

IN THE MATTER OF
NATIONAL ASSOCIATION OF SCUBA DIVING SCHOOLS,
INC.

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

Docket C-3094. Complaint, July 30, 1982—Decision, July 30, 1982

This consent order requires a Long Beach, Ca. corporation in connection with the issuance or authorization of various seals of approval, among other things, to cease representing that any diving equipment or product bearing their seal or insignia meets an objective standard of safety or reliability unless such equipment has been competently and credibly tested. The order bars any misrepresentations concerning the significance of any seal or insignia and requires respondent to provide those who utilize the seals with a copy of the order and a letter explaining its provisions; discontinue doing business with any user of such seals who does not comply with the order's provisions; and institute a program of reasonable surveillance to ensure compliance with the order.

Appearances

For the commission: *Dean Hansell* and *Kenneth H. Donney*.

For the respondent: *John Gaffney*, in-house counsel, Long Beach, Ca. and *Richard A. Lesser*, Hermosa Beach, Ca.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that the National Association of Scuba Diving Schools, Inc., ("NASDS"), a corporation, hereinafter sometimes referred to as respondent, 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 issue its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent NASDS is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, having its principal office and place of business at 641 West Willow Street, Long Beach, California.

PAR. 2. Respondent NASDS is a marketing and management organization, serving over 200 retail diving stores nationally. It is now and for some time last past has been engaged in the develop-

ment, offering for sale and sale of marketing and promotional devices, services, and programs for scuba diving and skin diving retail stores and equipment.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of paragraphs one and two are incorporated by reference herein as if fully set forth verbatim.

PAR. 3. In the ordinary course and conduct of its business, respondent serves retail diving stores located in 40 states and the District of Columbia. It causes and has caused the conduct of business in each of these states and the District of Columbia through the U.S. mail and other facilities of interstate commerce. Respondent maintains and has maintained a substantial course of business, including the acts and practices hereinafter set forth, that is in or affects commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of its business, respondent has developed, offers for sale and sells to retail diving stores a seal of approval that respondent refers to as its "Seal of Excellence" and its "Seal of Acceptance". Respondent uses its seal of approval as a promotional device. The seal is elliptical in shape and in addition to bearing the name "National Association of Scuba Diving Schools" displays prominently the terms "INTEGRITY", "SAFETY", "INSTRUCTION", "SPORT", "SEAL OF ACCEPTANCE" and "SEAL OF EXCELLENCE". A copy of the seal is attached to this complaint.

PAR. 5. In the ordinary course and conduct of its business, respondent publishes a magazine, *The Diving Retailer & Professional Instructor*, which is distributed to members of the diving industry including those retail diving stores which respondent serves. In many issues of the publication respondent advertises a copy of its seal of approval as follows:

THE
PRODUCTS
PRODUCT
BACKERS
BACK.

Our customers look for this seal before they buy. It's their guarantee of quality. The NASDS Seal of Excellence is an opportunity for our individual member stores to high-light their best values in equipment systems components.

All our stores service what they sell. And when you service what you sell you learn what equipment holds up and is the best value for the money.

Only our stores stand behind their products in this way. We know our success depends on satisfied customers.

PAR. 6. In the ordinary course and conduct of its business, respondent prepares diving product advertisements that promote the seal. The advertisements depict a diving product to which the seal is attached or affixed. The advertisement copy describes the product in favorable terms and states that because of these features the product has earned the NASDS seal. The advertisements are placed in publications disseminated to the diving industry and to the general public. Respondent disseminates these advertisements, directly or indirectly, to consumers.

PAR. 7. In the ordinary course and conduct of its business, respondent offers for sale or sells sets of display signs to retail diving stores that identify departments within the store. These signs prominently feature the seal and urge consumers to look for the seal before they buy diving equipment. These signs are placed in retail diving stores where they are read by consumers. Respondent disseminates these signs, directly or indirectly, to consumers.

PAR. 8. Respondent sells price tags and decals bearing its seal of approval to retail diving stores. These price tags and decals are sold for the purpose of being and are, in fact, attached or affixed by the stores to scuba and skin diving products offered for sale to consumers.

PAR. 9. Respondent, in promoting the seal in the aforesaid manner, represents directly or by implication to consumers that the seal is attached or affixed to or used in conjunction with scuba and skin diving products only if these products have been approved by respondent either because the products had been tested or certified by respondent for safety, integrity, or excellence, or because they have met some other objective standards of performance, reliability or quality set by respondent.

PAR. 10. In truth and in fact:

a. the seal may be attached or affixed to, or used in conjunction with, products without regard to whether these products have been approved by respondent either because the products have been tested or certified for safety, integrity, or excellence by respondent, or have met some other objective standards of performance, reliability or quality set by respondent; and

b. respondent has not conducted, sponsored, commissioned or relied upon testing or certification for safety, integrity or excellence of products to which the seal has been attached, affixed or used in conjunction with; and

c. respondent has not set objective standards of performance, reliability or quality for products to which the seal has been attached, affixed or used in conjunction with.

Therefore, the aforesaid statements, representations, acts or practices by respondent are false, misleading, deceptive or unfair.

PAR. 11. The use by respondent of the aforesaid false, misleading, deceptive, or unfair statements, representations, acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements, representations, acts or practices are true and into the purchase of substantial quantities of diving equipment to which the seal has been attached, affixed or used in conjunction with by reason of said erroneous and mistaken belief.

PAR. 12. The acts and practices of respondent NASDS, as herein alleged, were and are all to the prejudice and injury of the public and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Eight, inclusive, are incorporated by reference herein as if fully set forth verbatim.

