

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JULY 1, 1965, TO DECEMBER 31, 1965

IN THE MATTER OF WESTERN RADIO CORPORATION ET AL.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7468. Complaint, April 2, 1959—Decision, July 7, 1965

Order modifying cease and desist order of Sept. 25, 1963, 63 F.T.C. 882, requiring manufacturers of portable radio transmitters in Kearney, Nebr., to cease falsely advertising the operational range of their products; the conditions of licensing and the terms of guarantee remain unchanged, in accordance with an opinion of the Court of Appeals, Seventh Circuit, of Nov. 23, 1964, 339 F. 2d 937, *cert. denied*, 381 U.S. 938 (1965), 7 S.&D. 1030.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Seventh Circuit a petition to review and set aside the order to cease and desist issued herein on September 25, 1963 [63 F.T.C. 882]; and the court on November 23, 1964 [339 F. 2d 937], having filed its decision, and on January 27, 1965, having entered its final decree modifying and as modified, affirming and enforcing said order to cease and desist; and the United States Supreme Court on June 1, 1965 [381 U.S. 938], having denied a petition for certiorari filed by respondents;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the said final decree of the Court of Appeals, as follows:

It is ordered, That respondents Western Radio Corporation, a corporation, and its officers, and Paul S. Beshore and W. P. Beshore, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale,

sale and distribution of their products, including radio transmitters, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That their transmitters with or without the use of additional equipment have a satisfactory operational range of any specified distance unless respondents are able to establish that their devices in fact have the operational ranges specified.

(b) That no license or permit is required for any operational use of their radio transmitters unless the specific conditions under which such license or permit would be required are conspicuously set forth in conjunction therewith.

(c) That any product is guaranteed unless the terms and conditions of such guarantee are clearly and conspicuously set forth, including the amount of any service or other charge which is imposed.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order set forth herein.

IN THE MATTER OF
PAILLARD, INCORPORATED

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-914. Complaint, July 7, 1965—Decision, July 7, 1965

Consent order requiring a Linden, N. J., corporation—a subsidiary of Paillard, S.A. of Yverdon, Switzerland—engaged in selling and distributing cameras, photographic equipment and supplies through franchised dealers, to cease entering into and carrying out any planned common course of action through its franchised retail dealers to fix and maintain retail prices of its "Bolex" and "Hasselblad" cameras, photograph equipment, and supplies.

COMPLAINT

The Federal Trade Commission, having reason to believe that Paillard, Incorporated, a corporation, hereinafter referred to as respondent, has violated and is now violating the provisions of

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Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 45), 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 with respect thereof as follows:

PARAGRAPH 1. Respondent, Paillard, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1900 Lower Road, Linden, New Jersey. Respondent is now and for several years last past, has been, among other things, engaged in the offering for sale, sale and distribution of cameras, photographic equipment and supplies in the various states of the United States. Respondent is a subsidiary of Paillard, S.A. of Yverdon, Switzerland. Said cameras are extensively advertised and sold under the brand names of "Bolex" and "Hasselblad." Respondent sells lenses and accessories for these cameras that are sold under various brand names. The dollar volume of sales of cameras, photographic equipment and supplies by respondent per year exceeds \$7,000,000. The respondent sells its products to dealers throughout the United States and as of June 30, 1960, it had 1,494 franchised Bolex dealers, and 591 franchised Hasselblad dealers.

PAR. 2. In the course and conduct of its business, respondent is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships its cameras, photographic equipment, and supplies, or causes such products to be shipped, from states wherein it does business to purchasers located in other states, and there is and has been at all times mentioned herein a continuous and substantial current of trade in commerce in such products between and among the various states of the United States and the District of Columbia.

PAR. 3. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the sale and distribution of cameras, photographic equipment and supplies in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 4. It is now, and has been for some time past, the practice and policy of Paillard, Incorporated, to enter into certain agreements, understandings, and arrangements with various of its retail dealers located in areas within which it does business, including the various States of the United States and the District of Columbia

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whereby respondent forces and requires, or attempts to force and require its retail dealers to agree to maintain resale consumer prices fixed and promulgated by Paillard, Incorporated, for its products which are distributed, offered for sale, and sold through said retail dealers.

By various means and methods, respondent has entered into and effectuated the aforesaid practice and policy by which it can and does control, establish, manipulate, fix, and maintain the resale prices at which its products are sold by its dealers.

For example, in the selection and appointment of its retail dealers, respondent utilizes and consummates contracts designated and known as Franchise and Retail Fair Trade Agreements with its retail dealers, under the terms of which retail dealers agree, among other things, not to, directly or indirectly, display, advertise, offer to sell or sell the products purchased from respondent at prices less than the minimum retail or consumer selling prices set forth in a schedule established and provided by respondent. Although said franchise agreements contain a disclaimer as to the applicability of the resale price provisions in states where such agreements are not lawful by statute, law or public policy, respondent nevertheless has been and is now enforcing or attempting to enforce adherence to its schedule of prices uniformly in all states. In addition, respondent regularly publishes and distributes from time to time, to its franchised retail dealers price lists or catalog sheets which contain the retail or consumer prices to be observed by said dealers. Also, respondent publishes or causes to be published advertisements, such as those utilized in its cooperative advertising program, promoting and offering its products for sale by its franchised dealers to consumers at prices, which are determined and established by respondent, and to be observed by said dealers.

