

IN THE MATTER OF

NEW ENGLAND JUVENILE RETAILERS ASSOCIATION, ET AL.

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

Docket C-3552. Complaint, Jan. 18, 1995--Decision, Jan. 18, 1995

This consent order prohibits, among other things, a Massachusetts association of retailers from combining, agreeing or conspiring to: fix or maintain prices or the terms of sale for juvenile products; engage in or threaten boycotts in order to influence a manufacturer's decision as to how or to whom it distributes its products; or use coercion by means of actual or threatened refusals to deal in order to compel a juvenile products manufacturer to adopt or refrain from adopting any marketing method for its products. The consent order also requires the dissolution of the association within sixty days and requires the association to send a letter, acknowledging the consent order with the Commission and outlining its terms, to the manufacturers it allegedly threatened to boycott.

Appearances

For the Commission: *Phoebe D. Morse, Gary S. Cooper and Mary Lou Steptoe.*

For the respondents: *Arthur Goldberg, Nathanson & Goldberg, Boston, MA. and Robert Colby, Alexandria, VA.*

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 respondents named above have 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 in that respect as follows:

PARAGRAPH 1. Respondent New England Juvenile Retailers Association ("NEJRA") is an unincorporated association of retailers of juvenile products doing business in New England, with an office

and principal place of business located in Boston, Massachusetts. The NEJRA's designated agent is Arthur Goldberg, Esq., c/o Nathanson & Goldberg, 10 Union Wharf, Boston, Massachusetts.

PAR. 2. Respondents Elliot Young ("E. Young") and Susan Young ("S. Young") have done business as and are proprietors of The Baby Place, Inc., a retail store engaged in the sale of juvenile products, with a principal place of business located at 50 Worcester Road, Natick, Massachusetts. Individually or in concert with others, they formulate, direct, control and participate in the acts and practices of The Baby Place, Inc., including the acts and practices of said proprietorship alleged in this complaint. Their principal offices or places of business are the same as that of The Baby Place, Inc.

PAR. 3. Respondent Baby's Room, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office located at 20 Garden Street, Danvers, Massachusetts. Baby's Room, Inc. is engaged in the business of the retail sale of juvenile products.

Respondent Stephen Brass ("Brass") is president of respondent Baby's Room, Inc. Individually or in concert with others, he formulates, directs, controls and participates in the acts and practices of the corporate respondent, including the acts and practices of said respondent alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

PAR. 4. Respondent Baby Specialties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 100 Grove Street, Worcester, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

Respondent Baby Specialties of Natick, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1276 Worcester Road, Natick, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

Respondent George Koury ("Koury") is treasurer of respondents Baby Specialties, Inc. and Baby Specialties of Natick, Inc. Individually or in concert with others, he formulates, directs, controls and participates in the acts and practices of the corporate respondents, including the acts and practices of said respondents alleged in this

complaint. His principal office or place of business is 100 Grove Street, Worcester, Massachusetts.

PAR. 5. Respondent Boston Baby, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 30 Tower Road, Newton, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

Respondent Boston Baby of Avon, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 15 Stockwell Drive, Avon, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

Respondent Boston Baby of Hingham, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 100 Derby Street, Hingham, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

Respondent Michael Slobodkin ("M. Slobodkin") is treasurer of respondents Boston Baby, Inc., Boston Baby of Avon, Inc., and Boston Baby of Hingham, Inc. Individually or in concert with others, he formulates, directs, controls, and participates in the acts and practices of the corporate respondents, including the acts and practices of said respondents alleged in this complaint. His principal office or place of business is located at 30 Tower Road, Newton, Massachusetts.

PAR. 6. Respondent Chapin Specialties Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1140 Main Street, Springfield, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

Respondent Allan Broverman ("Broverman") is president of respondent Chapin Specialties Co., Inc. Individually or in concert with others, he formulates, directs, controls, and participates in the acts and practices of the corporate respondent, including the acts and practices of said respondent alleged in this complaint. His principal

office or place of business is the same as that of the corporate respondent.

