

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. ("BFPPI") 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.

Respondent is a voluntary association of retailers of juvenile products doing business in approximately twenty-five States.

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 virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 3. Respondent's members are engaged in the business of the retail sale of juvenile products. Except to the extent that competition has been restrained herein, respondent's members have been and are now in competition with other retailers of juvenile products in various States of the United States.

PAR. 4. The acts and practices of the BFPAL, including those alleged herein, are in commerce or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 5. 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. 6. In June 1990, NHBS began distributing its mail order catalog to consumers located in the trade areas of some of respondent's members. At a general meeting of the membership on April 9, 1991, respondent's administrator circulated a copy of the NHBS catalog to respondent's members. Following a discussion of the NHBS catalog and the economic impact it was having on some of the members' individual businesses, the BFPAL's members agreed to act in concert to restrict the competition that some of the members faced from the NHBS catalog. In furtherance of this plan, the members agreed to send letters to certain manufacturers whose products were in the NHBS catalog to complain about NHBS's price discounting.

PAR. 7. Pursuant to the agreements arrived at during the above-referenced meeting, on April 22, 1991, respondent sent letters to thirty-seven manufacturers of juvenile products. All but two of these manufacturers distributed their products through the NHBS catalog. The letters directly or impliedly threatened that respondent BFPAL and its individual members would refuse to deal with these manufacturers if they continued to do business with NHBS.

PAR. 8. By engaging in the acts and practices described in paragraphs six and seven, respondent has combined or conspired with at least some of its members 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 various States of the United States.

PAR. 9. The actions of respondent described in paragraphs six through eight 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 between respondent BFPAL's members and other retailers of juvenile products, including the NHBS mail order catalog;

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

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

PAR. 10. 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 respondent of appropriate relief.

Commissioner Azcuenaga dissenting.

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 complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, by its duly authorized officer, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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, 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 Baby Furniture Plus Association, Inc. is a voluntary association of retailers of juvenile products, and 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.

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

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

A. "*Baby Furniture Plus Association, Inc.*" means Baby Furniture Plus Association, Inc., and its directors, committees, officers, representatives, agents, employees, successors and assigns.

B. "*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 BFP AI, directly, indirectly, or through any corporate or other device, in or 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:

A. Taking any action, directly or indirectly, on behalf of its members, 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);

B. Coercing, compelling, inducing, or intimidating by means of actual or threatened refusals to deal, or attempting 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); and

C. Requesting, urging, recommending or suggesting that BFP AI members take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, which 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).

Provided that this order shall not be construed to prevent BFP AI from engaging in trade association or buying cooperative activities that are lawful under the antitrust laws.

II.

It is further ordered, That BFP AI shall:

A. Distribute by first-class mail a copy of this order and the accompanying complaint to each of BFP AI's members within thirty (30) days after the date on which this order becomes final;

B. For a period of five (5) years after the date on which this order becomes final, provide each new BFP AI member with a copy of this

order and the accompanying complaint at the time the member is accepted for membership; and

C. Within thirty (30) days after the date on which this order becomes final, distribute by first-class 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 BFPPI letterhead and signed by BFPPI's president, in the form shown as "Appendix B" to this order.

III.

It is further ordered, That, for a period of five (5) years after this order becomes final, BFPPI shall maintain in its files a copy of the minutes of each meeting of its membership and of each meeting of its board of directors and a copy of all correspondence received from, or sent to, any mail order dealer of juvenile products, any manufacturer of juvenile products, or any association representing manufacturers of juvenile products and that such copies of minutes and correspondence be made available to Commission staff for inspection and copying upon reasonable notice.

IV.

It is further ordered, That, within sixty (60) days after the date on which this order becomes final, BFPPI shall file with the Commission a verified written report setting forth in detail the manner and form in which it has 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 BFPPI, require.

V.

It is further ordered, That BFPPI 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 or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Commissioner Azcuenaga dissenting.

APPENDIX A

A.D.I. Lamps
P.O. Box 6357
Phoenix, AZ 85005
Attn: National Sales Manager

Aprica U.S.A., Inc.
P.O. Box 25408 - Zip 92825-5408
1200 Howell Avenue
Anaheim, CA 92805
Attn: National Sales Manager

Baby Trend, Inc.
1928 W. Holt Avenue
Pomona, CA 91768
Attn: National Sales Manager

Bandaks Emmaljunga Incorporated
737 South Vinewood Street
Escondido, CA 92029
Attn: National Sales Manager

Bassett Furniture Industries, Inc.
P.O. Box 626
Bassett, VA 24055
Attn: National Sales Manager

Carlson Children's Products, Inc.
122 Kirkland Circle
Oswego, IL 60543
Attn: National Sales Manager

Century Products Company
9600 Valley View Road
Macedonia, OH 44056-9989
Attn: National Sales Manager

Chicco Artsana of America
200 Fifth Ave., Rm 910
New York, NY 10010
Attn: National Sales Manager

Child Craft Industries, Inc.
P.O. Box 444
Salem, IN 47167-0444
Attn: National Sales Manager

