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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of
Universal Music & Video Distribution Corp., a corporation, and
UMG Recordings, Inc., a corporation.

Docket No. C-3974

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Respondents Universal Music & Video Distribution Corp. and UMG Recordings, Inc., and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondents 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 Respondents 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 Respondents have 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, and having duly considered the comments filed thereafter by interested persons pursuant to § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent Universal Music & Video Distribution Corp. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 70 Universal Plaza, Universal City, California 91608.
2. Respondent UMG Recordings, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 70 Universal City Plaza, Universal City, California 91608.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over both Respondents, 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. "Universal Music & Video Distribution Corp." means Universal Music & Video Distribution Corp. its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Universal Music & Video Distribution Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "UMG Recordings, Inc." means UMG Recordings, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by UMG Recordings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Respondents" means both Universal Music & Video Distribution Corp. and UMG Recordings, Inc.
- D. "Commission" means the Federal Trade Commission.
- E. "Product" means prerecorded music in physical or electronic format that is offered for sale or sold in the United States, including, but not limited to, compact discs ("CDs"), audio DVDs, audio cassettes, albums and digital audio files (i.e., digital files which are delivered to the consumer electronically, to be stored on the consumer's hard drive or other storage device).
- F. "Dealer" means any person, corporation, or entity that in the course of its business offers for sale or sells any Product in or into the United States, including, but not limited to, wholesale distributors, retail establishments, and Internet retail sites.
- G. "Cooperative Advertising or Other Promotional Funds" means any payment, rebate, charge-back or other consideration provided to a Dealer by Universal Music & Video Distribution Corp. or UMG Recordings, Inc. in exchange for any type of advertising, promotion or marketing efforts by that Dealer on behalf of Universal Music & Video Distribution Corp. or UMG Recordings, Inc. This term also includes advertising, promotion, or marketing efforts by Universal Music & Video Distribution Corp. or UMG Recordings, Inc. on behalf of one or more identified Dealers. Examples of cooperative advertising include, but are not limited to, free goods provided to a Dealer by Universal Music & Video Distribution Corp. or UMG Recordings, Inc., and payments for newspaper advertisements, radio and television advertisements, internet banner advertisements, posters and signs within a Dealer's retail stores, pricing or positioning of Products within a Dealer's retail stores, and point-of-purchase merchandising.
- H. "Media Advertising" means any promotional effort by a Dealer outside of the Dealer's physical location or Dealer-controlled internet site, including but not limited to, print, radio, billboards, or television.
- I. "In-Store Promotion" means any promotional effort conducted in or on the physical premises of a Dealer or a Dealer-controlled internet site, including but not

limited to, signs, bin cards, end caps, hit walls, listening posts, internet banner advertisements, and promotional stickers.

J. "Advertised or Promoted" means:

(1) any form of advertising, promotion, or marketing efforts by Universal Music & Video Distribution Corp. or UMG Recordings, Inc. on behalf of one or more of their Dealers;

(2) any form of Media Advertising efforts including, but not limited to, print, radio, billboard, or television; and

(3) any form of In-Store Promotion efforts including, but not limited to, signs, bin cards, end caps, hit walls, listening posts, internet banner advertisements and promotional stickers.

II.

It is further ordered that for a period of seven (7) years, Universal Music & Video Distribution Corp. and UMG Recordings, Inc., directly, indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product in or into the United States of America in or affecting "commerce," as defined by the Federal Trade Commission Act, shall cease and desist from directly or indirectly adopting, maintaining, enforcing or threatening to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price or price level at which any Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product is Advertised or Promoted.

III.

It is further ordered that Universal Music & Video Distribution Corp. and UMG Recordings, Inc., directly, indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product in or into the United States of America in or affecting "commerce," as defined by the Federal Trade Commission Act, shall not directly or indirectly:

- A. A. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price at which any Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product is offered for sale or sold;
- B. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price or price level of the Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product in any In-Store Promotion or Media Advertising where the Dealer does not seek any contribution from Universal Music & Video Distribution Corp. or UMG Recordings, Inc. for the cost of said Media Advertising or In-Store Promotion;

- C. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price or price level of the Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product in any In-Store Promotion or Media Advertising if Universal Music & Video Distribution Corp.'s or UMG Recordings, Inc.'s contribution exceeds 100% of the Dealer's actual costs of said Media Advertising or In-Store Promotion;
- D. Agree with any Dealer to control or maintain the resale price at which the Dealer may offer for sale or sell any Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product;
- E. For a period of five (5) years, announce resale or minimum advertised prices of Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product and unilaterally terminate those who fail to comply because of such failure. Notwithstanding the foregoing, nothing herein shall prohibit Universal Music & Video Distribution Corp. or UMG Recordings, Inc. from announcing suggested list prices for Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product.

IV.

It is further ordered that for a period of seven (7) years:

- A. Universal Music & Video Distribution Corp. and UMG Recordings, Inc. shall amend all Advertising Policy statements applicable to the distribution of Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product to state affirmatively that Universal Music & Video Distribution Corp. and UMG Recordings, Inc. do not maintain or enforce any plan, practice or policy of the type prohibited in Paragraph II of this Order.
- B. In each published full catalogue or published full price list in which Universal Music & Video Distribution Corp. or UMG Recordings, Inc. states suggested list prices or codes indicative of such prices, Universal Music & Video Distribution Corp. and UMG Recordings, Inc. shall state affirmatively that they do not maintain or enforce any plan, practice or policy of the type prohibited in Paragraph II of this Order.

The documents described in this Paragraph IV shall be provided to the Commission upon request.

V.

It is further ordered that within 10 days after this Order becomes final, Universal Music & Video Distribution Corp. and UMG Recordings, Inc. shall mail by first class mail a letter containing the language attached as Exhibit A to:

- A. All officers, employees and sales representatives of Universal Music & Video Distribution Corp. and UMG Recordings, Inc., and sales representatives of all the wholly-owned labels for which Universal Music & Video Distribution Corp. distributes Product in the United States, and
- B. All Dealers to which Universal Music & Video Distribution Corp. or UMG Recordings, Inc. sells directly and that are engaged in the sale of any Universal

Music & Video Distribution Corp. or UMG Recordings, Inc. Product in the United States of America.

VI.

It is further ordered that for a period of seven (7) years, Universal Music & Video Distribution Corp. and UMG Recordings, Inc. shall mail by first class mail a letter containing the language attached as Exhibit A to:

- A. Each new officer, employee and sales representative of Universal Music & Video Distribution Corp. or UMG Recordings, Inc. and each new sales representative of all the wholly-owned labels for which Universal Music & Video Distribution Corp. distributes Product in the United States, and
- B. Each new Dealer to which Universal Music & Video Distribution Corp. or UMG Recordings, Inc. sells directly which is engaged in the sale of any Universal Music & Video Distribution Corp. or UMG Recordings, Inc. Product in the United States of America,

within thirty (30) days of the commencement of such person's employment or affiliation with Universal Music & Video Distribution Corp. or UMG Recordings, Inc.

VII.

It is further ordered that annually for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice to Universal Music & Video Distribution Corp. or UMG Recordings, Inc. require, Universal Music & Video Distribution Corp. and UMG Recordings, Inc. shall file with the Commission a verified written report setting forth in detail the manner and form in which Universal Music & Video Distribution Corp. or UMG Recordings, Inc. has complied and is complying with this Order.

VIII.

It is further ordered that this Order shall terminate on August 30, 2020.

By the Commission.
Donald S. Clark
Secretary
ISSUED: August 30, 2000

EXHIBIT A

[COMPANY LETTERHEAD]

Dear [Recipient]:

Universal Music & Video Distribution Corp. announces several important changes in policy. All of these changes will be reflected in new Advertising Policy statements.

Universal has dropped its Minimum Advertised Price ("MAP") policy effective _____, 2000. Cooperative advertising and other promotional funds will not be conditioned upon the price at which Universal product is advertised or promoted. As many of you know, the Federal Trade Commission has conducted an investigation into Universal's MAP policies. To end the investigation expeditiously and to avoid disruption to the conduct of its business, Universal has voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement relating to MAP and other related matters.

Universal's customers can advertise and promote our products at any price they choose. Universal will not withhold cooperative advertising or other promotional funds on the basis of the price at which product is advertised in the media or promoted in your stores. Universal may announce suggested retail prices, but retailers remain free to sell and advertise Universal product at any price they choose.