

IN THE MATTER OF
KREEPY KRAULY USA, INC.

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

Docket C-3354. Complaint, Dec. 20, 1991—Decision, Dec. 20, 1991

This consent order prohibits, among other things, a Florida manufacturer of automatic swimming pool cleaning devices from engaging in or enforcing any agreement with any dealer to establish or maintain the dealer's resale prices. In addition, the respondent is required to rescind the paragraph of its dealer agreements that requires dealers to agree to maintain resale prices, to refrain from maintaining resale prices, and to notify its officers, sales personnel, dealers, and distributors that dealers are allowed to determine their own selling prices.

Appearances

For the Commission: *Michael E. Antalics* and *Karen A. Mills*.

For the respondent: *Steven B. Feirman* and *Arthur I. Cantor*,
Brownstein, Zeidman & Schomer, Washington, D.C.

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 Kreepy Krauly USA, Inc., a corporation, hereinafter sometimes referred to as respondent, 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 its complaint stating its charges in that respect as follows:

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

- (1) "*Respondent*" means Kreepy Krauly, U.S.A., Inc., its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Kreepy Krauly USA, Inc., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.
- (2) "*Product*" means any swimming pool cleaning device or part for such device.

(3) "*Dealer*" means any person, partnership, or corporation, not owned by respondent, that sells any product in the course of its business.

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 13801 N.W. 4th Street, Sunrise, Florida.

PAR. 2. Respondent is now, and for some time has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of products.

PAR. 3. Respondent maintains and has maintained a substantial course of business, including the acts and practices as hereinafter set forth, 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 its products, respondent has entered into agreements with dealers pursuant to which the dealers have agreed to maintain suggested retail prices.

PAR. 5. The aforesaid acts and practices therefore constituted and now constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Commissioners Starek and Yao not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Kreepy Krauly, USA, Inc., a corporation, hereinafter sometimes referred to as respondent or "Kreepy Krauly", and 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

Respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade 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 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, and having duly considered the comment filed thereafter by an interested person 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. Proposed respondent Kreepy Krauly, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 13801 N.W. 4th St., in the City of Sunrise, State of 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.

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

(1) "*Kreepy Krauly*" or "*respondent*" means Kreepy Krauly, USA, Inc., its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Kreepy Krauly USA, Inc., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(2) "*Product*" means any swimming pool cleaning device or part for such device.

(3) "*Dealer*" means any person, partnership or corporation, not owned by Kreepy Krauly, that sells any product in the course of its business.

(4) "*Resale price*" means any price, price floor, price ceiling, price range, or any mark-up, formula, margin of profit, or any other

technique for pricing any product at retail. Such term includes, but is not limited to, any suggested, established, or customary resale price as well as the retail price at any dealer.

II.

It is ordered, That respondent Kreepy Krauly, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the manufacture, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, attempting to enter into, maintaining, or attempting to enforce any agreements with any dealer fixing, establishing, controlling or maintaining, directly or indirectly, the resale price at which any dealer may sell any product, or otherwise coercing or requiring any dealer to maintain or adhere to any resale price.

III.

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

ALTHOUGH KREEPY KRAULY 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 respondent do forthwith cease and desist from including in dealer agreements paragraph III.D. and the reference to paragraph III.D. in paragraph VIII.B.3., and shall, within thirty days from the date on which this order becomes final, by sending to dealers the letter attached as Exhibit A, cancel, rescind, and sever paragraph III.D. of each of respondent's dealer agreements, and the reference to paragraph III.D. in paragraph VIII.B.3. of each of respondent's dealer agreements.

V.

It is further ordered, That within thirty days of the date on which this order becomes final, respondent shall mail a copy of the letter attached as Exhibit A, together with a copy of this order, to all of respondent's present dealers, to all present officers and sales personnel of respondent, and to all distributors of respondent.

VI.

It is further ordered, That respondent notify the Commission at least thirty days prior to any 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 corporation which may affect compliance obligations arising out this order.

VII.

It is further ordered, That respondent shall within sixty days from the date on which this order becomes final, and annually thereafter for five years on the anniversary date of this order, 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.

Commissioners Starek and Yao not participating.

EXHIBIT A

Dear Retailer:

Kreepy Krauly USA, Inc. ("Kreepy Krauly") has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain pricing practices. A copy of the Order is enclosed herewith.

The Order specifies that you are free to make your own determination as to the price at which you sell our products. Kreepy Krauly may not take any action to coerce you to maintain or adhere to the suggested retail price or any resale price or price level. In addition, Paragraph III.D. of the Kreepy Krauly Dealer Agreement is hereby cancelled and rescinded.

Should you have any questions concerning this letter or the enclosed Order, please feel free to contact me.

Sincerely,

Ted Mignone
Executive Vice President
Kreepy Krauly USA, Inc.

IN THE MATTER OF

SOUTHBANK IPA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3355. Complaint, Dec. 20, 1991—Decision, Dec. 20, 1991*

This consent order requires, among other things, a Florida association and its 23 obstetrician/gynecologist members to dissolve Southbank IPA and Southbank Health Care Corp.; prohibits each physician respondent from entering into any agreement with any other physician respondent or any competing physician to fix, stabilize, or tamper with any fee, price, or other aspect or term associated with any physician's services; and prohibits the physician respondents from dealing with any third-party payor on collectively determined terms.

Appearances

For the Commission: *David M. Narrow, Linda Blumenreich, Kathleen Kenyon and James C. Egan, Jr.*

For the respondents: *Jack R. Bierig, Sidley & Austin, Chicago, IL. and Donald W. Weidner, Florida Physicians Association, Jacksonville, FL.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (Title 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 respondents named above have violated and are violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, 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 as follows:

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

A. "*Third-party payor*" means any person or entity that engages in the process of reimbursing for, purchasing, or paying for health care services provided to any other person.

B. "*Participating provider*" means any physician or other person