

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

virtue of the laws of the State of Massachusetts, with its principal place of business located at 202 Donald Lynch Boulevard, Marlboro, Massachusetts.

PAR. 2. Respondents are now, and for some time have 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. Respondents maintain, and have maintained, a substantial course of business, including the acts or practices alleged in the complaint, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In connection with the sale and distribution of Reebok and Rockport branded products, respondents, in combination, agreement and understanding with certain of their dealers, have engaged in a course of conduct to maintain the resale prices at which dealers sell their 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 to 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 Reebok and Rockport products have been increased; and

(b) Price competition among retail dealers with respect to the sale of Reebok and Rockport 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.

Commissioner Starek voting in the negative.

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 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 respondents with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 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, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission further issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Proposed respondents Reebok International Ltd. and The Rockport Company, Inc. are corporations 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 proposed respondent Reebok International Ltd. is: 100 Technology Center Drive, Stoughton, Massachusetts. The mailing address and principal place of business of proposed respondent The Rockport Company, Inc. is: 220 Donald Lynch Boulevard, Marlboro, Massachusetts.

2. 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

I.

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

(A) The term "*Reebok*" means Reebok International Ltd., its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Reebok International Ltd., and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

(B) The term "*Rockport*" means The Rockport Company, Inc., its predecessors, subsidiaries, divisions, groups, and affiliates controlled by The Rockport Company, Inc., and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

(C) The term "*respondents*" means Reebok and Rockport.

(D) The term "*product*" means any athletic or casual footwear item which is manufactured, offered for sale or sold under the brand name of "Reebok" or "Rockport" to dealers or consumers located in the United States of America.

(E) The term "*dealer*" means any person, corporation or entity not owned by Reebok or Rockport, or by any entity owned or controlled by Reebok or Rockport, that in the course of its business sells any product in or into the United States of America.

(F) The term "*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 Reebok and Rockport, 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 into the United States of America in or affecting "commerce," as defined by the Federal Trade

Commission Act, do forthwith cease and desist from, directly or indirectly:

(A) Fixing, controlling, or maintaining 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 to maintain, adopt, or adhere to any resale price.

(C) Securing or attempting to secure 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) For a period of ten (10) years from the date on which this order becomes final, adopting, maintaining, enforcing or threatening to enforce any policy, practice or plan pursuant to which respondents notify a dealer in advance that: (1) the dealer is subject to partial or temporary suspension or termination if it sells, offers for sale, promotes or advertises any product below any resale price designated by respondents, and (2) the dealer will be subject to a greater sanction if it continues or renews selling, offering for sale, promoting or advertising any product below any such designated resale price. As used herein, the phrase "partial or temporary suspension or termination" includes but is not limited to any disruption, limitation, or restriction of supply: (1) of some, but not all, products, or (2) to some, but not all, dealer locations or businesses, or (3) for any delimited duration. As used herein, the phrase "greater sanction" includes but is not limited to a partial or temporary suspension or termination of greater scope or duration than the one previously implemented by respondent, or complete suspension or termination.

Provided that nothing in this order shall prohibit Reebok and Rockport from announcing resale prices in advance and unilaterally refusing to deal with those who fail to comply. Provided further that nothing in this order shall prohibit Reebok and Rockport from establishing and maintaining cooperative advertising programs that include conditions as to the prices at which dealers offer products, so long as such advertising programs are not a part of a resale price maintenance scheme and do not otherwise violate this order.

III.

It is further ordered, That, for a period of five (5) years from the date on which this order becomes final, Reebok shall clearly and

conspicuously state the following on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price for any product to any dealer:

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

IV.

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

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

V.

It is further ordered, That, within thirty (30) days after the date on which this order becomes final, Reebok shall mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to all of its directors and officers, and to dealers, distributors, agents, or sales representatives engaged in the sale of any product in or into the United States of America.

VI.

It is further ordered, That, within thirty (30) days after the date on which this order becomes final, Rockport shall mail by first class mail the letter attached as Exhibit B, together with a copy of this order, to all of its directors and officers, and to dealers, distributors, agents, or sales representatives engaged in the sale of any product in or into the United States of America.

VII.

It is further ordered, That, for a period of two (2) years after the date on which this order becomes final, Reebok shall mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to each new director, officer, dealer, distributor, agent, and sales representative engaged in the sale of any product in or into the United States of America, within ninety (90) days of the commencement of such person's employment or affiliation with Reebok.

VIII.

