

Complaint

122 F.T.C.

IN THE MATTER OF

PRECISION MOULDING CO., INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3682. Complaint, Sept. 3, 1996--Decision, Sept. 3, 1996*

This consent order prohibits, among other things, a California-based supplier of wood products used to construct frames for artists' canvases from requesting, suggesting, urging or advocating that any competitor raise, fix or stabilize prices or price levels, and from entering into any agreement or conspiracy to fix, raise or maintain prices.

Appearances

For the Commission: *Michael Antalics, William Lanning and William Baer.*

For the respondent: *Bruce Ryan, Paul, Hastings, Janofsky & Walker, Washington, D.C.*

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 Precision Moulding Co., Inc., a corporation, hereinafter sometimes referred to as respondent or "Precision," 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 in that respect as follows:

PARAGRAPH 1. Respondent Precision Moulding Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 3308 Cyclone Court, Cottonwood, California, and its mailing address at P.O. Box 406, Cottonwood, California.

PAR. 2. Respondent is now, and for some time has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of stretcher bars and other wood products. A "stretcher bar" is an art

supply wood product which when assembled with three other stretcher bars comprises a rectangular frame over which a canvas used for painting is stretched. Stretcher bars come in various lengths and widths, but are usually between 6" to 120" in length. Precision is the dominant supplier of commercial stretcher bars in the United States.

PAR. 3. Respondent maintains and has maintained a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Between January and May of 1995, respondent became aware that a new competitor was soliciting the business of its customers. These customers provided respondent with written documentation that the competitor was offering stretcher bars at prices below those offered by respondent. Upon reviewing the information concerning the competitor's prices, the President of the respondent stated that the competitor's prices were "ridiculous."

PAR. 5. At all times relevant herein, respondent perceived the competitor as a competitive threat because of the competitor's low prices. Between January and May of 1995, respondent intentionally delayed a scheduled across-the-board increase in the price of its stretcher bars because of the competitive threat posed by the competitor.

PAR. 6. In May of 1995, the President and General Manager of the respondent planned to travel to the eastern United States, in part, to make an unannounced visit to its competitor.

PAR. 7. On or about June 23, 1995, the President and General Manager of respondent visited the headquarters of the new competitor and met with an officer thereof. During the meeting, the General Manager of respondent told the competitor that its prices for stretcher bars were "ridiculously low." He also told the competitor that he did not "have to give the product away." This was understood by the competitor to be an invitation to fix prices. At this point, the competitor advised the respondent's representatives that he was aware that price fixing was illegal and did not want to get "contaminated." The competitor then implored the respondent's representatives to refrain from further discussion concerning prices.

PAR. 8. After a brief discussion about equipment, the respondent's representatives returned to a discussion about prices. The General Manager of the respondent threatened the competitor

with a price war and told the competitor that the competitor would not be able to survive a price war with Precision. At this point, the competitor reiterated that the respondent's discussion of prices was "dangerous" from a legal perspective, and the competitor advised the respondent that the conversation was over.

PAR. 9. After the June 1995 meeting and throughout the remainder of 1995, respondent continued to delay the implementation of its scheduled across-the-board price increase for its stretcher bars until it could ascertain whether the competitor would continue to be a competitive threat.

PAR. 10. The conduct described in paragraphs seven and eight constituted an implicit invitation by respondent to its competitor to raise prices of stretcher bars and refrain from competition. The invitation, if accepted, would have constituted an agreement in restraint of trade.

PAR. 11. 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. The acts and practices herein alleged are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission ("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 Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, their attorney, 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, now in further conformity with the procedure described 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 Precision Moulding Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3308 Cyclone Court, Cottonwood, California, and its mailing address at P.O. Box 406, Cottonwood, California.

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.

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

A. "*Respondent*" means Precision Moulding Co., Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups, and affiliates controlled by Precision Moulding Co., Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Stretcher bar products*" means an art supply wood product which when assembled comprises a rectangular frame over which a canvas used for painting is stretched, and includes any size of stretcher bar.

