

IN THE MATTER OF
NINTENDO OF AMERICA INC.

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

Docket C-3350. Complaint, Nov. 14, 1991—Decision, Nov. 14, 1991.

This consent order prohibits, among other things, a Redmond, Wa., based corporation from fixing the prices at which its dealers advertise and sell Nintendo home video-game hardware to consumers. In addition, the consent order requires the respondent to mail a letter to all of its dealers advising them of the order and that they can advertise and sell the products at any price without adverse action by Nintendo.

Appearances

For the Commission: *L. Barry Costilo, Kevin J. Arquit, and Michael E. Antalics.*

For the respondent: *Robert A. Longman, Mudge, Rose, Guthrie, Alexander & Ferdon, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (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 Nintendo of America Inc. (hereinafter "Nintendo" or "respondent") has violated the provisions of Section 5 of the Federal Trade Commission 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. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business at 4820-150th Ave., N.E., Redmond, Washington. Respondent is a wholly-owned subsidiary of Nintendo Co. Ltd., with its principal place of business in Kyoto, Japan.

PAR. 2. Respondent is now, and for some time has been, engaged in the offering for sale, sale and distribution of home video game

hardware, software and accessories to retail dealers located throughout the United States, including many of the nation's largest retail chains. Respondent's Nintendo Entertainment System is the number one selling toy in America. In 1989, Nintendo products, and products licensed by Nintendo, accounted for \$2.7 billion in retail sales. In 1989, Nintendo home video game hardware accounted for over 80% of all home video game hardware sales, and Nintendo software, together with Nintendo licensed software, accounted for over 80% of all home video game software sales.

PAR. 3. Nintendo maintains, and has maintained, a substantial course of business, including the acts or practices alleged in the complaint, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In connection with the sale and distribution of Nintendo products, respondent, in combination, agreement and understanding with certain of its dealers, has engaged in a course of conduct to maintain the resale prices at which certain of its dealers advertise, offer for sale, and sell its home video game hardware.

PAR. 5. The purpose, effects, tendency, or capacity of the acts and practices described in paragraph 4 are and have been to restrain trade unreasonably and hinder competition in the provision of home video game products in the United States, and to deprive consumers of the benefits of competition in the following ways, among others:

(a) Prices to consumers of Nintendo home video game hardware have been increased; and

(b) Price competition for Nintendo home video game hardware among retail dealers has been restricted.

PAR. 6. The aforesaid acts and practices constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. These acts and practices are continuing and will continue in the absence of the relief requested.

Commissioner Yao not participating.

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 Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 respondent 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 respondent has violated the said Acts, 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Nintendo of America Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4820-150th Ave., N.E., Redmond, Washington. Respondent is a wholly-owned subsidiary of Nintendo Co. Ltd., with its principal place of business in Kyoto, Japan.

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.

For the purpose of this order, the following definitions shall apply:

(1) "*Product*" means any home video game hardware, software, accessories, or items related thereto which are manufactured, offered for sale or sold by respondent to dealers.

(2) "*Dealer*" means any person, corporation, or firm not owned by Nintendo that in the course of its business sells any product. The term "*dealer*" does not include licensees of Nintendo which do not act as agents, representatives, or distributors of Nintendo.

(3) "*Resale Price*" means any price, price floor, price ceiling, price range, or any mark-up formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any suggested, established, or customary resale price as well as the retail price advertised, promoted or offered for sale by any dealer.

II.

It is ordered, That respondent Nintendo of America Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of any product in or affecting "commerce," as defined by the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Fixing, controlling, or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product.

(2) Requiring, coercing, or otherwise pressuring any dealer, directly or indirectly, to maintain, adopt, or adhere to any resale price.

(3) Securing or attempting to secure, directly or indirectly, any commitment or assurance from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale or sell any product.

(4) Reducing the supply of products to any dealer or imposing different credit terms in whole or in part due to the dealer's resale price of any product.

(5) Requesting dealers, directly or indirectly, to report the identity of other dealers who advertise, promote, or offer for sale or sell any product below any resale price.

(6) For a period of five (5) years from the date on which this order becomes final, terminating any dealer due in whole or in part to the dealer's resale price of any product. *Provided, however*, that the respondent retains the right to terminate unilaterally any dealer for lawful business reasons, unrelated to resale prices, that are not inconsistent with this paragraph or any other paragraph of this order.

III.

It is further ordered, That, for a period of five (5) years from the date on which this order becomes final, respondent shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where respondent has suggested any resale price to any dealer:

ALTHOUGH NINTENDO OF AMERICA INC. MAY SUGGEST RESALE PRICES FOR PRODUCTS, DEALER IS FREE TO DETERMINE ON ITS OWN THE PRICES AT WHICH IT WILL SELL THE PRODUCTS.

IV.

It is further ordered, That within thirty (30) days after the date on which this order becomes final, respondent mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to all of respondent's present dealers, personnel, distributors, agents, or representatives having sales or policy responsibilities with respect to respondent's products.

V.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respective corporation which may affect compliance obligations arising out of the order.

VI.

It is further ordered, That respondent, within sixty (60) days after this order becomes final, and at such other times as the Commission or its staff shall request, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order.

Commissioner Yao not participating.

EXHIBIT A

Dear Retailer:

Nintendo of America Inc. has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain practices relating to resale prices. A copy of the Order is enclosed. Nintendo has also agreed to a similar order with New York, Maryland and other states. This letter and the accompanying Order have been sent to all of our dealers, sales personnel and representatives.

The Order spells out our obligations in greater detail, but we want you to know and understand the following:

1. You can advertise and sell our products at any price you choose.
2. We will not take any adverse action against you because of the price at which you advertise or sell our products.
3. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

Sincerely yours,

President
Nintendo of America Inc.

IN THE MATTER OF
CONNECTICUT CHIROPRACTIC ASSOCIATION

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

Docket C-3351. Complaint, Nov. 19, 1991—Decision, Nov. 19, 1991

This consent order requires, among other things, an association of approximately 350 chiropractors to cease and desist from prohibiting, regulating, or interfering with its members offering free services or services at discounted fees and from prohibiting, regulating, or interfering with its members' advertising.

Appearances

For the Commission: *Andrew D. Caverly* and *Phoebe D. Morse*.

For the respondent: *Robert L. Hirtle, Jr., Rogin, Nassau, Kaplan, Lassman & Hirtle*, Hartford, CT.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Connecticut Chiropractic Association, a corporation, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Federal Trade Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Connecticut Chiropractic Association ("respondent" or "CCA") is a corporation formed and doing business pursuant to the laws of the State of Connecticut. Respondent is a voluntary association of approximately 350 chiropractors, constituting approximately 86 percent of the chiropractors practicing in Connecticut. Its principal business office is located at 28 Main Street, East Hartford, Connecticut.

PAR. 2. Respondent is a corporation organized for the purpose, among others, of serving the interests of its members by associating them into a practical business organization and is engaged in substantial activities that further its members' pecuniary interests. By