

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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In the Matter of)	
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POOL CORPORATION)	Docket No. C-
)	
a corporation.)	
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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Pool Corporation (hereinafter “PoolCorp” or Respondent), and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition 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 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 has violated the 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 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 Blvd, Covington, Louisiana 70433-5521.
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:

THE PARTIES

- A. “Respondent” or “PoolCorp” means Pool Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by PoolCorp; and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.

OTHER DEFINITIONS

- C. “Analysis to Aid Public Comment” means the public statement provided by the Commission that describes the allegations in the Complaint in FTC File No. 101-0115 and the terms of this Order.
- D. “Antitrust Compliance Program” means the program to ensure compliance with this Order and with the Antitrust Laws, as required by Paragraph III of this Order.
- E. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et. seq.*, the Sherman Act, 15 U.S.C. § 1 *et. seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*
- F. “Business Segment” means, separately, pool builders; pool retailers; and pool service companies.
- G. “Confidentially” means that any documents or data that are produced by a Manufacturer to a third party are in an aggregated or other form such that the documents or data could not be used to identify the specific pricing or sales to any individual Distributor(s), and that will not be provided to or otherwise shared with Respondent.

- H. “Dealer” means any Person (*e.g.*, pool builders, pool service companies, and pool retail stores) that sells Pool Products directly to owners of residential or commercial pools.
- I. “Delivery Services” means all terms and services associated with a Distributor delivering Pool Products to a specified location on behalf of a Manufacturer, Dealer or other Person, including but not limited to, delivery of Pool Products via truck or common carrier, delivery directly to a consumer’s home or job site, the timely scheduling of the delivery, and the extension of credit to eligible Dealers.
- J. “Distribute” or “Distribution” means the wholesale purchase of Pool Products from a Manufacturer and the re-sale of those Pool Products to Dealers or others.
- K. “Distributor” means a Person that Distributes, or intends to Distribute, Pool Products.
- L. “Document” means all written, recorded, or graphic materials of every kind, prepared by any Person, that are in the possession, custody, or control of Respondent, and includes but is not limited to, letters, reports, memoranda, e-mails, notes, and presentations.
- M. “Executive Staff” means all Directors on the Board of Directors, the President, all Vice-Presidents, the Chief Financial Officer, Senior Directors, General Managers, and Regional Managers of Respondent, or their equivalent positions regardless of job title.
- N. “Favorable” means more economically advantageous Price Terms or Product Support, or more effective Delivery Services, to Dealers or to Manufacturers than Respondent makes Generally Available to other Dealers or to other Manufacturers.
- O. “Generally Available” means the standard or typical terms and conditions, including but not limited to Price Terms, Product Support and Delivery Services, that Respondent offers or provides on like grade, quality and quantity of goods to most, if not all, Manufacturers based on their designation as a Preferred Vendor, or to most, if not all, Dealers in the same Business Segment(s) in the local geographic market.
- P. “In-Person Training” means any educational session, seminar, or other meeting whereby individuals participate on a face-to-face basis or through a live, two-way video-conference feed as part of the Antitrust Compliance Program required in Paragraph III of this Order.
- Q. “Less Favorable” means economically disadvantageous Price Terms or Product Support or less effective Delivery Services, to Dealers or to Manufacturers than Respondent makes Generally Available to other Dealers or to other Manufacturers.
- R. ”Manufacturer” means any Person that manufactures, develops, or produces one or more Pool Products.

- S. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiary, division, group or affiliate thereof.
- T. “Pool Product” means any equipment, product, part or material used for the construction, renovation, maintenance, repair or service of residential or commercial swimming pools (e.g., pumps, filters, heaters, cleaners, covers, drains, fittings, diving boards, steps, rails, pool liners, pool walls, chemicals, and cleaning tools). This definition does not include: pool toys or games; generic building materials (i.e., concrete, salt, sand, rebar, tiles, pavers, and electrical and plumbing products); or any equipment, product, part or material that is used solely for landscaping or irrigation, Olympic-style pools, or pools used in commercial water parks.
- U. “Preferred Vendor” means a Manufacturer that has been designated by Respondent as being eligible for favorable or preferential treatment by Respondent in connection with the sale, promotion, marketing, or purchase of the Manufacturer’s Pool Product(s).
- V. “Price Term” means the wholesale price, resale price, purchase price, price list, credit term, delivery term, service term, or any other term defining, setting forth, or relating to the money, compensation, or service paid by or received by a Manufacturer in connection with the sale of its Pool Products to Respondent.
- W. “Product Support” means any service, assistance or other support related to a Manufacturer’s Pool Product(s), including but not limited to, the processing or administration of Manufacturer warranties, Manufacturer rebates to Dealers, and training on the features of a Manufacturer’s Pool Product.
- X. “Sales Staff” means the officers, directors, employees, and contractors of Respondent whose duties primarily relate to the marketing, promotion, sale, or purchase of Pool Products.

