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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of

POOL CORPORATION

a corporation. **Docket No. C-4345**

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 ("Commission"), having reason to believe that Pool Corporation, Inc. ("PoolCorp" or "Respondent") has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, 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:

NATURE OF THE CASE

1. This action addresses PoolCorp's exclusionary acts and practices in the market for the distribution of residential and commercial swimming pool products. PoolCorp has unlawfully maintained its monopoly power by threatening to refuse to deal with any manufacturer that sells its pool products to a new distributor entering the market, thereby foreclosing potential rivals from an input necessary to compete. PoolCorp's conduct deters and impedes entry, raises its rivals' costs, and results in higher prices, reduced output and less consumer choice.

RESPONDENT

2. Respondent PoolCorp is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 109 Northpark Boulevard, Covington, Louisiana 70433.

3. Respondent distributes pool products through two distribution networks: SCP Distributors, LLC, formerly known as South Central Pools; and Superior Pool Products, LLC. Both distribution networks operate throughout the United States and distribute similar product lines.

JURISDICTION

4. At all times relevant herein, Respondent has been, and is now, a corporation as "corporation" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. The acts and practices of Respondent, including the acts and practices alleged herein, are in commerce or affect commerce in the United States, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

RELEVANT MARKET

6. There are over nine million residential pools in the United States, and over 250,000 commercial pools operated by hotels, country clubs, apartment buildings, municipalities, and others. In 2010, the distribution of pool products was an estimated $3 billion industry in the United States.

7. The relevant product market is no broader than the wholesale distribution of residential and commercial swimming pool products. Pool products are the equipment, products, parts or materials used for the construction, renovation, maintenance, repair or service of residential and commercial swimming pools.

8. Pool products include, among others, pumps, filters, heaters, covers, cleaners, steps, rails, diving boards, pool liners, pool walls, and the "white goods" or parts necessary to maintain pool equipment. Pool products do not include pool toys or games, or products used solely for landscaping or irrigation, Olympic-style pools, or pools used in commercial water parks.

9. Pool products are designed and manufactured specifically for residential and commercial swimming pools. There are no close substitutes for pool products, and no other products significantly constrain their pricing.

10. Pool distributors purchase pool products from manufacturers, warehouse them, and then resell those products to pool builders, pool retail stores and pool service and repair companies (collectively, "pool dealers" or "dealers"). Pool dealers then sell the pool products to the ultimate consumer: owners of residential and commercial pools.

11. Pool product manufacturers consider wholesale distributors to be a unique and essential channel for the efficient distribution of their products. Distributors purchase and warehouse significant volumes of pool products throughout the year, allowing manufacturers to operate their factories year-round notwithstanding the seasonal nature of the pool industry. Distributors also provide one-stop shopping, timely delivery and the extension of credit to thousands of dealers, thereby providing dealers and manufacturers with significant transactional efficiencies. Additionally, distributors often help manufacturers administer their dealer rebate and warranty programs, and provide expertise to answer dealers' product-related questions.

12. While manufacturers make some direct sales to larger dealers, they cannot easily expand their operations into distribution because of the costs, their lack of expertise in distribution, and the difficulty of obtaining products to distribute from competing manufacturers. Distributors are the only available source of pool products for the vast majority of dealers, which are small mom-and-pop operations that do not have the inventory size or resources to purchase pool products directly from manufacturers. Dealers that buy direct from manufacturers are not permitted by the manufacturers to participate more broadly in the wholesale distribution market and sell pool products to other dealers.

13. The relevant geographic markets are no larger than the United States, and numerous local geographic markets contained therein. With the exception of a few large national pool retail chains that purchase products for their retail centers throughout the United States, competition among distributors for sales to dealers occurs locally. The high cost of transportation and the general need for same-day or next-day delivery of pool products typically limits local geographic markets to 50 to 100 square miles, depending on the concentration of the population and pools in the local area.

RESPONDENT HAS MONOPOLY POWER

14. Respondent is the world's largest distributor of pool products, and operates approximately half of all pool distribution facilities in the United States. Unlike other distributors that operate in a few local markets or a specific region, Respondent is the only U.S. distributor to operate nationwide. Through a series of acquisitions, Respondent has grown to operate over 200 distribution centers throughout the United States. By way of comparison, the next largest U.S. distributor operates less than 40 centers. In 2010, Respondent earned roughly $1.5 billion in net sales.

15. Respondent has monopoly power in numerous local geographic markets across the country, including, among others, Austin TX, Baton Rouge LA, Mobile AL, Nashville TN, Oklahoma City OK, and Springfield MO. In these local markets, Respondent is the only or dominant distributor in the local market, and has maintained a market share of approximately 80 percent or higher for at least the past five years.

16. Respondent's dominance in local markets is enhanced by its status as the largest nationwide buyer of pool products, commonly representing 30 to 50 percent of a manufacturer's total sales. Respondent obtains a significant competitive advantage in the downstream market by qualifying for large volume discounts from manufacturers that are not available to any other distributor.

17. Respondent's conduct of foreclosing new entrants from obtaining pool products directly from manufacturers, which is a necessary input to compete, represents a significant barrier to entering the pool distribution market.

RESPONDENT EMPLOYED UNFAIR METHODS OF COMPETITION IN ORDER TO MAINTAIN ITS MONOPOLY

18. Beginning in at least 2003 and continuing through to today, Respondent has engaged in unfair methods of competition by foreclosing access to essential inputs and impeding market entry by potential rivals. Respondent's conduct has the tendency and effect of improperly maintaining and enhancing Respondent's monopoly power. Respondent's conduct has caused injury to competition and to consumers. Respondent's conduct is likely to continue to harm competition absent the relief requested herein, and violates Section 5 of the FTC Act, as amended.

