

**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-4476

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Marker Völkl (International) GmbH (“Marker Völkl”), a corporation, hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of a draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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 Respondent had violated said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent 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 is a wholly-owned subsidiary of its parent, Jarden Corporation, which is 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.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” means Marker Völkl (International) GmbH, its directors, officers, employees, agents, representatives, successors, and assigns, and includes its parent, all subsidiaries, divisions, groups, and affiliates controlled by them, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Agreement” means any agreement, arrangement, contract, combination, or understanding, formal or informal, written or unwritten, direct or indirect, between two or more Persons.
- D. “Endorsement Agreement” means an Agreement between a Ski Company and a living natural person providing in part that, for consideration, (1) the Ski Company is authorized to utilize the name and/or likeness of the living natural person in connection with the advertisement, promotion, or sale of Ski Equipment, and/or (2) the living natural person will use and promote the Ski Company’s Ski Equipment; for the avoidance of doubt, the following Agreements are not Endorsement Agreements for the purposes of this Order: (1) any Agreement between Respondent and a living natural person who is an employee of Respondent at the time he or she enters into the Agreement; (2) any Agreement between Respondent and another Ski Company in connection with the exclusive licensing of intellectual property relating to Ski Equipment; or (3) any exclusive Agreement between Respondent and a retailer and/or distributor of Ski Equipment that is not a Ski Company.
- E. “Person” means any living natural person, corporate entity, sole proprietorship, partnership, association, joint venture, or trust.
- F. “Ski Company” means any Person that, for the purpose of sale, resale, distribution, or marketing in or into the United States, manufactures Ski Equipment or causes Ski Equipment to be manufactured, and includes all the directors, officers, employees,

consultants, agents and representatives of the Ski Company acting on behalf of or at the direction of the Ski Company; for the avoidance of doubt, “Ski Company” does not include: (1) any employee of Respondent to the extent he or she is acting on his or her own behalf; or (2) ski teams or ski pools.

- G. “Ski Equipment” means alpine snow skis, ski boots, or ski bindings.
- H. “U.S. Skier” means any living natural person who is engaged or has engaged in the sport of alpine skiing, and who, at the time the Ski Companies enter into an Agreement that, but for the proviso in Paragraph II.A. of this Order, would be prohibited by Paragraph II.A. of this Order, is:
 - 1. a citizen or permanent resident alien (as defined by the US Citizenship and Immigration Services) of the United States;
 - 2. a member of the U.S. Ski and Snowboard Association;
 - 3. a member of the U.S. Ski Team;
 - 4. a representative of the United States at the NorAm Cup, the World Cup, or any competition sanctioned by the International Ski Federation; or
 - 5. a representative of the United States at the Winter Olympics.
- I. “U.S. Employee” means any living natural person who is a citizen or permanent resident alien (as defined by the US Citizenship and Immigration Services) of the United States or whose principal place of employment is within the United States.

II.

IT IS FURTHER ORDERED that in connection with the business of manufacturing, distributing, marketing, or selling Ski Equipment in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, Respondent shall cease and desist from, directly or indirectly, or through any corporate or other device:

- A. Inviting, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, soliciting, or otherwise facilitating any Agreement, either express or implied, with any Ski Company or Ski Companies (other than Respondent) to forbear from soliciting, cold calling, recruiting, hiring, contracting with, or otherwise competing for any U.S. Skier to be a party to an Endorsement Agreement.

PROVIDED, HOWEVER, that Respondent may enter into, attempt to enter into, or comply with a written agreement with any other Ski Company or Ski Companies to forbear from competing for any U.S. Skier to be a party to an Endorsement Agreement that (1) is reasonably related to a lawful joint venture agreement, or lawful merger, acquisition or sale agreement; and (2) is reasonably necessary to achieve such agreement’s procompetitive benefits.

- B. Inviting, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, soliciting, or otherwise facilitating any Agreement, either express or implied, with any Ski Company or Ski Companies (other than Respondent) to forbear from soliciting, cold calling, recruiting, hiring, contracting with, or otherwise competing for any U.S. Employee of a Ski Company.

PROVIDED, HOWEVER, that Respondent may enter into, attempt to enter into, or comply with a written agreement with any other Ski Company or Ski Companies to forbear from competing for any U.S. Employee of a Ski Company that (1) is reasonably related to a lawful joint venture agreement, or lawful merger, acquisition or sale agreement; and (2) is reasonably necessary to achieve such agreement's procompetitive benefits.

PROVIDED, FURTHER, that Respondent may enter into, attempt to enter into, or comply with written agreements with any other Ski Company or Ski Companies to forbear from competing for any employee of a Ski Company if such agreement: (1) is in settlement of a bona fide dispute relating to the enforcement of an employee's non-compete or non-solicitation agreement with the Respondent or the other Ski Company; or (2) is included in non-disclosure or confidentiality agreements that Respondent has entered into in connection with conducting due diligence relating to a proposed and bona fide merger, acquisition, or consolidation.

III.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days after the date the Order is issued, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the Respondent has complied, is complying, and will comply with this Order.
- B. One (1) year after the date the Order is issued, annually for the next two (2) years on the anniversary of the date the Order is issued, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which Respondent has complied and is complying with the Order.

IV.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of the Respondent;
- B. Any proposed acquisition, merger or consolidation of the Respondent; or

- C. Any other change in the Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in the Respondent.

V.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Respondent relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to the Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order shall terminate on July 3, 2034.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: July 3, 2014