Children on the Go
1670 S. Wolf Road
Wheeling, IL 60090
Attn: National Sales Manager

Cosco, Inc.
2525 State St.
Columbus, IN 47201
Attn: National Sales Manager

Dutalier, Inc.
298 Chaput St. Pie
Quebec, Canada JOH 1WO
Attn: National Sales Manager

Evenflo Juvenile Furniture Co.
1801 Commerce Drive
Piqua, OH 45356
Attn: National Sales Manager

FBS, Inc.
1071 Batesville Rd.
Greer, SC 29650
Attn: National Sales Manager

Fisher-Price, Inc.
636 Girard Ave.
East Aurora, NY 14052
Attn: National Sales Manager

Gerry Baby Products
12520 Grant Drive
Denver, CO 80233
Attn: National Sales Manager

Glenna Jean Mfg.
P.O. Box 2187
Petersburg, VA 23804
Attn: National Sales Manager

Graco Children's Products, Inc.
Rt 23, Main St.
Elverson, PA 19520
Attn: National Sales Manager

Jolly Jumper
P.O. Box M
Woonsocket, RI 22895
Attn: National Sales Manager

Lambs & Ivy
5978 Bowcroft St.
Los Angeles, CA 90016
Attn: National Sales Manager

The Little Tikes Co.
2180 Barlow Rd.
Hudson, OH 44236
Attn: National Sales Manager

Newborne Company
River Rd.
Worthington, MA 01098
Attn: National Sales Manager

Noel Joanna Inc.
22942 Arroyo Vista
Rancho Santa Margarita, CA 92688
Attn: National Sales Manager

Nu-Line
214 Nu-Line St.
Suring, WI 54174
Attn: National Sales Manager

Omron Marshall Products
600 Barclay Blvd.
Lincolnshire, IL 60069
Attn: National Sales Manager

Pansy Ellen Products
1245 Old Alpharetta Rd.
Alpharetta, GA 30202
Attn: National Sales Manager

Perego, USA
3625 Independence Drive
Fort Wayne, IN 46808
Attn: National Sales Manager

Prince Lionheart
3070 Skyway Dr., Bldg. 502
Santa Maria, CA 93455
Attn: National Sales Manager

The Red Calliope & Associates, Inc.
13003 S. Figueroa St.
Los Angeles, CA 90061
Attn: National Sales Manager

Rochelle Furniture
722 North Market St.
Duncannon, PA 17020
Attn: National Sales Manager

Safety 1st, Inc.
210 Boylston St.
Chestnut Hill, MA 02167
Attn: National Sales Manager

Sandbox Industries
P.O. Box 477
Tenafly, NJ 07670
Attn: National Sales Manager

Sassy, Inc.
1534 College SE
Grand Rapids, MI 49507
Attn: National Sales Manager

Simmons Juvenile Products Co.
613 E. Beacon Avenue
New London, WI 54961
Attn: National Sales Manager

Snugli, Inc.
12520 Grant Drive
Denver, CO 80233
Attn: National Sales Manager

Summer Infant Products
33 Meeting Street
Cumberland, RI 02864
Attn: National Sales Manager

Welsh Company
1535 S. Eighth St.
St. Louis, MO 63104
Attn: National Sales Manager

APPENDIX B

Dear _____

As you may be aware, the Federal Trade Commission ("FTC") has been investigating certain activities of the Baby Furniture Plus Association, Inc. ("BFP AI"). The BFP AI 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, among other things, the BFP AI will cease and desist from:

A. Taking any action, directly or indirectly, on behalf of its members, 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);

B. Coercing, compelling, inducing, or intimidating by means of actual or threatened refusals to deal, or attempting 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); and

C. Requesting, urging, recommending or suggesting that BFP AI members take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, which 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).

A copy of the complaint and the order are enclosed.

Sincerely,

President

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

MEDICAL STAFF OF GOOD SAMARITAN
REGIONAL MEDICAL CENTERCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3554. Complaint, Feb. 1, 1995--Decision, Feb. 1, 1995*

This consent order prohibits, among other things, the members of the medical staff from agreeing, or attempting to enter into an agreement, to prevent or restrict the services offered by Good Samaritan, the clinic, or any other health care provider by refusing to deal with others offering health care services, or by withholding patient referrals.

Appearances

For the Commission: *Mark J. Horoschak, Garry H. Gibbs, Steven J. Osnowitz and Gary H. Schorr.*

For the respondent: *Robert J. Milligan, Gallagher & Kennedy, Phoenix, AZ.*

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 Medical Staff of Good Samaritan Regional Medical Center has violated and is violating 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:

THE SAMARITAN ORGANIZATION AND RESPONDENT MEDICAL STAFF

PARAGRAPH 1. Samaritan Health Systems ("SHS"), formerly operated as two separate corporations (Samaritan Foundation and its subsidiary Samaritan Health Services), is a nonprofit corporation organized and existing under the laws of the State of Arizona. SHS operates nine full service medical and surgical hospitals in the United States, including four hospitals in Maricopa County, Arizona. Good