A. The Wholesale Pool Product Distribution Industry

19. The swimming pool industry is generally very fragmented. There are over 100 manufacturers that produce a small number of product lines, such as pool heaters or diving boards and rails. However, there are only three manufacturers that sell nearly all the pool products necessary to operate and maintain a pool: Pentair Water Pool and Spa, Inc.; Hayward Pool Products, Inc.; and Zodiac Pool Systems, Inc. Collectively, these three full-line manufacturers represent more than 50 percent of sales at the wholesale level.

20. Distributors generally carry all brands of pool products across all manufacturers in order to satisfy any and all orders from their dealer customers. It is necessary to sell the products of at least one of the three full-line manufacturers in order to be able to compete effectively as a distributor. The products of the full-line manufacturers are "must have" products for wholesale distributors because of the volume of products they represent and the considerable consumer demand for their products. A positive relationship with these and other manufacturers is "critical" to the success of a pool distributor.

21. In general, manufacturers are willing to sell their products through any credit-worthy distributor that has a physical warehouse and personnel with knowledge of the pool industry. Manufacturers typically prefer to have two or more distributors selling their products in a local geographic market in order to ensure that their dealer customers receive competitive service and prices.

22. Manufacturers market their products directly to dealers in order to create pull-through demand at the distribution level, but also offer year-end rebates to distributors based on the volume of a distributors' purchases. These year-end rebates represent a significant component of the ultimate price paid by distributors for pool products. Failure to qualify for these rebates can have a significant detrimental impact on a distributor's ability to compete on price.

23. Dealers select a local distributor based on its level of service and the prices it offers. When a distributor increases its prices, dealers typically pass those increases on to their customers. Thus, the ultimate price paid by end consumers for pool products depends heavily on the prices that distributors charge to dealers.

B. Respondent's Exclusionary Practices

24. In August 2002, Respondent acquired Fort Wayne Pools, Inc. ("FWP"), a large regional pool distributor with operations in 16 states. FWP was Respondent's then-largest, and sometimes only, competitor in numerous local markets.

25. Soon thereafter, Respondent closed a FWP distribution facility in Baton Rouge, LA. This left Respondent as the only remaining distributor in the area, and it implemented a five percent price increase. In Spring 2003, a former dealer with almost 20 years of experience in the industry opened a distribution business in Baton Rouge, LA to compete with Respondent.

26. Respondent responded to this new competition by notifying all major manufacturers that it would stop dealing with any manufacturer that sold any of its products to the new entrant. Respondent threatened to terminate not only its purchases and sales in the local Baton Rouge area, but across the entire country.

27. As the manufacturers' largest customer, Respondent's threat was significant. No other distributor could replace the large volume of potential lost sales to Respondent, particularly in those markets where Respondent was the only distributor. The loss of sales to Respondent could be "catastrophic" to the financial viability of even major manufacturers. Without expending tens of millions of dollars to enter dozens of markets simultaneously, it was impossible for the new entrant to offer any economic incentive to manufacturers that would offset the risks imposed by Respondent's threats.

28. The manufacturers, including the three "must-have" manufacturers, refused to sell pool products to the new entrant and canceled any pre-existing orders. Respondent effectively foreclosed the new entrant from obtaining pool products from manufacturers that represented more than 70 percent of all pool product sales. Without direct access to the manufacturers' pool products, the new entrant's business ultimately failed in 2005.

29. A new entrant cannot avoid the effects of Respondent's conduct by purchasing pool products from other distributors, rather than directly from manufacturers. As a general rule, distributors do not sell pool products to other distributors. Even when possible, this alternative is not a viable long-term strategy because it substantially increases a distributor's costs and lessens its quality of service.

30. For example, buying from a distributor forces the new entrant to pay transportation costs from the distributor's location rather than receiving free shipping under manufacturer programs. The purchases are also at a marked-up price and do not qualify for key manufacturer year-end rebates. These higher costs would prevent the new entrant from being able to compete aggressively on price. Additionally, without full control of its inventory, this work-around hampers the entrant's ability to provide timely and quality service to its dealer customers.

31. Respondent has employed similar exclusionary strategies in other local markets, including against distributors that have entered the market since 2008, with the purpose and effect of excluding rivals, raising its rivals' costs, and maintaining its monopoly power. Respondent's

exclusionary practices and policies target new entrants, rather than established rivals, because new entrants represent a unique competitive threat due to their likelihood to compete aggressively on price in order to earn new business.

ANTICOMPETITIVE EFFECTS OF RESPONDENT'S CONDUCT

32. The acts and practices of Respondent as alleged herein have had the purpose, capacity, tendency, and effect of impairing the competitive effectiveness of Respondent's rivals, raising its rivals costs, and deterring and impeding entry. Respondent's conduct has contributed significantly to the enhancement and maintenance of Respondent's monopoly power.

33. Respondent's conduct adversely affects competition and consumers by:

a. increasing the prices and reducing the output of pool products;

b. deterring, delaying and impeding the ability of Respondent's actual or potential competitors to enter or to expand their sales in the wholesale distribution market; and

c. reducing the choice of suppliers available to pool dealers.

34. There are no legitimate procompetitive efficiencies that justify Respondent's conduct or outweigh its substantial anticompetitive effects.

VIOLATION ALLEGED

35. The acts and practices of Respondent, as alleged herein, constitute monopolization and 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 tenth day of January, 2012, issues its complaint against Respondent.

By the Commission, Commissioner Rosch dissenting.

Donald S. Clark
Secretary

SEAL: