

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

OLIN SKI COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2895. Complaint, July 19, 1977 — Decision, July 19, 1977

This consent order, among other things, requires a Middletown, Conn. manufacturer and distributor of ski boots and other ski industry items to cease establishing, maintaining, and enforcing price maintenance agreements; requiring such agreements as a precondition to dealing; soliciting reports of recalcitrant distributors and terminating those dealerships; using serial numbers as a means of tracing products sold to unauthorized outlets; and failing to honor warranties for products sold by such establishments. Further, the order requires the respondents to maintain prescribed files for a five-year period; and prohibits them from disseminating, for two years, all materials suggesting resale prices.

Appearances

For the Commission: *David W. Dijnardi.*

For the respondents: *Allen F. Maulsby, Cravath, Swain & Moore,*
New York City.

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 Olin Ski Company, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 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 its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Olin Ski Company, Inc., hereinafter referred to as respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 475 Smith St., Middletown, Connecticut.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale or distribution of skis, ski boots or other ski industry items, hereinafter referred to as said products. Said products are subse-

quently distributed and sold throughout the United States for resale to the general public through authorized dealers who have signed with respondent an Authorized Dealership Agreement (hereinafter authorized dealers).

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been engaged and is now engaged in commerce or its acts and practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, in that respondent has sold and caused and now causes said products to be shipped from the state in which they are manufactured or warehoused to other States of the United States for resale and distribution through authorized dealers to the general public.

PAR. 4. Except to the extent that competition has been hampered, hindered, lessened or restrained as set forth in this complaint, respondent has been and is now in competition with other persons, firms and corporations engaged in the manufacture, sale and distribution of said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Respondent, in combination, agreement, or understanding with certain of its authorized dealers, has for the last several years been engaged in a course of action to fix, establish and maintain certain resale or retail prices at which said products are resold to the general public. In furtherance of said course of action, respondent has for the past several years engaged in the following acts or practices, among others:

(a) Regularly furnishing its authorized dealers with price lists and necessary supplements thereto containing certain resale or retail prices;

(b) Establishing agreements, understandings, or arrangements with its authorized dealers, one or more of whom are located in states which did not have fair trade laws, as a condition precedent to the granting of a dealership, that such authorized dealers would maintain certain resale or retail prices for said products or such dealership would be terminated; and that respondent would not honor a guaranty on said products sold by other than an authorized dealer of respondent;

(c) Requiring its authorized dealers to execute an Authorized Dealership Agreement under the terms of which such authorized dealers agree, among other things; That said products shipped to them by respondent will be sold at the retail level; and To resell to respondent any unsold stock of said products in the event that business relations between respondent and its authorized dealers are terminated;

(d) Affixing serial numbers on all skis shipped by respondent to its authorized dealers for the purpose of tracing sales of such skis by authorized dealers to unauthorized retail outlets;

(e) Soliciting and obtaining from its authorized dealers, cooperation and assistance in identifying and reporting any authorized dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices;

(f) Contacting those authorized dealers who fail to adhere to and maintain certain retail or resale prices for said products and securing, or attempting to secure, assurances from such authorized dealers that they will adhere to and observe respondent's resale or retail prices;

(g) In certain instances threatening to terminate and terminating authorized dealers who fail or refuse to observe, maintain or advertise respondent's resale or retail prices for said products.

PAR. 6. By means of such acts and practices, including but not limited to the foregoing, respondent, in combination, agreement, or understanding with certain of its authorized dealers, has established, maintained and pursued a course of action to fix and maintain certain resale or retail prices at which said products will be resold.

PAR. 7. The aforementioned acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of said products, and constitute unfair methods of competition in commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

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 Boston 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, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, which order incorporates an agreement of Olin Corporation, 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, 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 complaint should issue stating its charges in that respect, 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 Olin Ski Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at 475 Smith St., Middletown, Connecticut.

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 respondent Olin Ski Company, Inc., a corporation, or any of its subsidiaries, divisions, successors and assigns, and its officers, and respondent's agents, representatives and employees, individually or in concert, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, manufacture, distribution, offering for sale or sale of skis, ski boots or other ski industry items (hereinafter referred to in this order as "said products") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing with any authorized dealer any contract, agreement, understanding or arrangement fixing, establishing, maintaining, controlling or enforcing, directly or indirectly, the price at which any of said products is advertised, sold or offered for sale at retail.

B. Requiring any authorized dealer or prospective dealer to enter into an oral or written agreement or understanding that such authorized dealer or prospective dealer will maintain any resale or retail price for any of said products as a condition of buying any of said products.