PAR. 7. Respondent Crib-N-Cradle Juvenile Furniture Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 1000 Bald Hill Road, Warwick, Rhode Island, where it is engaged in the business of the retail sale of juvenile products.

Respondent Louis Avarista, Sr. ("Avarista") is president and treasurer of respondent Crib-N-Cradle Juvenile Furniture Inc. Individually or in concert with others, he formulates, directs, controls, and participates in the acts and practices of the corporate respondent, including the acts and practices of said respondent alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

PAR. 8. Respondent Cribs And Cradles, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Cribs And Cradles, Inc. maintained an office and principal place of business located at 623 Broadway, Route 1, Saugus, Massachusetts, where, until approximately January 1992, it was engaged in the business of the retail sale of juvenile products.

Respondent Robert Newhouse ("Newhouse") is president and treasurer of respondent Cribs And Cradles, Inc. Individually or in concert with others, he formulated, directed, controlled, and participated in the acts and practices of the corporate respondent, including the acts and practices of said respondent alleged in this complaint. Mr. Newhouse resides at 34 Garvey Road, Framingham, Massachusetts.

PAR. 9. Respondent Juveniles, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Juveniles, Inc. maintained an office and principal place of business located at 8 Bourbon Street, W. Peabody, Massachusetts, where, until approximately May 1, 1991, it was engaged in the business of the retail sale of juvenile products.

Respondent Waltham Slumber Shop, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Waltham Slumber Shop, Inc. maintained an office and principal place of business located at 879 Main Street, Waltham, Massachusetts, where, until approximately

May 1, 1992, it was engaged in the business of the retail sale of juvenile products.

Respondent Timothy Precourt ("Precourt") is president of respondents Juveniles, Inc. and Waltham Slumber Shop, Inc. Individually or in concert with others, he formulated, directed, controlled, and participated in the acts and practices of the corporate respondents, including the acts and practices of said respondents alleged in this complaint. Mr. Precourt resides at 998 Summer Street, Lynnfield, Massachusetts.

PAR. 10. Respondent Normand Poirier is an individual trading and doing business as Norm's Discount, with an office and principal place of business located at 55 Airport Road, Fitchburg, Massachusetts, where he is engaged in the business of the retail sale of juvenile products. Individually or in concert with others, he formulates, directs, controls, and participates in the acts and practices of Norm's Discount, including the acts and practices of said proprietorship alleged in this complaint. His principal office or place of business is the same as that of Norm's Discount.

PAR. 11. Respondent Small Wonders Limited, Inc. d/b/a Rooms to Grow is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 117 Chestnut Street, Warwick, Rhode Island, where it is engaged in the business of the retail sale of juvenile products.

Respondent Henry Ritchotte ("Ritchotte") is manager of the Warwick, Rhode Island, store of respondent Small Wonders Limited, Inc. d/b/a Rooms to Grow. Individually or in concert with others, he formulates, directs, controls, and participates in the acts and practices of the corporate respondent, including the acts and practices of said respondent alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

PAR. 12. Respondent Tiny Totland, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire, with its office and principal place of business located at 1111 Elm Street, Manchester, New Hampshire, where it is engaged in the business of the retail sale of juvenile products.

Respondent Jack Resnick ("Resnick") is president of respondent Tiny Totland, Inc. Individually or in concert with others, he formulates, directs, controls, and participates in the acts and practices

of the corporate respondent, including the acts and practices of said respondent alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

PAR. 13. Respondent Rudolph Mosesso ("R. Mosesso") is an individual whose address is 132 Pine Street, Holbrook, Massachusetts. Mr. Mosesso was president of Welcome Baby Boutique Inc., a corporation that was organized, existed and did business under and by virtue of the laws of the Commonwealth of Massachusetts until approximately April 27, 1993, when it was formally dissolved. While it was in operation, Welcome Baby Boutique Inc. maintained an office and principal place of business located at 1500 Main Street, S. Weymouth, Massachusetts, where it was engaged in the business of the retail sale of juvenile products. Individually or in concert with others, respondent R. Mosesso formulated, directed, controlled, and participated in the acts and practices of Welcome Baby Boutique Inc., including the acts and practices of said corporation alleged in this complaint.