II.

It is ordered, That respondent, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with

the manufacture, advertising, offering for sale, sale or distribution of any stretcher bar products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Requesting, suggesting, urging, or advocating that any competitor raise, fix or stabilize prices or price levels, or engage in any other pricing action; and

B. Entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, agreement, understanding, plan or program with any competitor to fix, raise, establish, maintain or stabilize prices or price levels.

Provided, that nothing in this order shall prohibit respondent from: (1) agreeing to sell or distribute its stretcher bar products to its competitors, and (2) negotiating or agreeing upon the price which any of its stretcher bar products will be sold to its competitors.

III.

It is further ordered, That respondent shall:

A. Within thirty (30) days of the date on which this order becomes final, provide a copy of this order to all of its directors, officers, and management employees;

B. For a period of three (3) years after the date on which this order becomes final, and within ten (10) days after the date on which any person becomes a director, officer, or management employee of respondent, provide a copy of this order to such person; and

C. Require each person to whom a copy of this order is furnished pursuant to subparagraphs III.A and B of this order to sign and submit to Precision Moulding Co., Inc. within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject Precision Moulding Co., Inc. to penalties for violation of the order.

IV.

It is further ordered, That respondent shall:

A. Within sixty (60) days from the date on which this order becomes final, and annually thereafter for three (3) years on the anniversary date of this order, and at such other times as the Commission may by written notice to the respondent require, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order;

B. For a period of three (3) years after the order becomes final, maintain and make available to the staff of the Federal Trade Commission for inspection and copying, upon reasonable notice, all records of communications with competitors of respondent relating to any aspect of pricing for stretcher bar products, and records pertaining to any action taken in connection with any activity covered by Parts II, III and IV, of this order; and

C. Notify the Commission at least thirty (30) days prior to any change in respondent 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 that may affect compliance obligations arising out of this order.

V.

It is further ordered, That this order shall terminate on September 3, 2016.

Interlocutory Order

122 F.T.C.

IN THE MATTER OF

COCA-COLA BOTTLING CO. OF THE SOUTHWEST

*Docket 9215. Interlocutory Order, September 9, 1996*ORDER RETURNING MATTER TO ADJUDICATION
AND DISMISSING COMPLAINT

In 1984, Coca-Cola Bottling Company of the Southwest ("CCSW") acquired the Dr Pepper and Canada Dry carbonated soft drink franchises for the San Antonio, Texas area from the San Antonio Dr Pepper Bottling Company, a wholly-owned subsidiary of the parent Dr Pepper concentrate company. On July 29, 1988, the Commission issued an administrative complaint alleging, *inter alia*, that this acquisition was likely substantially to lessen competition, in violation of Section 5 of the FTC Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18. The Notice of Contemplated Relief in the administrative complaint included a provision that would have required divestiture of the Dr Pepper and Canada Dry licenses.

Hearings on the complaint were held before an administrative law judge ("ALJ") from July to October 1990. On June 14, 1991, the ALJ issued an initial decision dismissing the complaint. Applying Clayton Act standards, the ALJ concluded that the relevant product market included all carbonated soft drinks and other similar non-carbonated beverages; that the relevant geographic market was broader than the 10-county San Antonio area pleaded in the complaint; that entry was not difficult; that competition had been significant; that no customer had complained; and that there was accordingly no likelihood of anticompetitive effects from the transaction.

FTC counsel for the complaint appealed that decision to the full Commission. On August 31, 1994, the Commission issued a Final Order and Opinion in which the Commission concluded, *inter alia*, that CCSW's acquisition of the Dr Pepper franchise violated the FTC Act and the Clayton Act, and reversed the ALJ's initial decision. The Commission concluded that the relevant product market was branded carbonated soft drinks; that the relevant geographic market was the 10-county San Antonio area; that entry into the market was difficult; that the acquisition had raised CCSW's market share from 44.7% to 54.5%; that the market was highly concentrated; and that the acquisition substantially increased the likelihood of collusion among