It is further ordered, That, for a period of two (2) years after the date on which this order becomes final, Rockport shall mail by first class mail the letter attached as Exhibit B, together with a copy of this order, to each new director, officer, dealer, distributor, agent, and sales representative engaged in the sale of any product in or into the United States of America, within ninety (90) days of the commencement of such person's employment or affiliation with Rockport.

IX.

It is further ordered, That Reebok or Rockport shall notify the Commission at least thirty (30) days prior to any proposed changes in Reebok or Rockport 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 corporations which may affect compliance obligations arising out of the order.

X.

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

XI.

It is further ordered, That this order shall terminate on July 18, 2015.

Commissioner Starek voting in the negative.

EXHIBIT A

[REEBOK LETTERHEAD]

Dear Retailer:

The Federal Trade Commission has conducted an investigation into Reebok's sales policies, and in particular Reebok's Centennial Plan, which was announced in November 1992 and whose retail pricing provisions have since been withdrawn. To expeditiously resolve the investigation and to avoid disruption to the conduct of its business, Reebok 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 that you can sell and advertise our products at any price you choose. While we may send materials to you which contain suggested retail prices, you remain free to sell and advertise those products at any price you choose.

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

Sincerely yours,

President
Reebok International Ltd.

EXHIBIT B

[ROCKPORT LETTERHEAD]

Dear Retailer:

The Federal Trade Commission has conducted an investigation into Rockport's sales policies, and in particular Rockport's Suggested Retail Pricing Policy, which was announced in July 1992 and which, together with Rockport's subsequent "Marathon Policy," has since been withdrawn. To expeditiously resolve the investigation and to avoid disruption to the conduct of its business, Rockport 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 that you can sell and advertise our products at any price you choose. While we may send materials to you which contain suggested retail prices, you remain free to sell and advertise those products at any price you choose.

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

Sincerely yours,

President
The Rockport Company, Inc.

DISSENTING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I find reason to believe that Reebok International, Ltd. ("Reebok") has engaged in resale price maintenance ("RPM") in violation of Section 5 of the FTC Act, 15 U.S.C. 45.¹ However, I dissent from the Commission's decision to approve the consent order in this matter because certain provisions of the order are not necessary to prevent unlawful conduct and may unduly restrain procompetitive activity by Reebok.

Under most circumstances, including those here, the competitive effects of RPM are ambiguous at worst, and a full rule of reason analysis likely would not reveal cognizable anticompetitive effects.² Therefore, I would prefer that injunctive relief ordered to address RPM be strictly tailored to the *per se* allegations. The fencing-in restrictions in this order -- related to resale price advertising (in subparagraphs II(A) and (C)) and to Reebok's "structured termination policy" (subparagraph II(D)) -- are unnecessarily broad and may enjoin efficient conduct.³

¹ See *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911) (RPM held unlawful upon mere proof of agreement).

² See, e.g., Pauline Ippolito, Resale Price Maintenance: Evidence From Litigation, 34 J.L. & Econ. 263 (1991). See also Kevin J. Arquit, Resale Price Maintenance: Friend or Foe?, 60 Antitrust L.J. 447 (1992).

³ Even if the evidence in this case suggests that Reebok's dealer advertising and termination policies supported RPM, deleting the related fencing-in injunctions likely would be procompetitive. The order should be revised to permit Reebok to exercise its lawful dealer termination rights and to engage in any procompetitive minimum advertised price programs "unless [this conduct] includes some agreement on price or price levels." *Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717, 735-36 (1988).

Set Aside Order

120 F.T.C.

IN THE MATTER OF

RUBBER MANUFACTURERS ASSOCIATION, INC., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 5448. Consent Order, Feb. 2, 1948--Set Aside Order, July 19, 1995*

The Federal Trade Commission has reopened a 1948 consent order (44 FTC 453) -- which prohibited the Association from formulating or enforcing resale price agreements, exchanging resale price information or entering into price-fixing agreements -- and has set aside the consent order as to respondent Rubber Manufacturers Association pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING
AND SETTING ASIDE ORDER AS TO RESPONDENT
RUBBER MANUFACTURERS ASSOCIATION, INC.

On March 17, 1995, Rubber Manufacturers Association, Inc. ("Rubber Manufacturers") one of forty-three respondents named in this consent order,¹ filed its Petition to Reopen and Set Aside Consent Orders ("Petition") in this matter. Rubber Manufacturers requests that the Commission set aside the 1948 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 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, Rubber Manufacturers 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 the thirty-day comment period expired on May 10, 1995. One comment, relating to general policy issues concerning the Commission's Sunset Policy Statement, was received.

¹ The remaining respondents did not petition the Commission to reopen and set aside the order as to them.