PAR. 14. At all times relevant to this complaint, the corporations and proprietorships named above were members of respondent NEJRA. Except to the extent that competition has been restrained as alleged herein, and depending on their geographic location, members of respondent NEJRA are or were in competition among themselves and with other retailers of juvenile products in New England.

PAR. 15. Respondent NEJRA is, and has been at all times relevant to this complaint, organized for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 16. Respondents' general businesses or activities, including the acts and practices described below, are in commerce or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 17. New Hampshire Buyer's Service, Inc. ("NHBS") operates a mail order catalog through which it sells juvenile products at discount prices up to 20-40 % below juvenile specialty store prices.

PAR. 18. In June 1990, NHBS began distributing its mail order catalog to consumers located in respondent retailers' trade areas. During December 1990, in response to the distribution of the NHBS catalog in their trade areas, the respondents named above met in Braintree, Massachusetts, with counsel present. They discussed the NHBS catalog and the economic impact it was having on their

individual businesses. As a result of this discussion, they agreed to act in concert to restrict the competition they faced from the NHBS catalog. In furtherance of this plan, they agreed to form respondent NEJRA. They also agreed to send letters to certain manufacturers whose products were in the NHBS catalog to complain about the "unfair competition" the catalog posed to their individual businesses.

PAR. 19. Pursuant to the agreements arrived at during the above-referenced meeting, on December 27, 1990, respondents, through their attorney, sent letters to thirteen manufacturers of juvenile products. All but one of these manufacturers distributed their products through the NHBS catalog. The letters directly or impliedly threatened that respondent NEJRA and its individual members would refuse to deal with these manufacturers if they continued to do business with NHBS or with retail stores affiliated with NHBS.

PAR. 20. By engaging in the acts and practices described in paragraphs eighteen and nineteen, respondents have combined or conspired with each other to threaten to boycott juvenile product manufacturers that do business with the NHBS mail order catalog, and otherwise to restrain competition among retailers of juvenile products in the New England area.

PAR. 21. The actions of respondents described in paragraphs eighteen through twenty have had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to injure consumers in the following ways, among others:

A. By restraining competition among members of respondent NEJRA;

B. By restraining competition between respondent NEJRA's members and other retailers of juvenile products, including the NHBS mail order catalog;

C. By restraining the ability of manufacturers of juvenile products to distribute their products through mail order catalogs; and

D. By depriving consumers of the benefits of additional price, quality and service competition in connection with the purchase and sale of juvenile products.

PAR. 22. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Such

combination or conspiracy, or the effects thereof, is continuing and will continue or recur absent the entry against respondents of appropriate relief.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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, 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 New England Juvenile Retailers Association ("NEJRA") is an unincorporated association of retailers of juvenile products doing business in New England, with an office and principal place of business located in Boston, Massachusetts.

2. Respondents Elliot Young ("E. Young") and Susan Young ("S. Young") have done business as and are proprietors of The Baby Place, Inc., a retail store engaged in the sale of juvenile products. Their principal offices or places of business are 50 Worcester Road, Natick, Massachusetts.

3.(a) Respondent Baby's Room, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office located at 20 Garden Street, Danvers, Massachusetts. Baby's Room, Inc. is engaged in the business of the retail sale of juvenile products.

(b) Respondent Stephen Brass ("Brass") is president of proposed respondent Baby's Room, Inc. His principal office is located at 20 Garden Street, Danvers, Massachusetts.

