

Modifying Order

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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.

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

Definitions

For purposes of this Order, the following definitions shall apply:

Respondent: means the American Dental Association ("ADA") and its councils, departments, committees, divisions, subdivisions, trustees, officers, delegates, representatives, agents, employees, successors, and assigns.

Constituent societies means those dental societies or dental associations defined as constituent societies in the January 1, 1978, edition of the American Dental Association's *Constitution and Bylaws* and, in the event that the American Dental Association's *Constitution and Bylaws* is amended to denominate constituent societies differently or to describe a new category of dental societies which replace or are roughly equivalent to constituent societies, *constituent societies* means those dental societies as well.

Component societies means those dental societies or dental associations defined as component societies in the January 1, 1978, edition of the American Dental Association's *Constitution and Bylaws* and, in the event that the American Dental Association's *Constitution and Bylaws* is amended to denominate component societies differently or to describe a new category of dental societies which replace or are roughly equivalent to component societies, *component societies* means those dental societies as well.

I.

It is ordered, That respondent American Dental Association directly or indirectly, or through any corporate or other device, in or in connection with respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising or publishing by any person of the prices, terms or conditions of sale of dentists' services, or of information about dentists' services, facilities or equipment which are offered for sale or made available by dentists or by any organization with which dentists are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through advertising or by any other means, including but not limited to bidding practices, of patients, patronage, or contracts to supply dentists' services, by any dentist or by any organization with which dentists are affiliated; and

C. Inducing, urging, encouraging, or assisting any dentist or any dental association, group of dentists, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this Part.

Nothing contained in this Part shall prohibit respondent from formulating, adopting, disseminating to its constituent and component dental organizations and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

II.

It is further ordered, That respondent American Dental Association cease and desist from taking any formal action against a person alleged to have violated any ethical standard promulgated in conformity with this Order without first providing such person with:

A. Reasonable written notice of the allegations against him or her;

B. A hearing wherein such person or a person retained by him or her may seek to rebut such allegations; and

C. The written findings or conclusions of respondents with respect to such allegations.

III.

It is further ordered, That respondent American Dental Association:

A. Send by first class mail a copy of a letter in the form shown in Appendix A to this Order to each of its present members and to each constituent and component organization of respondent, within sixty (60) days after this Order becomes final.

B. For a period of ten years, provide each new member of respondent and each constituent and component organization of respondent with a copy of this Order at the time the member is accepted into membership.

C. Within ninety (90) days after this Order becomes final, remove from respondent American Dental Association's *Principles of Ethics*, and *Official Advisory Opinions*, and from the constitution, bylaws, codes, standards of dentist conduct, and any other existing policy statements or guidelines of respondent, any provision, interpretation or policy statement which is inconsistent with the provisions of Part I of this Order and, within one hundred and twenty (120) days after this Order becomes final, publish in the *Journal of the American Dental Association* and in *ADA News* the revised versions of such documents, statements, or guidelines.

D. Require as a condition of affiliation with respondent that any constituent or component organization agree by action taken by the constituent or component organization's governing body to adhere to the provisions of Parts I and II of this Order.

E. Terminate for a period of one year its affiliation with any constituent or component organization within one hundred and twenty (120) days after learning or having reason to believe that said constituent or component organization has engaged, after the date this Order becomes final, in any act or practice that if committed by respondent would be prohibited by Part I or II of this Order.

IV.

It is further ordered That respondent American Dental Association:

A. Within sixty (60) days after the Order becomes final, publish a copy of this Order with such prominence as feature articles are regularly published in the *Journal of the American Dental Association* and in *ADA News* or in any respective successor publications.

B. Within one hundred and twenty (120) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order.

C. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Part I of this Order, including but not limited to any advice or

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interpretations rendered with respect to advertising or solicitation involving any of its members.

D. Within one year after this Order becomes final, and annually thereafter, for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Part I of this Order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any of its members.

V.

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

APPENDIX A

[ADA Regular Letterhead]

Dear Doctor:

As you are probably aware, in January of 1977, the Federal Trade Commission issued a complaint against the ADA, the Indiana Dental Association, the Indianapolis District Dental Society, the Virginia Dental Association, and the Northern Virginia Dental Society. The administrative complaint alleged that certain portions of ADA's Principles of Ethics and advisory opinions regarding advertising and solicitation by dentists were in violation of the Federal Trade Commission Act.

We entered into a consent order with the FTC, without admitting any violation of the law, which provided that we and the FTC would be bound by the final outcome of a similar FTC case (Docket No. 9064) principally as it relates to FTC jurisdiction, ethical restrictions on advertising and solicitation, and relief. That case has been ultimately decided and, as agreed in our consent order, the FTC has issued a final order against ADA based upon the final order in FTC Docket No. 9064. The final order is printed in the [insert issue date] issue of the *Journal of the American Dental Association*, the [insert issue date] issue of *ADA News* and may be obtained from the ADA headquarters or from your state or local dental society.

Among other things, the order forbids any action by ADA that would restrict its members' solicitation of patients by advertising or other means. However, the order does not prohibit the ADA from formulating and enforcing reasonable ethical guidelines governing deceptive advertising and solicitation (including unsubstantiated representations). The ADA may also issue guidelines concerning uninvited, in-person solicitation of patients who, because of their particular circumstances, are vulnerable to undue influence.

Because in Docket No. 9064 the Commission decided in its discretion not to apply the order to local societies, the Commission has also omitted local societies from the final ADA order. However, the order requires ADA to sever all ties for one year with

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any state or local dental society that engages in conduct of the type prohibited under the order, as well as requiring ADA to amend the *ADA Principles of Ethics* and the *ADA Official Advisory Opinions*.

Thank you for your cooperation.

Sincerely

/s/ _____

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IN THE MATTER OF

HAMMERMILL PAPER COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2513. Final Order, April 24, 1974.—Modifying Order, Aug. 6, 1982*

This order reopens the proceeding and modifies the Commission's order issued on April 24, 1974 (83 F.T.C. 1587), by modifying subparagraph 1(a) so as to allow the company to impose conditions on the kind of customers its distributors can serve, so long as such conditions do not unreasonably restrain competition.

ORDER MODIFYING DECISION AND ORDER

Whereas, a "Request To Reopen And Modify Consent Order" was filed by Respondent on April 8, 1982 pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51, wherein Hammermill Paper Company seeks modification of the order that issued on April 24, 1974 to allow Hammermill to impose reasonable nonprice vertical restrictions; and

Whereas, the matter was thereafter placed on the public record pursuant to Section 2.51(c) of the Commission's Rules of Practice, 16 C.F.R. 2.51(c) during which time comments from the public were received; and

Whereas, the Commission thereafter considered the Petition presented by Hammermill Paper Company and all of the materials and information submitted as public comments on the petition and has determined that the request makes a satisfactory showing that changed conditions of fact and law and the public interest require that the order be reopened for the purpose of modification.

Accordingly, *It is ordered*, that the matter is reopened and that subparagraph 1(a) be modified to read:

Limiting, allocating or restricting the persons or classes of persons to whom any dealer or distributor may resell his products, where such limitation, allocation or restriction unreasonably restrains competition.