

IN THE MATTER OF
NEW JERSEY PEST CONTROL ASSOCIATION, INC.

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

Docket C-2950. Complaint, Jan. 8, 1979 — Decision, Jan. 8, 1979

This consent order, among other things, requires a West Orange, N.J. trade association, representing a number of dealers and suppliers of pest control goods and services, to cease denying membership to bona fide dealers and suppliers; establishing or maintaining prices or conditions of sale for goods and services; interfering with advertising media; or attempting by any other means to fix prices and eliminate competition in relevant markets. The association is further required to eliminate timely from its charter and by-laws any provision which is contrary to the terms of the order, and to maintain specified records for a three-year period.

Appearances

For the Commission: *Herbert S. Forsmith.*

For the respondent: *John F. Doly*, West Orange, N.J., *Edward J. Hobbie*, *Chamberlin & Hobbie*, Hillside, N.J. and *Arthur L. Herold*, *Webster & Chamberlain*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (15 U.S.C. 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the party listed in the caption hereof, New Jersey Pest Control Association, Inc., a corporation, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent New Jersey Pest Control Association, Inc. is a non-profit incorporated trade association whose members are engaged in business for profit. It was organized in 1943, and exists and does business under and by virtue of the laws of the State of New Jersey. Respondent maintains its office and principal place of business at 475 Prospect Ave., West Orange, New Jersey.

The respondent is composed of approximately one hundred pest control applicators located within and without the State of New Jersey serving the New Jersey residential and commercial markets

for pest control goods and services designed to eliminate insects and rodents, and approximately twenty suppliers to the trade located in New Jersey and various other States of the United States.

Its members, comprising at least one fourth of pest control companies engaged in the business of pest control application in New Jersey, realized at least 50 percent of the state's approximately fifteen million dollars of trade in the pest control industry during the year 1975.

PAR. 2. The affairs of respondent association are managed by a Board of Directors and an Executive Board of Officers which are elected by a senior class of respondent's membership designated as the Active Membership. Admission to the Active Membership is restricted to pest control operators who have served a prolonged probationary period in respondent association, and who have satisfied the Active Membership that they are responsible full-service pest control operators.

Only those belonging to such Active Membership are permitted to vote upon respondent's business, to serve as respondent's officers or committee chairmen, or to advertise and disclose to those outside of the association the fact of their membership in respondent.

PAR. 3. Respondent is a well-known and well-advertised association as a result of its active and varied programs designed to provide technical training and information to its membership, and to promote such membership's reputation and financial interests.

By virtue of a number of circumstances, including action on the part of respondent association to that end, there exists a preference on the part of purchasers and prospective purchasers for members of the respondent as pest control dealers and applicators, and on the part of private and governmental persons and organizations frequently called upon to recommend pest control dealers and applicators, or to establish or approve particular pest control methods or procedures.

It therefore confers special benefits and is of substantial competitive importance to a dealer in pest control goods or services to belong to respondent association, and to be able to advertise and disclose such membership.

PAR. 4. Most of the members of the respondent purchase equipment and supplies for resale or use directly from manufacturers and distributors thereof located in various other states, and said manufacturers and distributors ship said products, when so purchased, from their respective places of business to said members in states other than the state of manufacture or storage. Further, many of the members of the respondent maintain their principal places of

business in states other than the State of New Jersey, and many of such members are engaged in the business of selling and supplying pest control materials to customers located in states other than the state in which such members are located, or without the State of New Jersey. As a result of the aforesaid transactions, and by virtue of respondent association's representation of its members, and promotion of their business, respondent association and its membership have been and are now engaged in a pattern, course of dealing, and substantial volume of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, in pest control products and services between the said members of the respondent trade association, and the purchasers of pest control goods and services located throughout several States of the United States.

PAR. 5. The pest control dealers and applicators holding membership in the respondent are in substantial competition with one another and with other members of the industry in the sale of pest control goods and services, in or affecting commerce, except insofar as that competition has been hindered, lessened, restricted and eliminated by the unfair methods of competition and unfair practices hereinafter set forth.

PAR. 6. For many years last past, and continuing in the present time, respondent has planned, adopted, placed in effect, and carried out, policies having the purpose, tendency and effect of hindering, frustrating, restraining, suppressing and eliminating competition in the offering for sale and sale of pest control goods and services in or affecting commerce.

Pursuant to and in furtherance of the above policies respondent has, alone and by means of agreements, understandings, and combinations and conspiracies with certain of its members, and with others, engaged in the following acts and practices:

(a) Denied, and restricted membership in respondent association by means of certain arbitrary rules and standards, and thereby refused substantial competitive advantages of such membership to bona fide dealers in pest control goods and services with which members of respondent association were not willing to compete upon an equal basis. Included among the reasons for such denials and restrictions are the following:

(1) a dealer cuts prices, or offers, advertises or charges low prices or underbids its competition;

(2) a bona fide dealer is in the pest control business on a part-time basis;

(3) a bona fide dealer is in the pest control business on less than a year-round basis;

(4) a bona fide dealer is engaged in another business or occupation as well as being in the pest control business;

(5) a bona fide dealer does not perform services designed to control both insects and rodents;

(6) a bona fide dealer has not been engaged in the pest control business, or has not served as a limited member of respondent for a requisite length of time;

(7) a bona fide dealer offers terms or conditions of sale, such as warranties, not approved by respondent association.