C. Prior to selling to a prospective dealer, requiring a promise or assurance, whether by understanding, agreement, or otherwise, that

1

Decision and Order

such dealer will adhere to and observe any resale or retail price for any of said products.

D. Requiring from any authorized dealer a promise or assurance to adhere to any resale or retail price for any of said products as a condition precedent to any future sales to said authorized dealer.

E. Requesting or requiring, either directly or indirectly, any authorized dealer or prospective dealer to report any authorized dealer who does not adhere to any resale or retail price for any of said products.

F. Terminating or threatening, either directly or indirectly, to terminate any authorized dealer for the reason that such dealer had been reported as not adhering to or observing any resale or retail price for any of said products.

G. Terminating or threatening, either directly or indirectly, to terminate any authorized dealer because of any resale or retail price observed, maintained, or advertised by the authorized dealer for any of said products.

H. For two (2) years from the date on which this order becomes final, publishing or circulating any suggested resale or retail price for any of said products by price list, discount schedule, invoicing procedure, pre-pricing of commodities or their containers, or by any other such means, to any reseller or authorized dealer.

I. After the expiration of the time period stipulated in provision H above, publishing, disseminating or circulating to any reseller or authorized dealer any price list, price book, price tag, advertising or promotional material, or other document indicating any resale or retail price of said products unless each reference to such price is accompanied by a clear and conspicuous disclosure that the price is suggested or approximate.

J. Refusing to honor a guaranty on any of said products for the reason that said product was not sold by an authorized dealer of respondent.

K. Requiring or inducing by threats of termination any authorized dealer or prospective dealer to refrain, or to agree to refrain from reselling any of said products to any independent dealer or distributor.

L. Using serial numbers, registration numbers or other similar identifying marks on said products as a means of tracing sales of said products to particular authorized dealers where the purpose of such tracing is to terminate or threaten to terminate authorized dealers of respondent selling said products to unauthorized dealers.

M. Requiring any authorized dealer to resell to respondent any unsold stock of said products in the event that business relations

between respondent and the authorized dealer are terminated; *provided, however*, that respondent shall not be prohibited from repurchasing such unsold stock with the consent of an authorized dealer, or where respondent has a "security interest" in said products, or where the authorized dealer is unable to meet its financial obligations to respondent.

II. *It is further ordered*, That respondent shall, within fifty-nine (59) days after service upon it of this order, mail to all current authorized dealers of said products, on official stationery of respondent, together with a copy of this order, a copy of the letter signed by the President of respondent, attached hereto as Exhibit A, and furnish the Commission proof of the mailing thereof.

III. *It is further ordered*, That respondent, during the five (5) year period of time following the date of service of this order, shall furnish to all future authorized dealers of said products at the time said dealers are opened as accounts a copy of this order, together with a copy of the letter attached hereto as Exhibit A.

IV. *It is further ordered*, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and subsidiaries now engaged in the manufacture, sale and distribution of said products and to all of its officers and directors now engaged in the manufacture, sale and distribution of said products.

V. *It is further ordered*, That respondent shall, within thirty (30) days from the date of service of this order, mail or deliver, and obtain a signed receipt therefor, a copy of this order to all of its sales personnel and sales representatives then engaged in the distribution, offering for sale or sale of said products.

VI. *It is further ordered*, That respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other such change in the corporation which may effect compliance obligations arising out of the order.

VII. *It is further ordered*, That respondent, for a period of five (5) years from the date of service of this order, maintain files of all records referring or relating to respondent's termination of any authorized dealer, which files shall contain a record of any written communication to each such dealer explaining such termination, and which files will be available for Commission inspection on reasonable notice; and, annually, for a period of five (5) years from the date of service, submit a report to the Commission listing the names and addresses of all authorized dealers whom respondent has terminated

during the preceding year, a description of the reason for the termination and the date of the termination.

VIII. *It is further ordered*, That the agreement of Olin Corporation, the parent corporation of the respondent, which agreement is in the form of an affidavit of the President of Olin Corporation, attached hereto as Exhibit B, be incorporated herewith into this order.

IX. *It is further ordered*, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

EXHIBIT A

(Letterhead of Olin Ski Company, Inc.)

(date)

Dear Authorized Olin Ski Dealer:

We have agreed with the Federal Trade Commission to inform you that the Federal Trade Commission has entered into a consent order with the Olin Ski Company, Inc.

Our agreement to the issuance of a consent order was for settlement purposes only and does not constitute an admission that the law has been violated by us in connection with the marketing of skis, ski boots and other ski industry items.

Subject to the provisions of the enclosed consent order:

- (1) You are free to set your own retail or resale prices for our products;
- (2) We will not solicit, invite or encourage you or any other person to report that any authorized dealer is not following any retail or resale price for any of our products, and, further, we will not act on any such reports sent to us; and
- (3) We will not require any authorized dealer to refrain from advertising our products at any price or from selling or offering our products at any price to any person.

As a result of the consent order, you are free to determine independently your own pricing policy with respect to the advertising, offering for sale and sale of our products without interference by us and without jeopardy from such determination to your status as an authorized dealer.

Very truly yours,

President

EXHIBIT B

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

In the Matter of

OLIN SKI COMPANY, INC.,

File No. 731 0049

a corporation

AFFIDAVIT OF
JOHN M. HENSKE

STATE OF CONNECTICUT, SS.:

COUNTY OF FAIRFIELD,

JOHN M. HENSKE, being duly sworn, deposes and says:

1. I am the President and a Director of Olin Corporation (Olin), whose wholly-owned subsidiary, Olin Ski Company, Inc., (Olin Ski), is the respondent herein.
2. Olin Ski will today execute with counsel for the Federal Trade Commission an Agreement Containing Consent Order to Cease and Desist pertaining to future marketing practices in the manufacture, sale or distribution of skis, ski boots or other ski industry items.
3. Olin will undertake to have Olin Ski fulfill all its obligations under the aforementioned agreement.
4. Olin will notify the Commission at least thirty days prior to any proposed change in Olin Ski such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of the order.
5. In the event that Olin Ski is sold, assigned or otherwise disposed of by Olin to any other person, firm, partnership or corporation, Olin will insert in the agreement of purchase a provision specifying that the purchaser or assignee is a successor to or assignee of the obligations of Olin under the order.
6. In the event that Olin dissolves Olin Ski and/or Olin Ski discontinues the manufacture, sale or distribution of skis, ski boots or other ski industry items, and if Olin at any time in the future manufactures, sells or distributes skis, ski boots or other ski industry items, Olin will become a successor to or assignee of the obligations of Olin Ski under the order.

/s/JOHN M. HENSKE

Sworn to before me this
19th day of April 1976.
/s/Pauline E. Altieri
Notary Public
My Commission Expires April 1, 1981

IN THE MATTER OF

CBS INC.

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

Docket C-2896. Complaint, July 21, 1977 -- Decision, July 21, 1977

This consent order requires a New York publishing firm to cease mailing and billing for unauthorized magazines; sending collection letters to receivers of unordered magazines; misrepresenting the effects of nonpayment on credit ratings in such letters; and transferring unpaid accounts to recipients of unsolicited magazines to debt collection or consumer reporting agencies. Further, the order requires respondent to make proper restitution to individuals who paid for unordered magazines; and to send correction letters to consumers whose credit standings may have been adversely affected by respondent's actions. Additionally, respondent is required to maintain prescribed records; and to institute an adequate program of continued surveillance to ensure conformance with the terms of the order.

Appearances

For the Commission: *Paul P. Eyre and John M. Mendenhall.*

For the respondent: *Edward Kelman and Jerry Ebenstein, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that CBS Inc., a corporation, hereinafter sometimes referred to as respondent, 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 CBS Inc. 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 51 West 52nd St., New York, New York. Respondent conducts its publishing of magazines through its CBS Consumer Publishing Division of the CBS Publishing Group, located at 600 Third Ave., New York, New York.

PAR. 2. Respondent, through its CBS Consumer Publishing Division, is now, and has been, engaged in the business of publishing, distributing, offering for sale, and selling various types of magazines.

PAR. 3. In the course and conduct of its magazine business, through

its CBS Consumer Publishing Division, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In late 1974 and early 1975, respondent, in the course and conduct of its magazine business through the CBS Consumer Publishing Division, in connection with the publishing, distributing, offering for sale, or selling of *Field & Stream* magazine:

(a) Ran a sweepstakes promotion in conjunction with a subscription campaign for *Field & Stream* magazine. In order to enter the sweepstakes, consumers were requested to sign an entry card and check a box to indicate whether the consumer wanted only to enter the sweepstakes or to also subscribe to *Field & Stream*. A number of people returning the card did not check either box. Respondent, through the CBS Consumer Publishing Division, sent copies of *Field & Stream* magazine to consumers who did not check either box, as well as those who checked the subscription box.

(b) Has mailed, or caused to be mailed, to persons who received such magazines without having checked either box, a bill for such magazines.

(c) Has mailed, or caused to be mailed, persistent demands for payment to persons who received such magazines without having checked either box.

Pursuant to the Postal Reorganization Act, Section 2, 39 U.S.C. 3009 (1970), the aforesaid acts and practices of respondent's CBS Consumer Publishing Division constituted a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of its business, and in connection with the publishing, distributing, offering for sale, or selling of *Field & Stream* magazine, respondent, through its CBS Consumer Publishing Division, transferred, or caused to be transferred, the purportedly due or delinquent accounts of those consumers who received copies of *Field & Stream* magazine and who did not indicate on the sweepstakes entry card whether they desired the magazine subscription to a debt collection agency or consumer reporting agency, for the purpose of collecting the subscription price for such magazines or for the purpose of including information in the consumer files of said agencies.

The aforesaid acts and practices constituted a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 6. Respondent, through its CBS Consumer Publishing Division, has used the acts and practices set forth in Paragraphs Four and Five, to induce persons who received copies of *Field & Stream*

magazine without having checked either box to pay the subscription price for such magazine. Respondent's CBS Consumer Publishing Division has received the said sums from some of such persons, and has failed to offer refunds, or refund such sums to said persons.

The use by respondent, through its CBS Consumer Publishing Division, of the aforesaid acts and practices constituted, and respondent's continued retention of said sums of money as aforesaid constitutes, a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 7. Respondent, in the course and conduct of its business, through its CBS Consumer Publishing Division, for the purpose of inducing consumers to pay due or delinquent accounts, has transmitted, or has caused to be transmitted, to consumers, form letters demanding payment, representing that:

(a) If the consumer does not respond to a collection letter within a specified period of time, such consumer's account will be transferred to a consumer credit reporting agency for immediate inclusion in a national bad debt file;

(b) A consumer's account has been transferred to a credit collection manager of respondent's credit collection department.

PAR. 8. In truth and in fact:

(a) The failure of a consumer to respond to a collection letter within a specified period of time did not automatically result in the transferral of such consumer's account to a consumer credit reporting agency for immediate inclusion in a national bad debt file;

(b) The consumer's account was not transferred to a credit collection manager of respondent's collection department.

Therefore, the representations set forth in Paragraph Seven hereof were false, and had the tendency and capacity to mislead members of the public, and to induce the payment of delinquent accounts.

PAR. 9. In the course and conduct of its magazine business through its CBS Consumer Publishing Division, and at all times mentioned herein, respondent has been, and is now, in substantial competition in or affecting commerce with corporations, firms, and individuals engaged in the similar business of publishing, distributing, offering for sale, and selling magazines.

PAR. 10. The aforesaid acts and practices of respondent, through its CBS Consumer Publishing Division, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Cleveland 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, 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 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 CBS Inc. 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 51 West 52nd St., in the City of New York, State of New York, and one of its components is the CBS Publishing Group.

CBS Consumer Publishing Division, a division of the CBS Publishing Group, with its principal office and place of business located at 600 Third Ave., New York, New York, is engaged in the manufacture, distribution, and sale of consumer publications, including magazines.

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 respondent CBS Inc., a corporation, its succes-

sors and assigns, and respondent's agents, representatives, and employees, directly or through the CBS Consumer Publishing Division, or any other corporation, subsidiary, division, or other device in connection with the advertising, publishing, distributing, offering for sale, or selling of magazines in commerce or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do continue to, and forthwith, cease and desist from:

A. Mailing, or causing to be mailed, magazines without the prior expressed request or consent of the recipient.

B. Mailing, or causing to be mailed, a bill to recipients of magazines mailed without the recipient's prior expressed request or consent.

C. Mailing, or causing to be mailed, collection letters to recipients of magazines mailed without the recipient's prior expressed request or consent.

D. Transferring, or causing to be transferred, the alleged delinquent accounts of recipients of magazines mailed without the recipient's prior expressed request or consent, to a debt collection or consumer reporting agency.

Provided, that respondent may act in accordance with the exceptions extended by the Postal Reorganization Act, Section 2, 39 U.S.C. 3009 (1970), as amended or modified.

II

It is further ordered, That respondent CBS Inc., a corporation, its successors and assigns, and respondent's agents, representatives, and employees, directly or through the CBS Consumer Publishing Division, or any other corporation, subsidiary, division, or other device in connection with the collection of consumer debts in commerce or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do continue to, and forthwith, cease and desist from:

A. Using any forms, letters, or materials which represent directly or indirectly, by any means, that where payment due from a consumer in purported receipt of magazines is not received, the information of said delinquency is referred to a debt collection or consumer reporting agency, unless such agency is notified as represented.

B. Misrepresenting, by any means, the manner, extent, and consequences of the referral of debt delinquency information, compiled as a result of the purported receipt of magazines, to debt collection or consumer reporting departments or agencies.

C. Misrepresenting, by any means, that failure to pay the alleged

