

Syllabus

IN THE MATTER OF
THE AMERICAN ASSOCIATION OF ORTHODONTISTS
ET AL.

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 6016. Complaint, July 22, 1952—Decision, Nov. 6, 1952

The words "orthodontic" and "orthodontia" refer to the regulation of the teeth through the use in the oral cavity of certain supplies, devices and appliances.

Much of the orthodontic work in the United States is done by dentists who do not specialize in orthodontia, and those who do not have their own laboratories, of whom there are many, must obtain such equipment from third parties who manufacture it or from orthodontists who have laboratories.

The practice of orthodontia includes—in addition to diagnosis, prescription, treatment and application of services to the patient—the manufacture, construction and sale of devices, equipment and material, in the form of braces, etc., which are constructed by orthodontists in their own laboratories, or are purchased by them from orthodontic laboratories or from one another across state lines, and orthodontists participate in the stream of commerce comprised of the purchase, sale, sending and receiving of raw materials going into such equipment, the manufacture of such raw materials into such equipment, and the sale thereof with services to patients or their dentists or to other orthodontists across state lines.

Where an association of orthodontists; a dentist who specialized in the practice of orthodontia and was highly influential in bringing about the things herein involved; and various members engaged in the treatment of patients and sale to them, to their dentists, or other orthodontists, of devices, equipment and material which they made in their own laboratories or purchased, in competition with one another and with others, including various laboratories which advertised their facilities in magazines and trade periodicals—

Acted together cooperatively to restrain and eliminate competition in the manufacture, sale and distribution of dental and orthodontic equipment, supplies, and devices, and attempted to monopolize and control trade therein; and pursuant to said combination—

- (1) Acted to prevent those engaged in the manufacture and sale of orthodontic supplies, devices and appliances from having access to advertising media serving the dental profession;
- (2) Acted to prevent dentists from having the benefit of advertising by those engaged in the manufacture and sale of such supplies;
- (3) Acted to coerce and compel, by threats of boycott, acts of intimidation and other means, publishers and editors of trade publications in the dental field, or others, from soliciting or publishing advertisements from those engaged in the manufacture and sale of orthodontic supplies, devices and appliances; and

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- (4) Used their association as an instrumentality or medium for carrying on and making effective their aforesaid combination:

Held, That such acts, practices and methods had a dangerous tendency unduly to hinder competition and to create in respondents a monopoly in the manufacture and sale of such equipment, supplies and devices.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Lynn C. Paulson and *Mr. Joseph J. Gercke* for the Commission.
Dargusch, Caren, Greek & King, of Columbus, Ohio, for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that The American Association of Orthodontists, its officers, directors and members, and T. Wallace Sorrels, all hereby made respondents herein and hereinafter referred to as respondents, have been and are using unfair methods of competition and unfair acts and practices in interstate commerce, in violation of the provisions of an Act of Congress approved September 26, 1914, as amended, and titled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect as follows.

PARAGRAPH 1. Respondent The American Association of Orthodontists, hereinafter referred to as respondent Association, a membership corporation, was organized in February, 1917, under and by virtue of the laws of the State of Pennsylvania as The American Society of Orthodontists. To the best of the Commission's information the principal office of respondent Association is located with one or another of the officers of the Association, usually the Secretary-Treasurer, and is at present located at 919 Oakland Avenue, Ann Arbor, Michigan. Respondent Association, according to its Constitution and By-Laws, exists to advance the science and art of orthodontia.

Respondent T. Wallace Sorrels is a dentist specializing in the practice of orthodontia. His professional offices and place of business are located at 1003 Medical Arts Building, Oklahoma City, Oklahoma. Through his personal efforts he has been highly influential in bringing about the things hereinabove and hereafter set forth.

There are approximately 1,195 members of respondent Association. Said members constitute a class so numerous as to make it impractical to name them all herein. The following respondents, who were officers or directors, as well as members, as of April, 1951, are fairly representative of the whole membership:

Joseph E. Johnson, President, 752 Starks Building, Louisville, Kentucky.

Barnard G. DeVries, President-Elect, Medical Arts Building, Minneapolis, Minnesota.

Homer B. Robinson, Vice President, Rorabaugh-Wiley Building, Hutchinson, Kansas.

George R. Moore, Secretary-Treasurer, 919 Oakland Avenue, Ann Arbor, Michigan.

Glenn F. Young, 745 Fifth Avenue, New York, New York.

Joseph D. Eby, 121 East 60th Street, New York, New York.

Frederick R. Aldrich, 327 East State Street, Columbus, Ohio.

Allan G. Brodie, 30 North Michigan Avenue, Chicago, Illinois.

