

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

In the Matter of

MARKER VÖLKL (International) GmbH,
a corporation.

Docket No. 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 (“Commission”), having reason to believe that Marker Völkl (International) GmbH (“Marker Völkl”), a corporation, hereinafter sometimes referred to as “respondent,” has violated the provisions of said Act, 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 in that respect as follows:

Nature of the Case

1. This action addresses anticompetitive conduct in the ski equipment industry. Beginning in or about 2004, Marker Völkl and its rival Tecnica Group, SpA. (“Tecnica”) agreed not to compete with one another for the endorsement services of ski athletes. In 2007, the companies further agreed not to compete for employees. Both agreements are unfair methods of competition, and violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

Marker Völkl

2. Marker Völkl is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Ruessenstrasse 6, 6341 Baar, Switzerland. Marker Völkl manufactures, markets, and sells skis (under the Völkl brand) and ski bindings (under the Marker brand). Marker

Völkl sells its skis and ski bindings in or into the United States. Since 2007, Marker Völkl has been a wholly-owned subsidiary of its parent, Jarden Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 555 Theodore Fremd Avenue, Rye, New York 10580.

3. At all times relevant herein, Marker Völkl has been, and is now, a corporation as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
4. The acts and practices of respondent, including the acts and practices alleged herein, are in commerce or affect commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

The Ski Equipment Businesses of Marker Völkl and Tecnica

5. Marker Völkl manufactures, markets, and sells skis (Völkl brand) and ski bindings (Marker brand).
6. For many years, Tecnica specialized in the manufacture and sale of ski boots. Tecnica acquired the Nordica ski equipment unit from Benetton Group SpA. in 2003. The Nordica unit manufactured and sold both skis and ski boots.
7. Tecnica acquired a second ski manufacturer, Blizzard GmbH, in 2006. Currently, Tecnica, is the fourth largest seller of skis in the United States.
8. In 1992, Tecnica and Marker Völkl began collaborating in the marketing and distribution of certain complementary ski equipment: Völkl brand skis, and Tecnica brand ski boots. Initially, these companies were not competitors: Tecnica did not have a ski product; Marker Völkl did not have a ski boot product.
9. The ski brands later acquired by Tecnica (Nordica and Blizzard brands) were not included in the Tecnica/Marker Völkl collaboration. That is, Tecnica independently manufactures, markets, and distributes Nordica skis and Blizzard skis in competition with Völkl skis.
10. Tecnica and Marker Völkl terminated their collaboration in the United States in 2008, and in other regional markets over the period 2008 through 2010.

Competition for Ski Athlete Endorsements

11. The most effective and most costly tool for marketing ski equipment consists of securing endorsements from prominent ski athletes. Endorsers include world class and professional athletes who compete in organized ski competitions (such as the World Cup and the Olympics), “junior” athletes who show the potential to develop into world class athletes, skiers whose performance attracts significant media attention (such as extreme skiers), and other “opinion leaders” (such as ski instructors and ski patrollers).
12. Endorsement agreements between a ski equipment company and a ski athlete are typically of short duration, and are subject to renewal. Commonly, the ski athlete: (i) authorizes the company to use the athlete’s name and likeness in promotions and in advertisements, (ii) agrees to use and promote the company’s equipment on an exclusive basis, (iii) agrees to display the company’s equipment when the athlete can attract media exposure, such as by taking the skis to the podium when receiving a medal, and/or (iv) agrees to appear at promotional events on behalf of the company. The association of a ski equipment brand with a prominent ski athlete generates sales, goodwill, and other benefits for the company.
13. As consideration for the ski athlete’s endorsement services, the ski equipment company commonly provides the ski athlete with monetary compensation (keyed to the athlete’s success in competitions), support services at competitions, free or discounted equipment, and/or travel expenses.
14. Ordinarily, ski equipment companies compete with one another to secure the endorsement services of prominent ski athletes. At the expiration of an endorsement agreement, a ski athlete can be induced to switch from one company to another in return for greater compensation, in much the same way that an employee can be induced to change employers in return for a higher salary or better benefits.
15. Endorsement agreements are the primary source of income for professional ski athletes. Among professional skiers, the common wisdom is: To make money in this sport, ski fast—and endorsement deals may follow.

The Anticompetitive Agreements

16. In or about 2004, Marker Völkl and Tecnica agreed not to compete with one another to secure the endorsement services of ski athletes. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Nordica brand skis or who was otherwise claimed by Tecnica. Tecnica agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Völkl brand skis or who was otherwise claimed by Marker Völkl.
17. In 2005, Marker Völkl and Blizzard GmbH agreed not to compete with one another to secure the endorsement services of ski athletes. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Blizzard brand skis or who was otherwise claimed by Blizzard GmbH. Blizzard GmbH agreed not to solicit, recruit, or contract with a ski athlete who previously endorsed Völkl brand skis or who was otherwise claimed by Marker Völkl.
18. In or about January 2007 – shortly after Tecnica’s acquisition of Blizzard GmbH – executives of Marker Völkl met with executives of Tecnica to review the inter-company collaboration and the non-compete agreements. Marker Völkl and Tecnica reaffirmed that the companies would not compete with one another to secure the endorsement services of ski athletes. Marker Völkl and Tecnica intended that these athlete non-compete agreements would enable them to avoid bidding up the cost of securing athlete endorsements.
19. At the January 2007 meeting, Marker Völkl and Tecnica also agreed to expand the scope of their non-compete agreements. Marker Völkl and Tecnica agreed not to compete for the services of any employee. Specifically, Marker Völkl agreed not to solicit, recruit, or contract with any employee of Tecnica. Tecnica agreed not to solicit, recruit, or contract with any employee of Marker Völkl. Marker Völkl and Tecnica intended that this employee non-compete agreement would enable them to avoid bidding up the salaries paid to employees.
20. In furtherance of the athlete non-compete agreements and the employee non-compete agreement, executives of Marker Völkl and Tecnica communicated the terms of these agreements to company managers with responsibility for recruiting ski athletes and for hiring employees.
21. Christoph Bronder, the President and Chief Executive Officer of Marker Völkl, aggressively policed the Marker Völkl/Tecnica non-compete agreements, and complained to Tecnica when he detected a potential violation.
22. The restraints on competition agreed to by Marker Völkl and Tecnica were not reasonably necessary for the formation or efficient operation of the collaboration between the companies. The ski businesses of Tecnica (the Nordica and Blizzard brands) were at

all times outside of and apart from the collaboration. Consequently, the restraints did not align the disparate incentives of the companies in a manner that promoted the cognizable efficiency goals of the collaboration. Also, the restraints adversely affected competition for – and the compensation available to – athletes and employees whose services were unrelated to the collaboration.

23. Marker Völkl’s conduct, as alleged herein, had the purpose, capacity, tendency, and likely effect of (i) restraining competition unreasonably, (ii) harming the economic interests of ski athletes, and (iii) harming the economic interests of the affected employees of Marker Völkl and Tecnica.

Violations Alleged

24. As set forth in paragraphs 16 through 23 above, Marker Völkl and Tecnica agreed to restrain competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.
25. The acts and practices of respondent, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ____ day of _____, 2014, issues its complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: