

Set Aside Order

120 F.T.C.

IN THE MATTER OF

HARLEY-DAVIDSON MOTOR CO.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 3 OF THE CLAYTON ACT AND THE
FEDERAL TRADE COMMISSION ACT*Docket 5698. Consent Order, June 29, 1954--Set Aside Order, July 11, 1995*

The Federal Trade Commission has set aside a 1954 consent order with Harley-Davidson Motor Co., (50 FTC 1047), pursuant to the Commission's Sunset Policy, under which the Commission presumes, in the context of petitions to reopen and modify orders, that the public interest requires terminating competition orders that have been in effect for more than 20 years.

ORDER REOPENING PROCEEDING
AND SETTING ASIDE ORDER

On February 8, 1995, Harley-Davidson Motor Company ("Harley-Davidson"), the respondent subject to the order issued by the Commission on June 29, 1954, in Docket No. 5698, in the matter of *Harley-Davidson Co.*, 50 FTC 1047 (1954) ("order"), filed a Petition to Reopen Proceedings and Set Aside Cease and Desist Order ("Petition"). Among other things, Harley-Davidson requests that the Commission set aside the order in this matter pursuant to Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition, Harley-Davidson affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and close to 200 comments were received.¹

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders

¹ To accommodate numerous requests to provide additional time to prepare and submit written comments concerning Harley-Davidson's Petition, the Commission extended the initial public comment period in this matter by thirty days.

in effect for more than twenty years."² The Commission's order in Docket No. 5698 was issued on June 29, 1954, and has been in effect for over twenty years. Consistent with the Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket 5698.

In light of some of the commenters' belief that granting Harley-Davidson's Petition would be commensurate with allowing it to engage in conduct that may violate the antitrust laws, and their concern that Harley-Davidson may use certain marketing practices to engage in unlawful conduct in the event the Commission sets aside the order in Docket No. 5698, the Commission notes that Harley-Davidson's conduct would continue to be subject to a case-by-case, rule of reason analysis under the antitrust laws. Harley-Davidson's conduct would also continue to be subject to state motor vehicle dealer protection laws.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened;

It is further ordered, That the Commission's order in Docket No. 5698 be, and it hereby is, set aside, as of the effective date of this order.

² Sunset Policy Statement, 59 Fed. Reg. at 45289.

Complaint

120 F.T.C.

IN THE MATTER OF

REEBOK INTERNATIONAL LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3592. Complaint, July 18, 1995--Decision, July 18, 1995*

This consent order prohibits, among other things, a Massachusetts corporation and its subsidiary from fixing, controlling or maintaining the resale prices at which any dealer may advertise, promote, offer for sale or sell any Reebok or Rockport product. The consent order also prohibits, for a period of ten years, the respondents from enforcing or threatening suspension or termination of a dealer that sells or advertises a product below a resale price designated by Reebok or Rockport.

Appearances

For the Commission: *Alan Loughnan, Michael Bloom and William Baer.*

For the respondents: *David Martland, Hutchinson, Wheeler & Dittmar, Boston, MA.*

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 Reebok International Ltd. and The Rockport Company, Inc., a subsidiary of Reebok International Ltd., (hereinafter "respondents"), 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 as follows:

PARAGRAPH 1. Respondent Reebok International Ltd. 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 100 Technology Center Drive, Stoughton, Massachusetts. Respondent The Rockport Company, Inc. is a corporation organized, existing and doing business under and by