Through its officials and representatives respondent maintains and exerts pressure upon its retail dealers to insure that they do not depart from or sell below the minimum resale prices fixed by said respondent. Retail dealers who advertise or sell at prices below the agreed minimum prices are contacted by a representative of respondent, who secures, or attempts to secure, the retail dealers' adherence to the minimum prices fixed by respondent through persuasion, or informs and threatens the retail dealers that respondent will discontinue doing business with said dealers.

As a result of the aforesaid practice and policy, and various means and methods including, among others those described herein,

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respondent has caused and is causing its franchised retail dealers to enter into or acquiesce in a course of dealing, combination, conspiracy, agreement, understanding, or planned common course of action with respondent whereby the retail or consumer price at which cameras, photographic equipment, and supplies were and are sold or offered for sale to the purchasing public by said retail dealers, was and is fixed and maintained.

Pursuant to and in furtherance of the aforesaid combination, planned common course of action, understanding and agreement, respondent, acting together in combination as aforesaid with such dealers, agreed to fix and maintain, and did fix and maintain, the retail price at which cameras, photographic equipment and supplies, purchased by the dealers from respondent, were to be sold or were sold at retail by the dealers to the purchasing public in the various States of the United States and the District of Columbia; and policed the retail prices at which respondent's products were sold; and prevented retail dealers from selling or shipping respondent's products to other retail dealers for resale; and withdrew the franchise from dealers who cut prices and who shipped or sold respondent's products to other retail dealers for resale.

PAR. 5. The agreements, understandings, conspiracy, combination, planned common course of action or course of dealings, together with the acts, practices, methods, and policies, as hereinabove alleged, are unlawful and against public policy because of their tendency to unduly restrain, hinder, suppress and eliminate competition and to restrain and monopolize trade and commerce and thereby constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent 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 complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute

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an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Paillard, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1900 Lower Road, Linden, New Jersey. Respondent is a subsidiary of Paillard, S.A. of Yverdon, Switzerland.

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

It is ordered, That the respondent, Paillard, Incorporated, a corporation, its officers, directors, agents, representatives or employees, successors or assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its cameras, photographic equipment and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, arrangement, agreement, contract or conspiracy with any person or persons not parties hereto to establish, fix, adopt, maintain, adhere to, or stabilize by any means or method, prices, terms or conditions of sale at which its cameras, photographic equipment and supplies are to be resold or otherwise distributed.

2. Establishing, maintaining, continuing, cooperating in, or carrying out, or attempting so to do, any plan, policy or program in combination with any other person or persons not parties hereto, for the purpose or with the effect of enabling respondent to establish or fix the prices, terms or conditions of sale at which its cameras, photographic equipment and supplies are to be resold or otherwise distributed.

3. Refusing to enter into or canceling any contract with a dealer, or distributor, for the distribution of respondent's products because of the dealer's or distributor's refusal to agree or adhere to any contract, agreement or understanding to

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establish or fix the prices, terms or conditions of sale at which respondent's products are to be resold or otherwise distributed.

4. Putting into effect, maintaining, or enforcing any merchandising or distribution plan or policy under which contracts, agreements, or understandings are entered into with dealers in or distributors of respondent's products which have the purpose or effect of:

(a) Fixing, establishing, or maintaining the prices at which such products may be resold or distributed by dealers or distributors; or

(b) Requiring or inducing any dealer or distributor to refrain from reselling such products to any specified persons or classes of persons.

5. Directly or indirectly establishing, maintaining, continuing, or effectuating any of the acts or practices prohibited by paragraphs 1 through 4 above, by any one or more of the following:

(a) Compiling, circulating, publishing or causing to be published lists of dealers or distributors who have had their franchises or licenses revoked.

(b) Utilizing the services of salesmen or any other persons for the purpose of shopping, investigating, or exercising any other methods of surveillance over the business operations of dealers or distributors to determine the prices at which such products are resold by the dealers or distributors.

(c) Refusing to continue to sell to dealers or distributors for the reason that such dealers or distributors are known to be, or are suspected of being, dealers or distributors who resell such products for less than recommended or prevailing resale prices.

(d) Preventing in any manner dealers or distributors from reselling, lending, exchanging or giving such products to other dealers or distributors for the reason that such dealers or distributors are known to be, or are suspected of being, dealers or distributors who resell such products or any other products for less than recommended or prevailing resale prices; or for the reason that such dealers or distributors are known to have, or are suspected of having, resold, loaned, exchanged, or given such products to other dealers or distributors known to have, or suspected of having, resold such products, or any other

