

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of)	Docket No. C-3683
)	
NEW BALANCE ATHLETIC SHOE, INC.,)	COMPLAINT
a corporation.)	
)	
)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Section 41 et seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that New Balance Athletic Shoe, Inc. (hereinafter "respondent") has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH ONE: Respondent New Balance Athletic Shoe, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business located at 61 North Beacon Street, Boston, Massachusetts 02134.

PARAGRAPH TWO: Respondent is now, and for some time has been, engaged in the offering for sale, sale, and distribution of athletic footwear to retail dealers located throughout the United States, including many of the nation's largest retail chains.

PARAGRAPH THREE: Respondent maintains, and has maintained, a substantial course of business, including the acts or practices alleged in the complaint, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PARAGRAPH FOUR: In connection with the sale and distribution of New Balance branded products, respondent, in combination, agreement and understanding with certain of its dealers, has engaged in a course of conduct to fix, establish and maintain the resale prices at which dealers sell its products. Respondent has

entered into express or tacit agreements with certain dealers, pursuant to which such dealers have agreed to raise retail prices on respondent's products, or to maintain certain prices or price levels set by respondent, or to refrain from discounting respondent's products for a certain period of time. Respondent has engaged in certain actions with the intent and effect of inducing dealers to enter into such price agreements, including, among other things, the following:

- (a) respondent has made threats to terminate or suspend shipments to discounting retailers and has engaged in other coercive acts, such as surveillance of dealers' prices, demands that dealers raise their prices, and threats that respondent would in the future respond to complaints by other dealers about a dealer's prices, with the intent and effect of inducing dealers to enter into express or tacit price agreements;
- (b) respondent, in order to induce certain dealers to enter into price agreements, has told such dealers that it would act to secure similar price agreements with other dealers or to prevent other dealers from discounting more than a certain fixed percentage below suggested retail prices; and
- (c) respondent has secured price agreements from dealers after warning discounting dealers that continued or subsequent selling of its products at prices below those set by respondent would result in discontinuation of sales to the dealer pursuant to respondent's written policy stating that respondent will give a "one-time warning" to a dealer who sells its products below designated prices, and that in the event of continued or subsequent violation of its policy respondent will discontinue selling to that dealer.

PARAGRAPH FIVE: The purpose, effect, tendency, or capacity of the acts and practices described in Paragraph Four is and has been to restrain trade unreasonably and to hinder competition in the sale of athletic footwear in the United States, and to deprive consumers of the benefits of competition in the following ways, among others:

- (a) price competition among retail dealers with respect to the sale of New Balance products has been restricted, and
- (b) prices to consumers of New Balance products have been increased, or have been prevented from falling.

PARAGRAPH SIX: The aforesaid acts and practices constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. These acts and practices are continuing and will continue in the absence of the relief requested.

IN WITNESS THEREOF, the Federal Trade Commission on this tenth day of September, 1996, issues its complaint against said respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: