

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

In the Matter of

Time Warner Inc.

Docket No.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. §§ 41 et seq., by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Time Warner Inc. has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, 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 Time Warner Inc. (“Time Warner”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 75 Rockefeller Plaza, New York, New York. Time Warner has interests in businesses that produce, manufacture, distribute, and market prerecorded music, among other things. Warner Music Group Inc. (“WMG”) is a wholly owned subsidiary of Time Warner, and is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 75 Rockefeller Plaza, New York, New York. Warner-Elektra-Atlantic Corporation (“WEA”) is a wholly owned subsidiary of Time Warner, and is a corporation organized and existing under the laws of the State of New York with its principal place of business at 111 N. Hollywood Way, Burbank, California.

PARAGRAPH TWO: Five major distributors sell and distribute over 85% of all prerecorded music in the United States. WEA is one of the five “major distributors” of prerecorded music. Sony Music Entertainment Inc., Universal Music and Video Distribution, Inc., EMI Music Distribution, and Bertelsmann Music Group, Inc. are the other “major distributors.”

PARAGRAPH THREE: The major distributors sell prerecorded music to numerous retailers including independent retailers, large national chains, mass merchandisers, regional chains and consumer electronics stores. They also sell prerecorded music to sub-distributors who in turn supply retailers not serviced directly by the prerecorded music distributors.

PARAGRAPH FOUR: There are two relevant markets in this matter. First, the commercial development, distribution and wholesale sale, by any means, of prerecorded music (hereinafter “wholesale market”). Second, the retail sale, by any means of prerecorded music (hereinafter “retail market”). The geographic scope of the wholesale market is the United States of America. The wholesale market is characterized by high entry barriers that seriously limit the likelihood of effective new entry.

PARAGRAPH FIVE: In the early 1990’s, several large consumer electronics chains began selling compact discs and other prerecorded music products. These new entrants competed aggressively on price and offered consumers substantial savings on some prerecorded music products. A retail price war ensued and music retailers lowered their prices.

PARAGRAPH SIX: Some retailers, faced with newly invigorated price competition in the retail market, requested margin protection from WEA. In 1992, WEA was also concerned that declining retail prices could have wholesale price effects. Thereafter, WEA decided to introduce a Minimum Advertised Pricing (“MAP”) policy. In 1992 and 1993, the other major distributors adopted MAP policies. These policies set forth minimum advertised prices for most prerecorded music products. As discussed below, these MAP policies were modified between 1995 and 1996. In 1995 and 1996, retail prices increased. Since 1997, wholesale prices have also increased.

PARAGRAPH SEVEN: The MAP policy changes which occurred in 1995 and 1996 significantly tightened the programs. By January 1, 1997, all the major distributors had implemented similar policies. The new MAP policies provided that any retailer who advertised the distributors’ product below the established MAP would be subject to a suspension of all cooperative advertising and promotional funds for either 60 or 90 days. BMG’s policy varied slightly and provided that any retailer who violated the policy three times within a twelve month period would be subject to a suspension of all cooperative advertising and promotional funds for up to twelve months. For each company, the suspension would be imposed whether or not the retailer paid for the offending advertisement or promotion. In addition, the suspension would be imposed for in-store “advertising and promotion” that included virtually every method of communicating the price of the product to the consumer other than the pre-printed price sticker on the product.

PARAGRAPH EIGHT: With the exception of the BMG policy described herein, a single violation of the new MAP policies resulted in a total loss of all cooperative advertising and promotional funds for the specified suspension period. The severity of the new MAP penalties ensured that even the most aggressive retail competitors would stop advertising prices below MAP. By defining advertising broadly enough to include all in-store displays and signs, the MAP policies effectively precluded many retailers from communicating prices below MAP to their customers.

PARAGRAPH NINE: Shortly after adopting the new MAP policies, the distributors began aggressively enforcing the policies. Several high profile enforcement actions that resulted in long periods of suspension were widely publicized by the trade press.

PARAGRAPH TEN: WEA's stricter MAP policy, in effect since December of 1995 and continuing to date, was implemented to eliminate aggressive retail pricing and to stabilize overall prices in the retail marketplace. This policy was successful.

PARAGRAPH ELEVEN: The purpose, effects, tendency or capacity of the acts and practices described in PARAGRAPHS SIX, SEVEN, EIGHT, NINE, and TEN relating to the implementation and enforcement of MAP policies are and have been to restrain trade unreasonably and hinder competition in the retail and wholesale markets for prerecorded music in the United States, and constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

CONCLUSION

PARAGRAPH TWELVE: The aforesaid acts and practices of the respondent were and are to the prejudice and injury of the public. These acts and practices constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. These acts and practices may recur in the absence of the relief requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ____ day of _____, 2000, issues its complaint against said respondent.

By the Commission.

Donald S. Clark
Secretary

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