(b) Conspired and combined to maintain price floors, minimum charges and higher prices for pest control goods and services; to prevent through intimidation and other means, price cutting and discounting in connection with the offering and sale of pest control goods or services; and to cause the reporting to respondent association of dealers in pest control goods or services believed to be offering discounts or lower prices than those approved by respondent association or certain of its members.

(c) Denied and attempted to deny full access to advertising media to non-members and certain members of the respondent by prevailing upon such media to refuse, condition, qualify or change advertising placed or sought to be placed for reasons, among others, that such advertising contains prices, terms or conditions of sale not approved by respondent association or its members.

PAR. 7. The acts, practices and methods of competition engaged in, followed, pursued or adopted, by respondent, as hereinabove alleged, are unfair, and to the prejudice of the public because they have the purpose or tend to have the effect of hindering, lessening and restraining competition in the sale of pest control goods and services between and among pest control dealers; restrain competition between and among non-members and members of respondent trade association; raise barriers to entry of new competition in the sale of pest control goods and services; and limit and restrict channels of distribution of pest control goods and services.

Said acts, practices and methods of competition constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent New Jersey Pest Control Association, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 475 Prospect Ave., West Orange, New Jersey.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent New Jersey Pest Control Association, Inc., a non-profit corporation, and its officers, directors, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporation, subsidiary, division, committee or other device, in connection with respondent association's business, or with the offering for sale, sale, distribution or promotion of pest control goods or services, in or affecting commerce, as commerce is

defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from entering into, cooperating in, or carrying out any agreement, understanding or combination, express or implied, or unilaterally to do, adopt or perform any of the following acts, policies or practices:

1. Failing to grant equal, uniform and nondiscriminatory membership upon written application therefor, to any dealer in pest control goods or services actually doing business within the territorial limits served by respondent association; except that this order paragraph shall not prohibit the respondent from denying membership to an applicant who has not complied with state or federal laws pertaining to qualification for the practice of pest control within the territorial limits served by respondent association.

2. Fixing, maintaining, establishing, setting, or attempting to fix, maintain, establish or set, prices, terms, or conditions of sale or price floors or minimum charges to consumers for pest control goods or services.

3. Eliminating or attempting to eliminate the granting or offering of discounts, or the advertisement of prices or discounts.

4. Requesting, suggesting, encouraging, requiring or demanding the reporting to respondent of dealers believed to be engaged in price cutting, or believed to be engaged in the granting, offering or advertisement of price cuts or discounts.

5. Requesting, suggesting, requiring, demanding or prevailing upon any advertising medium to refuse, condition, qualify or change advertising placed or sought to be placed by any dealer in pest control goods or services, because such dealer is not a member of respondent, or because such advertising contains representations relating to prices, terms or conditions of sale not approved by respondent or any member of the respondent; except that this paragraph shall not be construed in such a way as to prohibit the respondent from informing advertising media that a firm is representing itself to be a member of respondent or is using respondent's logo when, in fact, such firm is not a member of respondent.

6. Restricting or preventing, or attempting to restrict or prevent, dealers in pest control goods or services from carrying on lawful courses of action, and engaging in trade and commerce by lawful methods of their own choosing.

7. Eliminating or attempting to eliminate competition between or among dealers in pest control goods and services.

8. Requiring or requesting members of, or applicants for, membership in respondent to submit or disclose prior, current or planned advertising, or prior, current or planned prices.

It is further ordered, That respondent shall within thirty (30) days of the effective date of this order:

(1) Advise in writing and by mail all dealers in pest control services discovered through the best efforts of respondent to be doing business within the territorial limits served by respondent, that all dealers so engaged, and complying with state and federal laws pertaining to qualification for engaging in pest control services within such territorial limits, are eligible to join respondent association on equal, uniform and non-discriminatory terms.

(2) Mail a copy of this order to each dealer in pest control services discovered through the best efforts of respondent to be doing business within the territorial limits served by respondent.

It is further ordered, That immediately upon completion of the above mailings, respondent obtain from the person actually performing the required mailing of each notice and order, an affidavit verifying the mailing of each such document, and specifying the particular business entity and address to which each such document had been mailed.

It is further ordered, That respondent shall within thirty (30) days after the date of service of this order, amend its charter, by-laws, rules and regulations by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this order, and that respondent shall thereafter require as a condition of membership that all present and future members of respondent act in accordance with the provisions of this order.

It is further ordered, That respondent shall keep full and complete records relating to the following and shall retain the same for 3 years:

(a) standards for admission to and retention of membership in the respondent;

(b) all denials of membership in the respondent;

(c) all expulsions or withdrawals from, or non-renewals of membership in the respondent;

(d) all correspondence and minutes, formal or informal, kept by or on behalf of the respondent and its committees.

It is further ordered, That respondent trade association notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein shall within sixty

(60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it complied with this order including copies of all affidavits required by this order to be obtained by the respondent.