E. C. Lunsford, 2642 Biscayne Boulevard, Miami, Florida.

M. Duke Edwards, 812 First National Bank Bldg., Montgomery, Alabama.

Philip E. Adams, 106 Marlborough Street, Boston, Massachusetts.

Leo M. Shanley, 7800 Maryland Avenue, St. Louis, Missouri.

J. A. Salzmänn, 654 Madison Avenue, New York, New York.

George A. Dinham, Medical Arts Building, Duluth, Minnesota.

Richard E. Barnes, 638 Keith Building, Cleveland, Ohio.

Clifford G. Glaser, 675 Delaware Avenue, Buffalo, New York.

Ralph Waldron, 549 High Street, Newark, New Jersey.

Frederick T. West, 870 Market Street, San Francisco, California.

William R. Humphrey, 1232 Republic Building, Denver, Colorado.

A. C. Broussard, 1116 Maison Blanche Building, New Orleans, Louisiana.

Edgar D. Baker, 334 Professional Building, Raleigh, North Carolina.

William R. Alstadt, 610 Boyle Building, Little Rock, Arkansas.

Frederick W. Black, 835 Doctors Building, Cincinnati, Ohio.

Brooks Bell, Medical Arts Building, Dallas, Texas.

PAR. 2. There are in the United States 80,000 or more licensed dentists.

Orthodontia is a profession relating to dentistry. It is defined in Webster's Dictionary as that division of dentistry dealing with irregularity of the teeth. Certain equipment is required in connection with the practice of orthodontia. Many orthodontists have their own laboratories. Many dentists do not. Much of the orthodontic work performed each year in the United States is done by dentists who do not specialize in orthodontia. Dentists who do not have their own laboratories for the production of orthodontic equipment must obtain that equipment from third parties who are engaged in the manufacture and production of orthodontic material and equipment

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or from orthodontists who have laboratories. A number of laboratories in various parts of the United States engage in the business of supplying the needs of dentists and orthodontists with orthodontic material and equipment. It has been the practice of these laboratories in the past to make their facilities known to the dental trade by means of advertisements in magazines and periodicals serving the dental trade.

PAR. 3. Most of the respondents are engaged in interstate commerce. The practice of orthodontia includes in addition to diagnosis, prescription, treatment and application of services to the patient; the manufacture, construction and sale of devices, equipment and material, in the form of braces, etc. Such devices and materials as are used in the practice of orthodontia are constructed from various other materials by respondent orthodontists in their own laboratories or are purchased by them for resale from orthodontic laboratories, or from one another across State lines. Orthodontists participate in the stream of commerce that is comprised of the purchase, sale, sending and receiving of raw materials going into such equipment, the manufacture of these raw materials into such equipment, and the sale of that equipment together with services to patients, or to the patients' dentists or to other orthodontists across State lines. Materials and equipment used in the manufacture of orthodontic devices and equipment are purchased by respondent orthodontists in States other than the State of location of the purchaser, and sales are made of services, devices and equipment to parties in said purchaser's State and other States in the regular course of the practice of the profession. Many orthodontists manufacture and sell equipment in accordance with prescriptions to other orthodontists in States other than the State of the manufacturer orthodontists.

PAR. 4. Respondent orthodontists are in substantial competition with one another and with other manufacturers and processors of dental and orthodontic material, equipment, supplies and devices in the sale and distribution of the aforesaid products, except insofar as the competition has been hindered, lessened, restricted and eliminated by the unfair methods and unfair acts and practices hereinafter set forth. The manufacturers and processors with whom respondent orthodontists are in competition, as aforesaid, are engaged in the sale and distribution of orthodontic equipment, supplies and devices in interstate commerce.

PAR. 5. For more than ten years last past and continuing to the present time, respondents have acted together cooperatively, in combination, to limit, restrain, suppress and eliminate competition in the manufacture, sale and distribution of dental and orthodontic

equipment, supplies and devices, and have attempted to monopolize and control trade in commerce in said equipment, supplies and devices, and as a part of, pursuant to and in furtherance of the aforesaid cooperative action and combination respondents have engaged in, done and performed the following acts, practices, methods and things:

1. Acted to prevent competitors from having free access to media of advertising serving the dental profession.

2. Acted to prevent sellers of supplies and equipment used by dentists and dental laboratories, from having access to media of advertising serving the dental profession.

3. Acted to coerce and compel, by various means, publishers and editors of trade publications in the dental and orthodontic field from soliciting or publishing advertisements from non-members of said respondent Association.

4. Used respondent Association as an instrumentality or medium for carrying on and making effective their aforesaid combination.

