and (2) of Part II of the order are applicable only to respondents' footwear products. Paragraph (1) of Part II forbids respondents from enforcing any agreement, understanding or arrangement which prevents resellers or prospective resellers from selling the footwear products of competitors or from independently determining the volume of footwear to be purchased from competitors. Paragraph (2) of Part II prohibits respondents from requiring or inducing resellers to cancel orders for or not purchase footwear products supplied by competitors.

After reviewing respondents' Request, the Commission has concluded that the public interest warrants reopening and setting aside the mentioned paragraphs of the order as requested by respondents. The action we take today is consistent with our previous determinations in *Brown Shoe Company, Inc.*, Docket No. 7606, July 16, 1984 [104 F.T.C. 266], and in *International Shoe Company*, Docket No. 6835, January 30, 1985 [105 F.T.C. 191]. In both of those matters the Commission set aside perpetual exclusive dealing orders in the footwear industry. The same considerations which prompted our actions in

these earlier matters are applicable to the present request. Respondents have demonstrated that they do not have market power in the domestic footwear industry either at the manufacturing or retailing levels. Given the present characteristics of the shoe industry and that respondents do not have market power by which they may exclude competitors, paragraphs (1) and (2) of Part II of the order now serve no procompetitive purpose and may impede respondents' efforts to achieve efficient distribution of their footwear products through lawful practices available to their competitors.

Accordingly, *it is ordered* that this matter be and it hereby is reopened and that paragraphs (1) and (2) of Part II of the Commission's Decision and Order issued on September 26, 1978, shall be of no further force and effect.

IN THE MATTER OF

MAX FACTOR & CO.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SEC 2(d) OF THE CLAYTON ACT

Docket C-3201. Complaint, Oct. 15, 1986—Decision, Oct. 15, 1986

This consent order requires, among other things, a Stamford, Conn. cosmetics company to make promotional allowances available on proportionally equal terms to all of its customers, and in particular, to make alternatives, such as handbills or other in-store promotional activities, available to customers for whom its basic promotional plans are not usable or economically feasible. Respondent is required to notify all its customers that the promotional payments and alternatives are available.

Appearances

For the Commission: *Paul R. Roark.*

For the respondents: *Steven C. McCracken, Gibson, Dunn & Crutcher, Newport Beach, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Max Factor & Co. has violated Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. 13(d)), 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 in that respect as follows:

PARAGRAPH 1. Respondent Max Factor & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 50 Gatehouse Road, Stamford, Connecticut.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture, sale, and distribution of cosmetic products.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act, having