a detailed report of the manner and form of its compliance with the order within sixty days of its becoming final and at such other times as the Commission may request.

The proposed order provides that the order shall terminate 20 years after the date of its issuance by the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in New Balance Athletic Shoe, Inc., File No. 921–0050

There is some evidence that New Balance went beyond permissible communications with its dealers and entered the realm of unlawful resale price maintenance. An order is, therefore, appropriate. I write separately to make clear my understanding that the proposed complaint does not challenge the announcement or implementation by a supplier of a structured termination policy. although I view Paragraph 4(c) of the complaint as ambiguous, the essence of the charge is that New Balance would not impose sanctions on them. New Balance did not implement its structured termination policy, and the proposed complaint and order do not address the lawfulness of that policy.

Dissenting Statement of Commissioner Roscoe B. Starek, III In the Matter of New Balance Athletic Shoe, Inc., File No. 921–0050

As I did in *Reebok International, Ltd.*, Docket No. C–3592, I find reasons to believe that the target of the present investigation—New Balance Athletic Shoe, Inc. (''New Balance'')—has entered into agreements with retailers to restrain retail prices and has thereby violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. However, I dissent from the Commission's decision to accept the consent agreement in this matter because certain provisions of the proposed Commission order are not required to prevent unlawful conduct and may instead unnecessarily restrain procompetitive conduct by New Balance.

As in *Reebok International,* the fencing-in restrictions in the proposed order relating to resale price advertising (specifically, the minimum advertised price provisions)[1] and to New Balance's ''structured termination policy.''[2] are unjustifiably broad and likely to deter efficient conduct. Indeed, the order even goes beyond the provisions I found over inclusive, and therefore unacceptable, in the *Reebok* order: the current order omits language that appeared in Paragraph II of the *Reebok* order that expressly recognized the respondent's *Colgate* rights.[3]

In the interests of fairness and efficiency, injunctive relief ordered to address resale price maintenance should be strictly tailored to the per se unlawful conduct alleged. Because the proposed order in this case mandates excessive restrictions upon the conduct of New Balance, I respectfully dissent.

[FR Doc. 96–16113 Filed 6–24–96; 8:45 am]

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[1] The unnecessary provisions relating to price advertising appear in Paragraphs II(A), II(B), and III and in Exhibit A to the proposed order.

[2] See Paragraph IV(C) of the proposed complaint and Paragraph II(D) of the proposed order.

[3] See *United States* v. *Colgate & Co.,* 250 U.S. 300 (1919).

[File No. 951–0124]

Precision Moulding Company, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Cottonwood, California-based company from requesting, suggesting, urging, or advocating that any competitor raise, fix, or stabilize price levels. This consent agreement settles allegations that Precision, the leading supplier of wood products used to construct frames for artists' canvases, attempted to fix prices and restrain trade in the market for these products, known as stretcher bars.

DATES: Comments must be received on or before August 26, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Michael Antalics, Federal Trade Commission, S–2627, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2821.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission (''Commission''), having initiated an investigation of certain acts and practices of Precision Moulding Co., Inc., a corporation, hereinafter sometimes referred to as ''proposed respondent,'' and it now appearing that Precision Moulding Co., Inc. is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Precision Moulding Co. Inc., by its duly authorized officer, and its attorney, and counsel for the Commission that:

1. Proposed respondent Precision Moulding Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal place of business located at 3308 Cyclone Court, Cottonwood, California 96022, and its mailing address at P.O. Box 406, Cottonwood, California 96022.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be

placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of this order, the following definitions shall apply:

A. ''Respondent'' means Precision Moulding Co., Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups, and affiliates controlled by Precision Moulding Co., Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. ''Stretcher bar products'' means an art supply wood product which when assembled comprises a rectangular frame over which a canvas used for painting is stretched, and includes any size of stretcher bar.

II

It is ordered that respondent, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any stretcher bar products, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Requesting, suggesting, urging, or advocating that any competitor raise, fix or stabilize prices or price levels, or engage in any other pricing action; and

B. Entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, agreement, understanding, plan or program with any competitor to fix, raise, establish, maintain or stabilize prices or price levels.

Provided, that nothing in this order shall prohibit respondent from: (1) agreeing to sell or distribute its stretcher bar products to its competitors, and (2) negotiating or agreeing upon the price which any of its stretcher bar products will be sold to its competitors.

It is further ordered That respondent shall:

A. Within thirty (30) days of the date on which this order becomes final, provide a copy of this order to all of its directors, officers, and management employees;

B. For a period of three (3) years after the date on which this order becomes final, and within ten (10) days after the date on which any person becomes a director, officer, or management employee of respondent, provide a copy of this order to such person; and

C. Require each person to whom a copy of this order is furnished pursuant to subparagraphs III.A. and B. of this order to sign and submit to Precision Moulding Co., Inc. within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject Precision Moulding Co., Inc. to penalties for violation of the order.

IV

It is further ordered That respondent shall:

A. Within sixty (60) days from the date on which this order becomes final, and annually thereafter for three (3) years on the anniversary date of this order, and at such other times as the Commission may be written notice to the respondent require, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order;

B. For a period of three (3) years after the order becomes final, maintain and make available to the staff of the Federal Trade Commission for inspection and copying, upon reasonable notice, all records of communications with competitors of respondent relating to any aspect of pricing for stretcher bar products, and records pertaining to any action taken in connection with any activity covered by parts II, III and IV, of this order; and

C. Notify the Commission at least thirty (30) days prior to any change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.