PAR. 6. The acts, practices and methods of respondents herein alleged have a dangerous tendency unduly to hinder competition and create in respondents a monopoly in the manufacture and sale of orthodontic equipment, supplies and devices.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A., Sec. 45), the Federal Trade Commission on July 22, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition in violation of the provisions of said Federal Trade Commission Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided for in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answers to said complaint heretofore filed, and which upon acceptance by the

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on November 6, 1952 and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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Commission of this settlement, are to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion and order to cease and desist.

It is understood that the respondents in consenting to the Commission's entry of said findings as to the facts, conclusion and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe are unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein, in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The American Association of Orthodontists, a membership corporation, was organized in February, 1917, under and by virtue of the laws of the State of Pennsylvania as The American Society of Orthodontists. To the best of the Commission's information the principal office of respondent Association is located with one or another of the officers of the Association, usually the secretary-treasurer, and is at present located at the Medical Center, White Plains, New York, care of Franklin A. Squires. Respondent Association, according to its Constitution and By-Laws, exists to advance the science and art of orthodontia.

Respondent T. Wallace Sorrels is a dentist specializing in the practice of orthodontia. His professional offices and place of business are located at 1003 Medical Arts Building, Oklahoma City, Oklahoma. Through his personal efforts he has been highly influential in bringing about the things hereinabove and hereafter set forth.

There are approximately 1195 members of respondent Association. Said members constitute a class so numerous as to make it impractical to name them all herein. The following respondents, who were officers or directors, as well as members, as of April, 1951, were named as being fairly representative of the whole membership:

Joseph E. Johnson, President, 752 Starks Building, Louisville, Kentucky.

Barnard G. deFries, President-Elect, Medical Arts Building, Minneapolis, Minnesota.

Homer B. Robinson, Vice President, Rorabaugh-Wiley Building, Hutchinson, Kansas.

George R. Moore, Secretary-Treasurer, 919 Oakland Avenue, Ann Arbor, Michigan.

Glenn F. Young, 745 Fifth Avenue, New York, New York.

Joseph D. Eby, 121 East 60th Street, New York, New York.

Frederick R. Aldrich, 327 East State Street, Columbus, Ohio.

Allen G. Brodie, 30 North Michigan Avenue, Chicago, Illinois.

E. C. Lunsford, 2642 Biscayne Boulevard, Miami, Florida.

M. Duke Edwards, 812 First National Bank Bldg., Montgomery, Alabama.

Philip E. Adams, 106 Marlborough Street, Boston, Massachusetts.

Leo M. Shanley, 7800 Maryland Avenue, St. Louis, Missouri.

J. A. Salzmänn, 654 Madison Avenue, New York, New York.

George A. Dinham, Medical Arts Building, Duluth, Minnesota.

Richard E. Barnes, 638 Keith Building, Cleveland, Ohio.

Clifford G. Glaser, 675 Delaware Avenue, Buffalo, New York.

Ralph Waldron, 549 High Street, Newark, New Jersey.

Frederick T. West, 870 Market Street, San Francisco, California.

William R. Humphrey, 1232 Republic Building, Denver, Colorado.

A. C. Broussard, 1116 Maison Blanche Building, New Orleans, Louisiana.

Edgar D. Baker, 334 Professional Building, Raleigh, North Carolina.

William R. Alstadt, 610 Boyle Building, Little Rock, Arkansas.

Frederick W. Black, 835 Doctors Building, Cincinnati, Ohio.

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PAR. 2. There are in the United States 80,000 or more licensed dentists.

Orthodontia is a profession relating to dentistry. It is generally recognized that the words "orthodontic" and "orthodontia" refer to the regulation of the teeth through the use in the oral cavity of certain supplies, devices and appliances. Many orthodontists have their own laboratories. Many dentists do not. Much of the orthodontic work performed each year in the United States is done by dentists who do not specialize in orthodontia. Dentists who do not have their own laboratories for the production of orthodontic equipment must obtain that equipment from third parties who are engaged in the manufacture and production of orthodontic material and equipment, or from

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orthodontists who do have laboratories. A number of laboratories in various parts of the United States engage in the business of supplying the needs of dentists and orthodontists with orthodontic material and equipment. It has been the practice of these laboratories in the past to make their facilities known to the dental trade by means of advertisements in magazines and periodicals serving the dental trade.

PAR. 3. Most of the respondents are engaged in interstate commerce. The practice of orthodontia includes in addition to diagnosis, prescription, treatment and application of services to the patient, the manufacture, construction and sale of devices, equipment and material, in the form of braces, etc. Such devices and materials as are used in the practice of orthodontia are constructed from various other materials by respondent orthodontists in their own laboratories or are purchased by them for resale from orthodontic laboratories, or from one another across state lines. Orthodontists participate in the stream of commerce that is comprised of the purchase, sale, sending and receiving of raw materials going into such equipment, the manufacture of these raw materials into such equipment, and the sale of that equipment together with services to patients, or to the patients' dentists, or to other orthodontists across state lines. Materials and equipment used in the manufacture of orthodontic devices and equipment are purchased by respondent orthodontists in states other than the state of location of the purchaser, and sales are made of services, devices and equipment to parties in said purchaser's state and other states in the regular course of the practice of the profession. Many orthodontists manufacture and sell equipment in accordance with prescriptions to other orthodontists in states other than the state of the manufacturer orthodontists.

