

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

NATIONAL FIRE HOSE CORPORATION, ET AL.

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

Docket C-2935. Consent Order, Nov. 1, 1978—Set Aside Order, Jan. 6, 1987

The Federal Trade Commission has set aside a 1978 consent order with National Fire Hose Corp. (92 F.T.C. 660), thus removing restrictions on the company's relations with its distributors.

ORDER REOPENING AND SETTING ASIDE ORDER
ISSUED ON NOVEMBER 1, 1978

On September 5, 1986, respondents National Fire Hose Corporation, Raymond L. Pepp and Dudley H. Pepp ("National") filed their Petition To Reopen Proceeding and To Set Aside Consent Order ("Petition"), 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, 16 CFR 2.51, requesting that the Commission set aside or modify the order in Docket No. C-2935, issued on November 1, 1978. The order, among other things, prohibits the respondents from restricting or limiting the territory in which a distributor may sell National's products. The Petition was placed on the public record for thirty days, pursuant to Section 2.51 of the Commission's Rules. One comment was received.

The complaint in this case alleged that National, the leading domestic manufacturer and seller of fire hose, had, by imposing territorial restrictions on its distributors of municipal fire hose, restricted competition among distributors of National's products and foreclosed the entry of new distributors into competition with National's distributors. The order prohibits National from restricting the territories in which its distributors may sell National products, from restricting the customers to which a distributor may sell and from communicating with any distributor about the establishment of new distributor-

ships.¹

In the Petition, National asserts that the prohibitions of the order hinder National from developing an effective and efficient distribution program and that, as a result, the order has placed National at a competitive disadvantage in the municipal fire hose market. National notes that none of its competitors is currently subject to the restrictions imposed on National by the order. National claims that setting aside the order would enable National to become a more effective interbrand competitor, because National would be able to foster the promotional and sales development efforts of its local distributors. National's local distributors presently are reluctant to undertake such efforts, because they risk losing business to distant National distributors who exploit the market created through the efforts of National's local distributors.

Based on the information provided by National and other available information, the Commission has concluded that National has failed to make a satisfactory showing of changed conditions of fact or law that require reopening. The Commission has determined, however, that the public interest warrants reopening the proceeding in Docket No. C-2935 and setting aside the order. National's inability under the order to impose otherwise lawful territorial restrictions on its fire hose distributors may impede National's ability to compete by lessening the efficiency of National's distribution system and by discouraging distributors from offering and promoting National's products. In addition, purchasers of National's municipal fire hose may have difficulty obtaining post-sale services and training from distributors that have lost sales due to "free riding" by other distributors and, therefore, may be exposed to increased risk of injury. As a result, National may be exposed to personal injury claims.

The impediments to effective competition resulting from the order outweigh any reasons to retain the order. There do not appear to be any significant impediments to entry into either the manufacture or distribution of fire hose, and, in fact, significant entry has occurred since the order in this case was entered. An absolute prohibition upon the use of territorial restrictions by National appears to be no longer necessary under the facts presented, because National's use of exclusive territorial arrangements with its distributors is unlikely to foreclose competitors from distributional outlets.

The legality of distributional restraints, such as territorial restrictions, standing alone or coupled with exclusive distribution arrangements, must be determined on a case by case basis under applicable legal standards. Under the particular circumstances of this case, the

¹ The order prohibits National from imposing territorial restrictions on its distributors. The order does not bar National from entering into exclusive distributorship agreements with its distributors.

likely impediment to National's ability to compete outweighs any need to retain the order, and it is therefore in the public interest to set aside the order in this case.

Accordingly, *it is ordered* that the order of November 1, 1978, in this matter be, and it hereby is, set aside.

Commissioner Bailey was recorded as voting in the negative.

Modifying Order

109 F.T.C.

IN THE MATTER OF

GLENDINNING COMPANIES, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 8824. Consent Order, Oct. 26, 1976—Modifying Order, Jan. 13, 1987*

The Federal Trade Commission has modified a 1976 consent order with respondent (88 F.T.C. 656) by lifting a prohibition against running skill contests that are not based on "matters of established provable fact." Provisions in the original consent order that required skill contests to be based on reference materials that are available in the typical public library and disclosure of the reference books containing the answers were replaced in the modified order with new provisions requiring that correct answers be ascertainable from "authoritative reference works" and that contestants be informed of that fact.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On September 15, 1986, Glendinning Associates, Inc. (Petitioner), successor to the respondent under the order, Glendinning Companies, Inc., filed a request to reopen and modify the consent order issued by the Commission on October 26, 1976, in Docket No. 8824. (88 F.T.C. 656.)

The request to reopen and modify the consent order was placed on the public record on October 9, 1986, and a press release concerning the petition was issued on the same date. A notice of 30-day period for public comments on the petition was published in the *Federal Register* on October 24, 1986 [51 FR 37741 (1986)]. The public comment period ended on November 10, 1986, and no comments were filed. The deadline for the Commission to rule on Petitioner's request was January 13, 1987.

Petitioner is engaged in the manufacture, promotion, sale, and distribution of promotional games used to induce the sale of consumer products. Paragraph 1 of the order relates to all promotional games, contests and sweepstakes in which a prize is offered. Paragraph 2 relates only to skill contests. Petitioner asserts that the public interest requires that the Commission replace Paragraph 2 with a new Paragraph 2.

Paragraph 2 now orders Petitioner to cease and desist from:

2. Engaging in, promoting the use of, or participating in the development or operation of any skill contest, unless: