

IN THE MATTER OF

THE KEDS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3490. Complaint, April 1, 1994--Decision, April 1, 1994*

This consent order prohibits, among other things, a Massachusetts-based manufacturer and seller of athletic and casual shoes from fixing the resale price at which any dealer may advertise or sell any Keds athletic or casual footwear item; coercing or pressuring any dealer to adopt or adhere to any resale price; attempting to secure commitments from any dealer about the resale price at which it will advertise or sell any such product; and requiring or suggesting that dealers report other dealers who advertise or sell any such product below any resale price.

Appearances

For the Commission: *Michael J. Bloom, Rhonda J. McLean and Alan B. Loughnan.*

For the respondent: *Richard E. Carlton and Darryl Libow, Sullivan & Cromwell, 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 The Keds Corporation (hereinafter "Keds" or "respondent"), a subsidiary of The Stride Rite Corporation, 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. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business located at Five Cambridge Center, Cambridge, Massachusetts.

PAR. 2. Respondent is now, and for some time has been, engaged in the offering for sale, sale, and distribution of athletic or casual footwear to retail dealers located throughout the United States, including many of the nation's largest retail chains.

PAR. 3. Keds 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 Keds 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 sell certain of its products.

PAR. 5. The purpose, effect, tendency, or capacity of the acts and practices described in paragraph four are and have been to restrain trade unreasonably and hinder competition in the sale of athletic or casual footwear in the United States, and to deprive consumers of the benefits of competition in the following ways, among others:

(a) Prices to consumers of Keds products have been increased; and

(b) Price competition among retail dealers with respect to the sale of Keds products 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, 15 U.S.C. 45. These acts and practices are continuing and will continue in the absence of the relief requested.

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 New York Regional Office 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 Act, and that a 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 issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Keds Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. The mailing address and principal place of business of respondent is: Five Cambridge Center, Cambridge, Massachusetts. Respondent is a wholly-owned subsidiary of The Stride-Rite Corporation, with its principal place of business in Cambridge, Massachusetts.

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.

It is ordered, That for the purpose of this order, the following definitions shall apply:

(A) “*Keds*” or “*respondent*” means The Keds Corporation, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by The Keds Corporation, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(B) “*Product*” means any athletic or casual footwear items which are manufactured, offered for sale or sold by respondent to dealers.

(C) “*Dealer*” means any person, corporation or entity not owned by The Keds Corporation or by any entity owned or controlled by Keds that in the course of its business sells any product.

(D) “*Resale Price*” means any price, price floor, minimum price, maximum discount, price range, or any mark-up formula or margin of profit used by any dealer for pricing any product. “Resale price” includes, but is not limited to, any suggested, established, or customary resale price.

II.

It is further ordered, That Keds, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacturing, 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:

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

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

(C) 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.

(D) Requiring, requesting or suggesting, directly or indirectly, that any dealer report the identity of other dealers who advertise, promote, offer for sale or sell any product below any resale price.

III.

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

ALTHOUGH THE KEDS CORPORATION MAY SUGGEST RESALE PRICES FOR PRODUCTS, RETAILERS ARE FREE TO DETERMINE ON THEIR OWN THE PRICES AT WHICH THEY WILL ADVERTISE AND SELL KEDS PRODUCTS.

IV.

It is further ordered, That, within thirty (30) days after the date on which this order becomes final, Keds shall mail by first class mail either the letter attached as Exhibit A or the letter attached as Exhibit B, together with a copy of this order, to all of Keds' directors, officers, dealers, distributors, agents, or sales representatives.

V.

It is further ordered, That for a period of two (2) years after the date on which this order becomes final, Keds shall mail by first class mail either the letter attached as Exhibit A or the letter attached as Exhibit B, together with a copy of this order, to all new directors, officers, dealers, distributors, agents, or sales representatives of Keds, within ninety (90) days of the commencement of such person's employment or affiliation with Keds.

VI.

It is further ordered, That Keds shall notify the Commission at least thirty (30) days prior to any proposed changes in Keds 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 of the order.

VII.

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

EXHIBIT A

[KEDS LETTERHEAD]

Dear Retailer:

The Federal Trade Commission has conducted an investigation into Keds' sales policies, and in particular, Keds' Suggested Retail Pricing Policy that was announced in May 1992. As you know, on June 25, 1993, Keds withdrew its Pricing Policy. Keds has always believed, and continues to believe, that its Pricing Policy did not violate the law. However, to expeditiously resolve the investigation and to avoid disruption to the conduct of its business, Keds 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. This letter and the accompanying order are being 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 sell and advertise our products at any price you choose.
2. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

We look forward to continuing to do business with you in the future.

Sincerely yours,

President
The Keds Corporation

EXHIBIT B

[KEDS LETTERHEAD]

Dear Retailer:

The [name of state] Attorney General's Office, along with the offices of the Attorneys General in the other 49 states, and the Federal Trade Commission have conducted investigations into Keds' sales policies, and in particular, Keds' Suggested Retail Pricing Policy that was announced in May 1992. As you know, on June 25, 1993, Keds withdrew its Pricing Policy. Keds has always believed, and continues to believe, that its Pricing Policy did not violate the law. However, to expeditiously resolve the investigations and to avoid disruption to the conduct of its business, Keds has agreed, without admitting any violation of the law, to the entry of Final Judgments and Consent Decrees by the State of [name of state] and the Federal Trade Commission prohibiting certain practices relating to resale prices. Copies of the Final Judgments and Consent Decrees are attached. This letter and the accompanying documents have been sent to all of our dealers, sales personnel and representatives.

The Final Judgments and Consent Decrees spell out our obligations in greater detail, but we want you to know and understand the following. Under both orders:

1. You can advertise and sell our products at any price you choose.
2. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

In addition, the [name of state] order requires that:

3. Keds will not take any adverse action against you because of the price at which you advertise or sell our products.

We look forward to continuing to do business with you in the future.

Sincerely yours,

President
The Keds Corporation

Complaint

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IN THE MATTER OF

MCLEAN COUNTY CHIROPRACTIC ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3491. Complaint, April 7, 1994--Decision, April 7, 1994*

This consent order prohibits, among other things, an association of Illinois chiropractors from entering into any agreement with any chiropractors to set fees for patients, or terms for third-party payor contracts, and requires the association to give members copies of the orders.

Appearances

For the Commission: *Mark J. Horoschak* and *Rendell A. Davis, Jr.*

For the respondent: *George R. Flynn*, Bloomington, IL.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 respondent McLean County Chiropractic Association ("respondent MCCA") 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 as follows:

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

A. The term "*person*" refers to both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

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