

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,)	Filed: March 17, 1993
)	
Plaintiff,)	PROPOSED FINAL JUDGMENT:
)	COMPETITIVE IMPACT
v.)	STATEMENT
)	
CANSTAR SPORTS USA, INC.,)	Civil Action No. 2-93CV77
)	
Defendant.)	Judge Parker

The United States of America, pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (b), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On March 17 , 1993 the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4, alleging that the defendant Canstar Sports USA, Inc. (Canstar USA) and certain of its retail dealers who are unnamed co-conspirators, had, beginning at least as early as February 1990 and continuing at least through November 1990, engaged in a combination and conspiracy, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, to fix the retail price of hockey skates with V2 blades (V2 skates) sold by Canstar USA to retail dealers throughout the United States. The complaint alleges that, in furtherance of this conspiracy, Canstar USA:

(a) established and communicated to retail dealers a minimum retail price for V2 skates purchased from Canstar USA; and

(b) obtained agreements from retail dealers to maintain the minimum retail price as a condition of receiving and continuing to receive V2 skates from Canstar USA.

The complaint also alleges that as a result of the combination and conspiracy, retail prices of hockey skates with V2 blades have been fixed and maintained, and competition in sales of C2 skates has been restrained.

The complaint seeks an adjudication that the alleged combination and conspiracy is illegal, and an injunction to enjoin Canstar USA from continuing or renewing the alleged combination or conspiracy and prohibiting Canstar USA from engaging in any combination or conspiracy or adapting any practice or plan having a similar purpose or effect.

The United States and Canstar USA have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the Judgment, or to punish violations of any of its provisions.

II

DESCRIPTION OF PRACTICES GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

Canstar USA, a Vermont corporation, is a leading seller of hockey skates in the United States. Hockey skates sold by Canstar USA are manufactured in Canada by Canstar USA's parent corporation. Canstar USA sells hockey skates to retail dealers which in turn sell them to consumers.

In or about February 1990, Canstar USA began to announce its "1990 Advertising and Distribution Policy for Select Professional Products" (Policy) to its retail dealers. The Policy covered the sale of Bauer 2000 and Mega 10-90 hockey skates with a V2 blade option (V2 skates) to the general public. The V2 skate represented a new design in that its stainless steel V2 blade was tapered to permit greater speed, agility and maneuverability.

The Policy announced a suggested retail price and a discount price (or minimum retail price) for V2 skates and provided that retailers who advertised V2 skates below the minimum resale price would have their allocation of such skates interrupted without prior notice for 90 days for a first violation, 180 days for a second violation, and an indefinite number of days (but in no event less than 180 days) for a third or more violations.

After its announcement of the Policy, Canstar USA obtained agreements from certain retailers to maintain a minimum retail price on these skates.

An investigation into Canstar USA's Policy was begun by the Antitrust Division of the Department of Justice in mid 1990. In November 1990, Canstar USA advised its retail dealers by letter that it had not implemented any of the restrictions outlined in its Policy and that it was cancelling the Policy, effective December 1, 1990.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The parties have stipulated that the proposed Final Judgment, in the form they negotiated, may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect continuation or renewal of the type of conspiracy alleged in the complaint. Specifically, Section IV enjoins and restrains the defendant from entering into, adhering to, maintaining, furthering, or enforcing any contract, agreement, understanding, plan or program with any retail dealer to fix or maintain the resale prices at which hockey skates sold or distributed by the defendant may be sold or offered for sale in the United States by any retail dealer. Section IV provides that nothing in the section shall be deemed to prohibit the defendant from adopting suggested resale prices of hockey skates, communicating such

prices to retail dealers or terminating, unilaterally and without any agreement or understanding with any other person, any dealer that departs from the suggested resale price.

Section V of the proposed Final Judgment requires the defendant to send notices and copies of the Judgment to each retail dealer who participated in or received information from the defendant regarding its Policy and to each retail dealer who purchased V2 skates from Canstar in either 1991 or 1992. In addition, the defendant is required to send notices and copies of the Judgment to every other retail dealer who purchases V2 skates from Canstar USA within three years of the date of entry of the proposed Final Judgment. The defendant is also required to furnish a copy of the Judgment to each of its officers and directors and each of its non-clerical employees, representatives, or agents with supervisory or direct responsibility for the sale or advertising of hockey skates in the United States.

In addition, the proposed Final Judgment provides methods for determining and securing the defendant's compliance with its terms. Section VI provides that, upon request of the Department of Justice, the defendant shall submit written reports, under oath, with respect to any of the matters contained in the Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview officers, directors, employees and agents of the defendant.

Section VII makes the Judgment effective for ten years from the date of its entry.

Section IX of the proposed Final Judgment states that entry of the Judgment is in the public interest. Under the provisions of the APPA, entry of the proposed Final Judgment is conditional upon a determination by the Court that the proposed Final Judgment is in the public interest.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of Section 1 of the Sherman Act alleged in the Complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Ralph T. Giordano
New York Office
Antitrust Division
United States Department of Justice
Room 3630
26 Federal Plaza
New York, New York 10278

Under Section VIII of the proposed Final Judgment, the Court will retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of the Judgment, or for the punishment of any violation of the Judgment.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternatives to the proposed Final Judgment considered by the Government were (1) a full trial on the merits and on relief and (2) a judgment containing relief ancillary to that provided in the proposed Final Judgment. In the view of the Government, such litigation would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides appropriate relief against the violations alleged in the complaint. The Government also believes that ancillary provisions are not necessary to achieve fully adequate and appropriate relief against any future violations of the nature alleged in the complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were determinative in formulating the proposed Final Judgment. Consequently, the Government has not attached any such materials or documents to the proposed

Final Judgment.

Dated: New York, New York
March 17, 1993

Respectfully submitted,

PHILIP F. CODY

JOHN H. CLARK

JEFFREY J. CORRIGAN

Attorney, Antitrust Division
U.S. Department of Justice
Room 3630
26 Federal Plaza
New York, New York 10278
(212) 264-0394