II.

IT IS ORDERED that Respondent, acting directly or indirectly, or through any corporate or other device, in connection with the actual or potential purchase, sale, or Distribution of Pool Products, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, shall cease and desist from:

- A. Conditioning the sale, purchase, or Distribution of Pool Products by Respondent, or a Manufacturer’s Preferred Vendor status, based on a Manufacturer’s sale, or an intention to sell, Pool Products to any Distributor other than Respondent;
- B. Urging, inducing, coercing, threatening, or pressuring, or attempting thereto, a Manufacturer to refuse to sell Pool Products, or limit its sales of Pool Products, to any Distributor other than Respondent; and

C. Discriminating against, penalizing, or otherwise retaliating against a Manufacturer because the Manufacturer sells, or intends to sell, Pool Products to any Distributor other than Respondent. Examples of prohibited retaliation shall include, but not be limited to, the following when the conduct is substantially caused by the fact that the Manufacturer sells, or intends to sell, Pool Products to any Distributor other than Respondent:

1. Terminating, suspending, reducing, or delaying, or threatening or proposing thereto, purchases of a Manufacturer's Pool Products;
2. Terminating, suspending, reducing, or delaying, or threatening or proposing thereto, the sales or promotion of a Manufacturer's Pool Products to Dealers;
3. Increasing Respondent's sales price of a Manufacturer's Pool Product(s) to Dealers, provided there has been no corresponding increase in costs for Distributing such Pool Products;
4. Requiring, soliciting, requesting, or encouraging a Manufacturer to furnish information to Respondent relating to the price or quantity of any sales by the Manufacturer to any specific Distributor other than Respondent, provided that information that is provided Confidentially by a Manufacturer to a third party for compliance or audit purposes shall not be prohibited;
5. Withdrawing, terminating, or modifying, or threatening or proposing thereto, Favorable Price Terms, Product Support, or Preferred Vendor status for a Manufacturer that is otherwise eligible;
6. Providing, or threatening or proposing thereto, Less Favorable Price Terms or Product Support; and
7. Refusing to deal with a Manufacturer, or with Dealers of a Manufacturer's Pool Products, on terms and conditions that are Generally Available from Respondent to other Manufacturers or to other Dealers.

Provided, however, that nothing in this Order requires Respondent to continue purchasing the same volume of Pool Products from any Manufacturer as in previous years if there is a reduced demand for such Pool Products from Respondent's customers at Respondent's then current prices or margins in any local geographic market(s) where entry has occurred.

D. Notwithstanding any provision of this Order, the following will not constitute, in and of itself, a violation of this Order:

1. Respondent's refusal to deal with a Manufacturer, or Respondent's engagement in any of the conduct described above in Paragraph II.C (1-7), when substantially caused by independent and verifiable business reasons unrelated to whether the

Manufacturer sells, or intends to sell, Pool Products to any Distributor(s) other than Respondent; or

2. Respondent's agreement(s) with a Manufacturer to be an exclusive Distributor of private-label Pool Products.
- E. Respondent, within ninety (90) days after the date this Order becomes final, shall waive or modify any condition, requirement, policy, agreement, contract, or understanding with any Manufacturer that is inconsistent with the terms of this Order.