PAR. 13. As a result of the acts and practices alleged in Paragraphs Four through Eight, respondent allows, authorizes, or encourages other persons, corporations, partnerships or other entities (hereinafter "users") to attach or affix its seal of approval to scuba and skin diving products as a promotional device in the selling of such products to the public.

PAR. 14. Respondent, by authorizing or encouraging users to attach or affix or use its seal in conjunction with scuba and skin diving products as a promotional device in the selling of such products, represents directly or by implication to consumers that the seal is attached or affixed to or used in conjunction with said products only if these products have been approved by respondent either because the products have been tested or certified by respondent for safety, integrity or excellence, or because they have met some other objective standards of performance, reliability or quality set by respondent.

PAR. 15. In truth and in fact:

a. respondent authorizes or encourages users to attach or affix the seal or use it in conjunction with scuba and skin diving products, without regard to whether these products have been approved by respondent either because the products have been so tested or certified by respondent for safety, integrity or excellence or have met some other objective standards of performance, reliability or quality set by respondent;

b. respondent has not conducted, sponsored, commissioned or relied upon testing or certification for safety, integrity or excellence of products to which the seal has been attached, affixed or used in conjunction with; and

c. respondent has not set objective standards of performance, reliability or quality for products to which the seal has been attached, affixed or used in conjunction with.

Therefore, the aforesaid statements, representations, acts or practices are false, misleading, deceptive or unfair.

PAR. 16. Respondent, by allowing users to attach or affix the seal of approval to scuba and skin diving products, places in the hands of such users of the seal an instrumentality whereby such users are enabled to and do represent, directly or by implication, that the products to which the seal is attached or affixed have been approved by NASDS either because the products have been tested or certified by respondent for safety, integrity, or excellence or because they have met some other objective standards of quality, reliability or performance set by respondent, without regard to whether such products have been so tested or certified or have met such standards.

Therefore, the aforesaid statements, representations acts or practices by respondent are false, misleading, deceptive or unfair.

PAR. 17. The use by respondent of the aforesaid false, misleading, deceptive, or unfair statements, representations, acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements, representations, acts or practices are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 18. The acts and practices of respondent NASDS, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.



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 Los Angeles 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, its attorney, 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 confirmity 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 641 West Willow Street, in the City of Long Beach, State of California.
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 National Association of Scuba Diving Schools, Inc., ("NASDS"), a corporation, and its successors and assigns, and respondent's officers, agents, representatives, and employees, jointly or severally, directly or through any corporation, subsidiary, division, or other device, in connection with the issuance or authorization of various seals of approval, emblems, shields, or other insignia in or affecting commerce, as "commerce" is defined in

the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such seal, emblem, shield, or other insignia, is attached to or affixed to or used in conjunction with any scuba diving or skin diving product, or any other product, as an assurance that such product meets an objective standard of safety or reliability or any other objective standard of quality or performance, unless such product has been competently, adequately and thoroughly tested in such a manner as reasonably to substantiate with competent and reliable evidence any such assurance and unless any connection between the tester and the product that might materially affect the weight and the credibility of the test and that is not reasonably expected by the public, such as the tester being the product's manufacturer, is fully disclosed on the seal.

2. Using or encouraging, authorizing, or allowing anyone else to use any such seal, emblem, shield, or other insignia that represents, directly or by implication, that any scuba diving or skin diving product or any other product meets an objective standard of safety or reliability or any other objective standard of quality or performance, unless such product has been competently, adequately and thoroughly tested in such a manner as reasonably to substantiate with competent and reliable evidence any such representation and unless any connection between the tester and the product that might materially affect the weight and the credibility of the test and that is not reasonably expected by the public, such as the tester being the product's manufacturer, is fully disclosed on the seal.

3. Misrepresenting, directly or by implication, the significance of any such seal, emblem, shield or other insignia.

II.

It is further ordered, That respondent shall provide all present and future persons, corporations, partnerships, or other entities who use any insignia of respondent with a copy of this Order and a letter informing such users that they can no longer use the respondent's insignia except in a manner consistent with the provisions of this Order. Respondent shall immediately stop doing business with any user of its insignia if that user acts in a manner inconsistent with the provision of this Order; and respondent shall institute a program of reasonable surveillance of all users in order to assure their compliance with this Order.

III.

It is further ordered, That respondent 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, subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

IV.

It is further ordered, That respondent 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 respondent has complied with this Order.

Modifying Order

100 F.T.C.

IN THE MATTER OF

AMERICAN DENTAL ASSOCIATION

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9093. Decision and Order, Sept. 6, 1979—Modifying Order, Aug. 3, 1982*

The Federal Trade Commission has modified its Decision and Order issued against the American Dental Association (ADA) on September 6, 1979 (94 F.T.C. 403), pursuant to Paragraph I(A) of the order, which provides that upon entry of a final adjudicated order granting relief against the American Medical Association (AMA), the Commission will reissue its order against the ADA, so that the prohibitions dealing with restrictions on advertising conform to those entered against the AMA.

MODIFICATION OF DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional allegations set forth in the complaint, a statement that the signing of said 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, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, and in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, having entered an order in Docket No. 9093, the Commission now, in accordance with Paragraph I of the order in Docket No. 9093, hereby makes the following jurisdictional findings and enters the following order:

1. Respondent American Dental Association ("ADA") is an Illinois corporation, with its principal place of business at 211 East Chicago Avenue, Chicago, Illinois.