PAR. 4. Respondent orthodontists are in substantial competition with one another and with other manufacturers and processors of dental and orthodontic material, equipment, supplies and devices in the sale and distribution of the aforesaid products, except insofar as the competition has been hindered, lessened, restricted and eliminated by the unfair methods and unfair acts and practices hereinafter set forth. The manufacturers and processors with whom respondent orthodontists are in competition, as aforesaid, are engaged in the sale and distribution of orthodontic equipment, supplies and devices in interstate commerce.

PAR. 5. For more than ten years last past and continuing to the present time, respondents have acted together cooperatively, in combination, to limit, restrain, suppress and eliminate competition in the manufacture, sale and distribution of dental and orthodontic equipment, supplies and devices, and have attempted to monopolize and

control trade in commerce in said equipment, supplies and devices, and as a part of, pursuant to and in furtherance of the aforesaid co-operative action and combination respondents have engaged in, done and performed the following acts, practices, methods and things:

1. Acted to prevent those engaged in the manufacture and sale of supplies, devices and appliances used by dentists in the practice of orthodontia from having access to media of advertising serving the dental profession.

2. Acted to prevent dentists from having the benefit of advertising by those engaged in the manufacture and sale of supplies, devices and appliances needed by dentists in the practice of orthodontia.

3. Acted to coerce and compel by threats of boycott, acts of intimidation and other means, publishers and editors of trade publications in the dental field, or others, from soliciting or publishing advertisements from those engaged in the manufacture and sale of supplies, devices and appliances used by dentists in the practice of orthodontia.

4. Used respondent Association as an instrumentality or medium for carrying on and making effective their aforesaid combination.

CONCLUSION

PAR. 6. The acts, practices and methods of respondents herein alleged have a dangerous tendency unduly to hinder competition and create in respondents a monopoly in the manufacture and sale of orthodontic equipment, supplies and devices.

CEASE AND DESIST ORDER

It is ordered, That respondents, The American Association of Orthodontists, a corporation, its officers, directors and members, and T. Wallace Sorrels, directly or indirectly, in or in connection with the offering for sale, sale or distribution in commerce, between and among the several states of the United States, and in the District of Columbia, of supplies, devices and appliances used by dentists in the practice of orthodontia,* do forthwith cease and desist from entering into, co-operating in, carrying out or continuing any combination, agreement, understanding or planned common course of action between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

*It is generally recognized that the words "orthodontic" and "orthodontia" refer to the regulation of the teeth through the use in the oral cavity of certain supplies, devices and appliances.

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(a) Attempting to prevent or preventing those engaged in the manufacture and sale of supplies, devices and appliances, used by dentists and orthodontists in the practice of orthodontia* from having access to media of advertising serving the dental profession.

(b) Attempting to prevent or preventing dentists from having the benefit of advertising by those engaged in the manufacture and sale of supplies, devices and appliances needed by dentists in the practice of orthodontia.*

(c) Attempting to coerce or coercing and compelling by threats of boycott, acts of intimidation and other means, publishers and editors of trade publications in the dental field, or others, from soliciting or publishing advertisements from those engaged in the manufacture and sale of supplies, devices and appliances used by dentists in the practice of orthodontia.*

(d) Using The American Association of Orthodontists or any successor association, or group, as an instrumentality or medium for carrying on and making effective any of the aforesaid acts and practices.

It is further ordered, That each of the respondent members of respondent The American Association of Orthodontists and T. Wallace Sorrels do forthwith cease and desist from knowingly contributing to the accomplishment of any of the acts, practices, or things prohibited in paragraphs (a) to (d), inclusive, of this order.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Date: -----.

THE AMERICAN ASSOCIATION OF ORTHODONTISTS,
ITS OFFICERS, DIRECTORS AND ITS MEMBERS.

By its attorney:

By (Signed) DARGUSCH, CAREN, GREEK AND KING,
John G. McCune.
JOHN G. McCUNE,
T. WALLACE SORRELS.

By his attorney:

DARGUSCH, CAREN, GREEK AND KING,
By (Signed) JOHN G. McCUNE.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 6th day of November 1952.

*See page 495.

LEONARDS AND LEE SURPLUS SALES CO. ET AL.

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