III.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an Antitrust Compliance Program to assure compliance with this Order and with the Antitrust Laws. This program shall include, but not be limited to:

- A. Respondent's designation of an officer or director to supervise personally the design, maintenance, and operation of this program, and to be available on an ongoing basis to respond to any questions by employees of Respondent;
- B. Distribution of a copy of this Order to all Executive Staff and Sales Staff:
 1. Within thirty (30) days of the date this Order becomes final; and,
 2. Annually within thirty (30) days of the anniversary of the date this Order becomes final until the Order terminates;
- C. In-Person Training on the requirements of this Order and the Antitrust Laws for Respondent's Executive Staff to occur annually at either of Respondent's bi-annual management meetings;
- D. Training on the requirements of this Order and the Antitrust Laws for Respondent's Sales Staff to occur annually;
- E. Distribution within thirty (30) days after this Order becomes final of a copy of this Order and the Analysis to Aid Public Comment to all Manufacturers that have sold Pool Products to Respondent within twelve (12) months prior to the date this Order becomes final; and
- F. The retention of documents and records sufficient to record Respondent's compliance with its obligations under this Paragraph III of this Order.

IV.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days after the date this Order becomes final, 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. For the period covered by this report, the report shall include, but not be limited to:
1. The name, title, business address, e-mail address, and business phone number of the officer or director designated by Respondent to design, maintain, and operate Respondent's Antitrust Compliance Program;
 2. The name, title, business address, e-mail address, and business phone number of each Person to whom Respondent distributed a copy of this Order, and the date and manner of distribution to each; and
 3. The name, title, business address, e-mail address, and business phone number of each Person who received In-Person Training on the requirements of this Order and the Antitrust Laws; the date and location at which each Person was trained; the name, title, business address, e-mail address, and business phone number of the Person who conducted the training; and a description in reasonable detail of the In-Person Training.
- B. One (1) year after the date this Order becomes final, and annually for the following nine (9) years on the anniversary of the date this Order becomes final, as well as at any other such 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 it has complied and is complying with the Order. For the periods covered by these reports, these reports shall include, but not be limited to:
1. The name, title, business address, e-mail address, and business phone number of the officer or director designated by Respondent to design, maintain, and operate Respondent's Antitrust Compliance Program;
 2. The name, title, business address, e-mail address, and business phone number of each Person to whom Respondent distributed a copy of this Order, and the date and manner of distribution to each;
 3. The name, title, business address, e-mail address, and business phone number of each Person within Respondent's Executive Staff who received a copy of this Order and In-Person Training on the requirements of this Order and the Antitrust Laws during the reporting period, the date each Person received a copy of this Order and In-Person Training, and a description in reasonable detail of the In-Person Training;

4. The name, business address, e-mail address, and business phone number of each Person to whom Respondent required, solicited, requested or encouraged any Manufacturer to furnish information relating to the price or quantity of any sales by the Manufacturer to any Distributor other than Respondent;
5. The name, title, business address, e-mail address, and business phone number of each Person who has complained or alleged, orally or in writing (including, but not limited to, pleadings filed in any state or federal court), that Respondent has violated this Order or the Antitrust Laws, a description in reasonable detail of the complaint or allegation, and a description of any action or conduct by Respondent taken or proposed in response to the complaint or allegation; and
6. The names, business addresses, business phone numbers, and email addresses of the top ten Manufacturers that sold to Respondent the greatest dollar amounts of Pool Products in the United States in each of the following categories: pumps and filters, heaters, cleaners, covers, drains, fittings, diving boards, steps, rails, pool liners, and pool walls, during the most recently concluded fiscal year and during the prior fiscal year; and for each such Person:
 - i. State the total dollar amount of the Pool Products purchased by Respondent from the Manufacturer;
 - ii. Provide copies of all written agreements between Respondent and such Person in effect at any time during the most recently concluded fiscal year; and
 - iii. Provide copies of any Document that summarizes, memorializes, or otherwise reflects the terms of any oral agreement between Respondent and such Person that directly or indirectly require such Person to refrain from selling, limit its sales of, or delay its sales of, Pool Products to any other Distributor in effect at any time during the most recently concluded fiscal year.

V.

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

- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger or consolidation of Respondent; or
- C. Any other change in Respondent, including but not limited to, assignment, the creation or dissolution of subsidiaries, or if such change may affect compliance obligations arising out of this Order.

VI.

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 Respondent relating to any matters contained in this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date on which it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: