

Complaint

126 F.T.C.

IN THE MATTER OF

SOUTH LAKE TAHOE LODGING ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3830. Complaint, Oct. 7, 1998--Decision, Oct. 7, 1998*

This consent order prohibits, among other things, the California-based trade association, representing the interest of motel and hotel operators, from participating in, suggesting, or assisting any agreement, combination or conspiracy with its members to restrict the posting of signs advertising the prices at which its individual members offer lodging. The consent order requires the respondent to amend its by-laws to incorporate the provisions of this order and requires the respondent to distribute copies of the amended by-laws to each of its members.

Participants

For the Commission: *David Newman, Jeffrey Klurfeld, Willard Tom, William Baer, Oliver Grawe, and Jonathan Baker.*

For the respondent: *J. Dennis Crabb, Rollston, Henderson, Rasmussen & Crabb, South Lake Tahoe, CA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (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 South Lake Tahoe Lodging Association (hereinafter "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 as follows:

PARAGRAPH 1. Respondent South Lake Tahoe Lodging Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal place of business located at P.O. Box 5746, South Lake Tahoe, California.

PAR. 2. Respondent is a trade association representing the interests of motel and hotel operators and other operators of lodging

properties in the South Lake Tahoe area. For purposes of this complaint, the South Lake Tahoe area comprises those portions of El Dorado County, California, and Douglas County, Nevada, lying within the Lake Tahoe basin. Respondent's members are generally engaged in the offering of short-term lodging in the South Lake Tahoe area. Respondent has approximately 63 members, who, together with certain of respondent's associate members, constitute approximately 70 percent of the available lodging units in the South Lake Tahoe area. Except to the extent that competition has been restrained as alleged herein, respondent's members have been and are now in competition among themselves and with other motels, hotels, and lodging properties.

PAR. 3. Respondent is organized for the purpose of guarding and fostering the interests of its members. Respondent engages in 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, 15 U.S.C. 44.

PAR. 4. Respondent's acts and practices, including the acts and practices alleged herein, are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 5. Respondent has been and is acting in agreement, combination or conspiracy with its members, or in agreement, combination or conspiracy with some of its members, to restrain trade in the offering of lodging in the South Lake Tahoe area by eliminating the posting of signs advertising the prices at which its individual members offer such lodging.

PAR. 6. The purposes or effects of the agreement, combination or conspiracy and respondent's acts or practices as described in paragraph five are and have been to restrain competition unreasonably and to deprive consumers of the benefits of competition in one or more of the following ways, among others:

- (a) By foreclosing, reducing and restraining competition among providers of lodging in the South Lake Tahoe area;
- (b) By depriving consumers of truthful information concerning the prices of lodging in the South Lake Tahoe area; and
- (c) By depriving consumers of the benefits of competition among providers of lodging in the South Lake Tahoe area.

PAR. 7. 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.

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 of complaint which the San Francisco 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 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 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 South Lake Tahoe Lodging Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal place of business located at P.O. Box 5746, South Lake Tahoe, 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.

It is ordered, That for the purposes of this order, "respondent" or "SLTLA" shall mean the South Lake Tahoe Lodging Association, its predecessors, successors and assigns, and its directors, committees, officers, delegates, representatives, agents and employees.

II.

It is further ordered, That SLTLA, directly or indirectly, or through any person or any corporate or other device, in or in connection with its activities as a trade association, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from carrying out, participating in, inducing, suggesting, urging, encouraging, or assisting any agreement, combination or conspiracy with its members, or agreement, combination or conspiracy with some of its members, to restrict the posting of signs advertising the prices at which its individual members offer lodging;

Provided, however, that nothing in this order shall be construed to prevent respondent or its members from exercising rights protected under the First Amendment to the United States Constitution to petition any federal, state or local government executive agency or legislative body concerning legislation, rules, programs, or procedures, or to participate in any federal, state or local administrative or judicial proceeding.

III.

It is further ordered, That SLTLA shall:

A. Within sixty (60) days after the date this order becomes final, amend its by-laws to incorporate by reference paragraph II of this order, and distribute by first-class mail a copy of the amended by-laws to each of its members;

B. Within thirty (30) days after the date this order becomes final, distribute by first-class mail a copy of this order and the complaint to each of its members;

C. For a period of five (5) years after the date this order becomes final, provide each new member with a copy of this order, the complaint, and the amended by-laws within thirty (30) days of the new member's admission to SLTLA; and

D. Within seventy-five (75) days after the date this order becomes final, and annually thereafter for a period of five (5) years on the anniversary of the date this order becomes final, file with the Secretary of the Commission a verified written report setting forth in detail the manner and form in which SLTLA has complied with and is complying with this order.

IV.

It is further ordered, That SLTLA shall notify the Commission at least thirty (30) days prior to any change in SLTLA, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation that may affect compliance obligations arising out of this order.

V.

It is further ordered, That for the purposes of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission:

A. Upon seven (7) days notice to respondent, to have access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon seven (7) days notice to respondent and without restraint or interference from it, to interview directors, committees, officers, delegates, representatives, agents and employees.

VI.

It is further ordered, That this order shall terminate on October 7, 2018.

IN THE MATTER OF

NORTEK, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3831. Complaint, Oct. 8, 1998--Decision, Oct. 8, 1998*

This consent order requires, among other things, Nortek, Inc., to divest M & S, its wholly-owned subsidiary and seller of hard-wired residential intercoms, to a Commission-approved third-party within six months, and to provide technical assistance at the purchaser's request, for up to one year after the sale. The consent order also requires that Nortek preserves and maintains the competitive viability of M & S and operates M & S separately from Nortek until the divestiture is completed.

Participants

For the Commission: *Paul Block, Gary Cooper, Colleen Lynch, David Keniry, Andrew Caverly, William Baer, Leslie Farber, Hajime Hadeishi, and Jonathan Baker.*

For the respondent: *Kevin Arquit, Rogers & Wells, New York, N.Y. and John Christie, Hale & Dorr, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Nortek, Inc., a corporation subject to the jurisdiction of the Commission, through its wholly-owned subsidiary NTK Sub, Inc., has agreed to acquire all the outstanding shares of the capital stock of NuTone Inc., a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would be in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. "*Hard-Wired Residential Intercoms*" means electrical devices installed in residences to provide audio-only room-to-room or room-