

IN THE MATTER OF

THE AMERICAN MEDICAL ASSOCIATION, ET AL.

Docket 9064. Interlocutory Order, Apr. 26, 1977

Denial of respondents' motions that Commission reconsider issuance of complaint and for oral argument.

ORDER DENYING MOTIONS TO RECONSIDER ISSUANCE OF
COMPLAINT

The complaint in this matter alleges that respondents have entered into agreements that, *inter alia*, prevent their members (medical doctors) from soliciting business, by advertising, or otherwise from engaging in price competition. The complaint further asserts that respondents have caused the agreements to be published and circulated in the *Principles of Medical Ethics* and have enforced these alleged restrictions.

The administrative law judge has now certified respondents' motions that the Commission reconsider issuance of the complaint. Respondents assert that even before the filing of the complaint, the conduct challenged in this proceeding had been terminated. Respondents note, for example, that the Judicial Council of the American Medical Association has reviewed the Association's position regarding advertising and solicitation by physicians and issued a "Statement on Advertising and Solicitation" which permits the making of information about physicians available to the public. The Statement indicates that information may be provided "through the accepted local media of advertising or communication, which are open to all physicians on like conditions." The Statement proscribes "solicitation," defined as "the attempt to obtain patients by persuasion or influence, using statements or claims that (1) contain testimonials, (2) are intended or likely to create inflated or unjustified expectations of favorable results, (3) are self-laudatory and imply that the physician has skills superior to other physicians engaged in his field or specialty of practice, or (4) contain incorrect or incomplete facts, or representations or implications that are likely to cause the average person to misunderstand or be deceived."

Respondents also argue that in view of the pendency on the Supreme Court's docket of *Bates v. State Bar of Arizona*, Dkt. No. 76-316 (argued Jan. 18, 1977), a case raising the question of the legality of state restrictions on advertising by attorneys, the Commission should "reexamine whether this is the time to intervene in efforts of

physicians to regulate themselves in a manner consistent with the public interest."

It is well-established that the mere fact that allegedly offending practices have been discontinued does not provide, by itself, the requisite assurance that an order is unnecessary and not in the public interest. *See, e.g., Zale Corp.*, 78 F.T.C. 1195, 1240 (1971). Moreover, it is not clear, without a full record, that the allegedly illegal practices challenged in the complaint have been completely terminated, for instance, whether, assuming respondents now authorize physicians to advertise, the remaining restrictions on the methods by which physicians can solicit patients are unfair methods of competition.

The Commission also does not believe that it would be in the public interest to stay these proceedings pending a determination of the *Bates* litigation. Accordingly,

It is ordered, That the aforesaid motions be, and they hereby are, denied.¹

¹ The Commission denies respondents' motions for oral argument. The Commission also rejects as untimely the "Supplementary Memorandum in Support of Motion of Respondent American Medical Association for Reconsideration of Issuance of the Complaint" as well as complaint counsel's response.

Complaint

89 F.T.C.

IN THE MATTER OF
THE DINERS' CLUB, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2878. Complaint, Apr. 27, 1977 --- Decision, Apr. 27, 1977

Consent order requiring, among other things, a New York City credit card company to cease failing to furnish customers with periodic statements setting forth credit balances; failing to notify customers of their right to request and receive cash refunds of such credit balances; failing to provide prescribed disclosure statements with credit balance notifications; and failing to make proper refunds as detailed in the order.

Appearances

For the Commission: *Roger J. Fitzpatrick, Hong S. Dea, Howard Daniels and John F. Lefevre.*

For the respondent: *Stuart M. Rosen, Weil, Gotshal & Manges, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Diners' Club, Inc., a corporation, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Diners' Club, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 10 Columbus Circle, New York, New York.

PAR. 2. Respondent The Diners' Club, Inc. extends credit to consumers and others through the issuance of a credit card, hereinafter sometimes referred to as a Diners' Club card.

PAR. 3. Respondent The Diners' Club, Inc. maintains business offices located in several states. Respondent issues Diners' Club cards to persons throughout the United States and contracts with merchants to honor purchases made on Diners' Club cards in retail businesses throughout the United States. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.