V

It is further ordered That this order shall terminate on , 2016.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Precision Moulding Company, Inc., a manufacturer of stretcher bars [1] with its principal place of business located at 3308 Cyclone Court, Cottonwood, California.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested

[1] A stretcher bar is an art supply wood product which when assembled comprises a rectangular frame over which a canvas used for painting is stretched.

persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that two representatives of Precision Moulding Co., Inc. visited one of its competitors and invited the competitor to raise its prices for stretcher bars. The complaint alleges that the invitation to collude, if accepted, would constitute an agreement in restraint of trade.

Solicitations to collude have been condemned as unlawful under Section 2 of the Sherman Act (attempted monopolization), under the wire and mail fraud statutes,[2] and under Section 5 of the FTC Act. In this case, the structure of the stretcher market is not conducive to prosecution under Section 2 of the Sherman Act. Market structure does not affect whether an alleged solicitation to collude can be prosecuted under the wire fraud or mail fraud statutes. However, those statutes do not apply in this case, because there is no evidence that Precision Moulding Company, Inc. used either the telephone (or another form of wire communication) or the mail to invite its competitor to collude. Thus, if not prosecuted under Section 5 of the FTC Act, the conduct would go unpunished.

Solicitations to collude have been alleged to be unfair methods of competition that violate Section 5 of the FTC Act, which reaches anticompetitive activities that may not violate the Sherman Act.[3] During the past several years, the Commission has entered into several consent agreements involving invitations to collude that could not be reached under the wire and mail fraud statutes. *See YKK*, C–3345 (1993); *Quality Trailer Products*, C–3403 (1992) (''Quality''); *A.E. Clevite, Inc.*, C–3429 (1993). The Commission has condemned invitations to collude where the evidence is unambiguous, regardless of market power. Section 5 provides an appropriate vehicle for relief where the conduct falls short of criminal liability.

[2] *See* 18 U.S.C.A. §§ 1341, 1343 (mail and wire fraud).

[3] *See Fashion Originators' Guild* v. *FTC*, 312 U.S. 457, 466 (1941); *FTC* v. *Brown Shoe Co.*, 384 U.S. 316, 321 (1966) (Commission could ''ban trade practices which conflict with the basic policies of the Sherman and Clayton Acts even though such practices may not actually violate those laws''); *FTC* v. *Cement Institute*, 333 U.S. 683, 708 (1948) (Commission was intended to ''restrain practices as 'unfair' which, although not yet having grown into Sherman Act dimensions would most likely do so if left unrestrained'').

The alleged conduct engaged in by Precision Moulding Co., Inc. and the terms of the proposed consent order are similar to the conduct alleged and the relief obtained in *Quality Trailer Products*, C–3403 (1992). In *Quality*, according to the Commission complaint, two representatives of a firm visited the headquarters of a competitor and met with an officer of the firm. During the course of the meeting, they invited the competitor to fix prices. As in *Quality*, the visit here was uninvited, and the solicitor informed its competitor in a private conservation that its prices were too low. *See Quality* (Concurring Statement of Commissioner Azcuenaga) (Nov. 5, 1992).

The proposed consent order prohibits Precision Moulding Co., Inc. from requesting, suggesting, urging, or advocating that any other producer or seller of stretcher bars raise, fix or stabilize prices or price levels, or engage in any other pricing action. The proposed consent order also prohibits Precision Moulding Co., Inc. from entering into, adhering to, maintaining, or carrying out any combination, conspiracy, agreement, understanding, plan or program with any other producer or seller of stretcher bars to fix, raise, establish, control, maintain or stabilize prices or price levels. The provisions of the order apply to stretcher bar products of any size.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Robert J. Altman, M.D., University of California at San Francisco (UCSF): Based on an investigation conducted by the institution as well as information obtained by ORI during its oversight review, ORI found that Robert J. Altman, M.D., Research Fellow, Department of Obstetrics, Gynecology, and Reproductive Sciences, UCSF, committed scientific misconduct by fabricating and falsifying data in research supported by two National Institutes of Health grants.

Specifically, Dr. Altman fabricated an experiment related to an ovarian cell line injected intraperitoneally into 12 nude mice. The resulting data were reported in (1) a manuscript in page proof entitled ''Inhibiting vascular endothelial growth factor arrests growth of ovarian cancer in an intraperitoneal model'' (Journal of the National Cancer Institute); (2) a manuscript entitled ''Vascular endothelial growth factor is essential for human ovarian carcinoma growth in vivo,'' submitted to the Journal of Clinical Investigation (JCI manuscript); and (3) a published abstract entitled ''Vascular endothelial growth factor is essential for ovarian cancer growth in vivo'' (Society for Gynecologic Investigation, abstract #079). Further, in the JCI manuscript, Dr. Altman (1) falsified the number of subjects with ovarian tumors from whom he obtained sections of tissue for examination of the expression of vascular endothelial growth factor (VEGF) purportedly by both *in situ* hybridization and immunohistochemistry, and (2) falsely reported that VEGF expression was examined by in situ hybridization and immunohistochemistry in papillary serous- (n=7) and mucinous- (n=5) cystadenocarcinomas, when the number of surgical cases involving papillary serous tumors was four and the number of mucinous tumors was zero. Dr. Altman examined VEGF expression in only three papillary serous tumor specimens, one specimen both in situ and by immunohistochemistry and the remaining two solely by immunohistochemistry.

Dr. Altman has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning June 11, 1996, to exclude himself from:

(1) Any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations), and (2) Serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

The above voluntary exclusion shall not apply to Dr. Altman's future training