4.(a) Respondent Baby Specialties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 100 Grove Street, Worcester, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

(b) Respondent Baby Specialties of Natick, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1276 Worcester Road, Natick, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

(c) Respondent George Koury ("Koury") is treasurer of proposed respondents Baby Specialties, Inc. and Baby Specialties of Natick, Inc. His principal office or place of business is 100 Grove Street, Worcester, Massachusetts.

5.(a) Respondent Boston Baby, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 30 Tower Road, Newton, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

(b) Respondent Boston Baby of Avon, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 15 Stockwell Drive, Avon, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

(c) Respondent Boston Baby of Hingham, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 100 Derby Street, Hingham,

Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

(d) Respondent Michael Slobodkin ("M. Slobodkin") is treasurer of proposed respondents Boston Baby, Inc., Boston Baby of Avon, Inc., and Boston Baby of Hingham, Inc. His principal office or place of business is located at 30 Tower Road, Newton, Massachusetts.

6.(a) Respondent Chapin Specialties Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1140 Main Street, Springfield, Massachusetts, where it is engaged in the business of the retail sale of juvenile products.

(b) Respondent Allan Broverman ("Broverman") is president of proposed respondent Chapin Specialties Co., Inc. His principal office or place of business is 1140 Main Street, Springfield, Massachusetts.

7.(a) Respondent Crib-N-Cradle Juvenile Furniture Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 1000 Bald Hill Road, Warwick, Rhode Island, where it is engaged in the business of the retail sale of juvenile products.

(b) Respondent Louis Avarista, Sr. ("Avarista") is president and treasurer of proposed respondent Crib-N-Cradle Juvenile Furniture Inc. His principal office or place of business is 1000 Bald Hill Road, Warwick, Rhode Island.

8.(a) Respondent Cribs And Cradles, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Cribs And Cradles, Inc. maintained an office and principal place of business located at 623 Broadway, Route 1, Saugus, Massachusetts, where, until approximately January 1992, it was engaged in the business of the retail sale of juvenile products.

(b) Respondent Robert Newhouse ("Newhouse") is president and treasurer of proposed respondent Cribs And Cradles, Inc. Mr. Newhouse resides at 34 Garvey Road, Framingham, Massachusetts.

9.(a) Respondent Juveniles, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Juveniles, Inc. maintained an office and principal place of business located at 8 Bourbon Street, W. Peabody,

Massachusetts, where, until approximately May 1, 1991, it was engaged in the business of the retail sale of juvenile products.

(b) Respondent Waltham Slumber Shop, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Waltham Slumber Shop, Inc. maintained an office and principal place of business located at 879 Main Street, Waltham, Massachusetts, where, until approximately May 1, 1992, it was engaged in the business of the retail sale of juvenile products.

(c) Respondent Timothy Precourt ("Precourt") is president of proposed respondents Juveniles, Inc. and Waltham Slumber Shop, Inc. Mr. Precourt resides at 998 Summer Street, Lynnfield, Massachusetts.

10. Respondent Normand Poirier is an individual trading and doing business as Norm's Discount. Mr. Poirier maintains an office and principal place of business located at 55 Airport Road, Fitchburg, Massachusetts, where he is engaged in the business of the retail sale of juvenile products.

11.(a) Respondent Small Wonders Limited, Inc. d/b/a Rooms to Grow is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 117 Chestnut Street, Warwick, Rhode Island, where it is engaged in the business of the retail sale of juvenile products.

(b) Respondent Henry Ritchotte ("Ritchotte") is manager of the Warwick, Rhode Island, store of proposed respondent Small Wonders Limited, Inc. d/b/a Rooms to Grow. His principal office or place of business is 117 Chestnut Street, Warwick, Rhode Island.

12.(a) Respondent Tiny Totland, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire, with its office and principal place of business located at 1111 Elm Street, Manchester, New Hampshire, where it is engaged in the business of the retail sale of juvenile products.

(b) Respondent Jack Resnick ("Resnick") is president of proposed respondent Tiny Totland, Inc. His principal office or place of business is 1111 Elm Street, Manchester, New Hampshire.

13. Respondent Rudolph Mosesso ("R. Mosesso") is an individual whose address is 132 Pine Street, Holbrook, Massachusetts. Mr. Mosesso was president of Welcome Baby

Boutique Inc., a corporation that was organized, existed and did business under and by virtue of the laws of the Commonwealth of Massachusetts until approximately April 27, 1993, when it was formally dissolved. While it was in operation, Welcome Baby Boutique Inc. maintained an office and principal place of business located at 1500 Main Street, S. Weymouth, Massachusetts, where it was engaged in the business of the retail sale of juvenile products.

14. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

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

A. "*New England Juvenile Retailers Association*" means New England Juvenile Retailers Association, and its directors, committees, officers, representatives, agents, employees, successors and assigns.

B. "*Retailer respondents*" means the corporate and individual respondents named in paragraphs two through thirteen of the complaint.

C. "*Juvenile products*" means products or accessories to products that are used by or are intended for use by babies, children or juveniles.

I.

It is ordered, That each retailer respondent, directly or indirectly, or through any corporate or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, forthwith cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue any combination, agreement or understanding, express or implied, with any other retailer respondent(s), or with any competing retailer(s) of juvenile products, to:

A. Fix, maintain, or stabilize prices, or terms or conditions of sale of juvenile products;

B. Take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s); and

C. Coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, or attempt to coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s).

Provided that this order shall not be construed to prohibit any individual retailer respondent from becoming or remaining a member of a *bona fide* trade association, buying cooperative, or joint venture, or from participating in any such organization's activities that are lawful under the antitrust laws.

II.

It is further ordered, That the retailer respondents shall dissolve the New England Juvenile Retailers Association within sixty (60) days after the date on which this order becomes final.

III.

It is further ordered, That respondent New England Juvenile Retailers Association shall:

A. Within thirty (30) days after the date on which this order becomes final, and prior to the dissolution provided for in paragraph II of this order, mail to each manufacturer enumerated in "Appendix A" to this order a copy of the Commission's complaint and order in this matter and a letter, on the letterhead of its attorney, Arthur Goldberg, Esq., and signed by each of the respondent retailers, in the form shown as "Appendix B" to this order; and

B. Within sixty (60) days after the date on which this order becomes final, and prior to the dissolution provided for in paragraph II of this order, file a verified written report demonstrating how it has complied with paragraph III.A. of this order.

IV.

It is further ordered, That:

A. Each retailer respondent that is a corporation shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a 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 under this order.

B. For a period of five (5) years after this order becomes final, each retailer respondent that is an individual shall notify the Commission in writing of each new affiliation with a business or employment, including self-employment, within seven (7) calendar days of such affiliation or employment. Each such notice shall include the individual retailer respondent's current business address and a statement of the nature of the business affiliation or employment which defines his/her duties and responsibilities in connection with such business affiliation or employment.

V.

It is further ordered, That, within ninety (90) days after the date on which this order becomes final, the retailer respondents shall file with the Commission a verified written report setting forth in detail the manner and form in which they have complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission or its staff may, by written notice to the retailer respondents, require.

Commissioner Azcuenaga dissenting.

APPENDIX A

Aprica U.S.A., Inc.
P.O. Box 25408 - Zip 92825-5408
1200 Howell Avenue
Anaheim, CA 92805
Attn: Douglas W. Dolansky, Executive
Vice President

Bandaks Emmaljunga Incorporated
737 South Vinewood Street
Escondido, CA 92029
Attn: Sami Bandak, President

Bassett Furniture Industries, Inc.
P.O. Box 626
Bassett, VA 24055
Attn: R. H. Spilman, President

Carlson Children's Products, Inc.
122 Kirkland Circle
Oswego, IL 60543
Attn: Mark Flannery, President

Century Products Company
9600 Valley View Road
Macedonia, OH 44056-9989
Attn: Frank Rumpeltn, President

Child Craft Industries, Inc.
P.O. Box 444
Salem, IN 47167-0444
Attn: David E. Branaman, President

COMBI International Corporation
1401 N. Wood Dale Road
Wood Dale, IL 60191
Attn: Takashi Osato, President

Dutalier, Inc.
298 Chaput St. Pie
Quebec, CANADA J0H 1W0
Attn: Pierre Cloutier, President

Graco Children's Products, Inc.
Rt 23, Main Street
Elverson, PA 19520
Attn: Derial Sanders, President

Lambs & Ivy
5978 Bowcroft Street
Los Angeles, CA 90016-4302
Attn: Barbara Laiken, President

Noel Joanna Inc.
22942 Arroyo Vista
Rancho Santa Margarita, CA 92688
Attn: Shirley A. Pepys, President

The Red Calliope & Associates, Inc.
13003 South Figueroa Street
Los Angeles, CA 90061
Attn: Neil Fohrman, President

Simmons Juvenile Products Co.
613 E. Beacon Avenue
P.O. Box 287
New London, WI 54961
Attn: John Moeller, President

APPENDIX B

Dear _____

As you may be aware, the Federal Trade Commission ("FTC") has been investigating certain activities of the New England Juvenile Retailers Association ("NEJRA") and its member retailers. The NEJRA has voluntarily entered into an agreement with the FTC which resulted in the issuance by the FTC on (date) of a complaint and the entry of a consent order. The order requires that you be sent a copy of the complaint, the order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that NEJRA will be dissolved. In addition, among other things, the retailers that were members of the NEJRA will cease and desist from entering into any agreement or understanding, express or implied, with any other retailer respondent(s), or with any competing retailer(s) of juvenile products, to:

A. Fix, maintain, or stabilize prices, or terms or conditions of sale of juvenile products;

B. Take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s); and

C. Coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, or attempt to coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s).

A copy of the complaint and the order are enclosed.

Sincerely,

Arthur Goldberg, Esq.
Attorney for the NEJRA

Signatures of Members
Enclosures

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

In these cases, two trade associations complained to manufacturers about free riding by a catalogue seller, and the Commission charges them and the retailer members of one association with directly or impliedly threatening a concerted refusal to deal with the manufacturers. Although the letters of complaint were ill-advised, evidence that the retailers (many of whom were not represented by counsel during our investigation) were committed "to a common scheme designed to achieve an unlawful objective"¹ (*i.e.*, a coercive, concerted refusal to deal) is thin at best. Given the dearth of evidence of unlawful agreement, the arguably procompetitive purpose, and the absence both of market power and of anticompetitive effects, I do not find reason to believe that the challenged conduct unreasonably restrained trade or that the imposition of an order is in the interest of the public. I dissent.

¹ *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 768 (1984).

Complaint

119 F.T.C.

IN THE MATTER OF

BABY FURNITURE PLUS ASSOCIATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3553. Complaint, Jan. 18, 1995--Decision, Jan. 18, 1995*

This consent order prohibits, among other things, an Alabama-based buying cooperative and trade association from taking any action on behalf of its members, or encouraging them to take any action, that interferes with a juvenile product manufacturer's decision as to how or to whom to distribute its products. The consent order also prohibits the respondent from coercing -- by means of actual or threatened refusals to deal -- any juvenile products manufacturer to abandon or adopt -- or to refrain from abandoning or adopting -- any marketing method for its products.

Appearances

For the Commission: *Phoebe D. Morse* and *Gary S. Cooper*.

For the respondent: *Jack Sanders, Sanders & McDermott*,
Hampton, N.H.

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 Baby Furniture Plus Association, Inc., hereinafter sometimes referred to as 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 in that respect as follows:

PARAGRAPH 1. Respondent Baby Furniture Plus Association, Inc. ("BFP AI") is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at Suite 1, 1020 Montgomery Highway, Birmingham, Alabama.