

Complaint

100 F.T.C.

IN THE MATTER OF

ASSOCIATION OF INDEPENDENT DENTISTS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3097. Complaint, Oct. 22, 1982—Decision, Oct. 22, 1982*

This consent order requires a Colorado dental association to cease, among other things, inhibiting competition by restricting or advising member dentists against the truthful advertising of their services. The order bars the association and its members from coercing any third-party payer into altering the terms and conditions of any dental health care plan. Further, the association must timely repeal any provision of its by-laws which are inconsistent with the prohibitions contained in the order; mail a copy of the order together with a letter specifying the changes made to the by-laws to every member; and provide all future members with a copy of the order.

Appearances

For the Commission: *Steven T. Kessel.*

For the respondent: *Thomas E. Jagger, Pueblo, Colo.*

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 named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Association of Independent Dentists is a corporation organized and existing under the laws of the State of Colorado, with its mailing address at P.O. Box 1924, Pueblo, Colorado.

PAR. 2. Respondent is an association of dentists practicing in Pueblo County, Colorado, which is organized in order to, among other things, preserve and promote the private dental practices of its individual members. Respondent is not affiliated with any other dental society or professional association.

PAR. 3. Members of respondent are engaged in the business of providing dental services to patients for a fee. Except to the extent that competition has been restrained as herein alleged, members of respondent have been and are now in competition among themselves

and with other dentists. At least some of the fees which respondent's members charge for their services are reimbursed, in whole or in part, by third-party payers which pay for, or administer payment of, dental expenses incurred by their subscribers.

PAR. 4. Respondent engages in substantial activities which further its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

PAR. 5. In the conduct of their businesses, members of respondent receive substantial sums of money from third-party payers for rendering dental services, which money flows across state lines, and prescribe medicines or treatment devices which are shipped in interstate commerce. The acts or practices described below are in interstate commerce, or affect the interstate activities of respondent's members, third-party payers, other third parties, and some patients of respondent's members, and are in or affect commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

PAR. 6. Respondent has restrained competition among dentists in Pueblo County, Colorado by acting as a combination of at least some of its members, or by combining or conspiring with at least some of its members, to:

A. Restrict truthful advertising by respondent's members in their individual dental practices; and

B. Increase or maintain the level of reimbursement paid for dental services by third-party payers.

PAR. 7. Respondent has engaged in various acts and practices in furtherance of this combination or conspiracy, including, among other things:

A. Enacting a by-law prohibiting its members from advertising any aspect of their individual dental practices without prior approval of respondent's Board of Directors;

B. Disciplining members who advertised their individual dental practices without prior approval of respondent's Board of Directors; and

C. Threatening a collective refusal by its members to execute "participating dentist agreements" with a third-party payer for dental services in order to force that third-party payer to increase the levels of reimbursement for dental services rendered to its subscribers.

PAR. 8. The combination or conspiracy and the acts and practices described above have restrained, frustrated and foreclosed competition among dentists practicing in Pueblo County, Colorado, in the following respects:

A. Members of respondent have agreed not to, and do not, compete with each other by advertising the price, quality or convenience of their individual dental practices, and advertising by some individual members of respondent has been restrained; and

B. Members of respondent have agreed not to compete by independently deciding whether, and on what terms, to deal with third-party payers for dental services, and have agreed instead to deal with such third-party payers on a concerted basis, in order to increase the fees which respondent's members receive for their services.

PAR. 9. The combination or conspiracy and the acts or practices described above have deprived consumers of the benefits of competition among dentists. In particular, consumers have been deprived of information which can be obtained through truthful advertising concerning the price, quality, and convenience of respondent's members' dental practices, and have been deprived of the benefits of efforts by third-party payers to contain or limit the costs of dental services to their subscribers in Pueblo County, Colorado.

PAR. 10. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition or unfair or deceptive acts or practices which violate Section 5 of the Federal Trade Commission Act. Such combination or conspiracy is continuing and will continue absent the entry against respondent of appropriate relief.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent, Association of Independent Dentists, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition 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 draft complaint, a statement that the signing of that

agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the draft of complaint, and waivers and other provisions as required by the Commission's Rules; and

The Federal Trade Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the 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, Association of Independent Dentists, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its mailing address at P.O. Box 1924, Pueblo, Colorado.
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

I.

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

A. *AID* means respondent Association of Independent Dentists, its directors, officers, committees, agents, employees, successors and assigns;

B. *Third-party payer* means any person, partnership, corporation, government agency or other entity which agrees to pay for or reimburse, or administer payment or reimbursement of, all or part of any expense for dental services incurred by another person or group of persons;

C. *Reimbursement* means money paid by a third-party payer for dental services.

II.

It is ordered, That AID shall cease and desist from:

- A. Restricting, regulating, interfering with, or advising against the advertising or publishing by any person or organization of

information about dental services offered by that person or organization, or the manner in which such information is advertised or published; or

B. Making any express or implied threat of acts to be taken by AID or by any AID members acting in concert with AID, or engaging in any other acts, with the purpose or effect of coercing, compelling, or inducing any third-party payer to accept a position taken by AID, or AID members acting in concert with AID, concerning the amount, manner of calculating, or terms of reimbursement.

III.

It is further ordered, That AID shall:

A. Within thirty (30) days after service upon AID of this order, repeal any provision of its by-laws which is inconsistent with the provisions of Part II of this order;

B. Within forty (40) days after service upon AID of this order, mail a copy of this order, and a letter specifying the changes to AID by-laws made pursuant to Paragraph A of this Part, to every AID member;

C. Within sixty (60) days after service upon AID of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which AID has complied with this order; and

D. Provide a copy of this order to each new AID member when the member is accepted into membership.

IV.

It is further ordered, That AID shall notify the Commission at least thirty (30) days prior to any proposed change in AID 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 this order.

IN THE MATTER OF
H & R BLOCK, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2162. Consent Order, March 1, 1972—Modifying Order, Nov. 2, 1982

This order reopens the proceeding and modifies Paragraphs 5 and 6 of the Commission's order issued on March 1, 1972 (80 F.T.C. 304), by substituting a new paragraph 5, so as to make the order's provisions consistent with federal tax laws. Section 7216 of the Internal Revenue Code provides a comprehensive scheme for regulating the use by tax preparers of information obtained from customers, and the Commission believes that this scheme is adequate to prevent the misuse of confidential information by petitioner in the future.

ORDER REOPENING THE PROCEEDING AND GRANTING REQUEST TO
MODIFY ORDER

On January 22, 1982, H & R Block Inc., the petitioner, filed a Request to Reopen Proceedings under Section 2.51 of the Commission's Rules of Practice. Block sought to set aside paragraphs 5 and 6 of a March 1, 1972, order against the company. On June 8, 1982, Block filed a Supplement to Modification of Request to Reopen Proceedings, seeking modification of the Order paragraphs instead of their elimination. The Order paragraphs prohibit Block from using information obtained from a customer for any purpose other than the preparation of tax returns unless, prior to obtaining any information from the customer, Block obtains the customer's written consent. The consent form used must disclose: (1) the exact information to be used, (2) the particular use to be made of such information, (3) and a description of the parties or entities to whom the information may be made available.

The petitioner contends that enactment of Section 7216 of the Internal Revenue Code, 26 U.S.C. 7216, on December 10, 1971, effective January 1, 1972, and adoption by the Internal Revenue Service of regulations 301.7216-1 through 301.7216-3 on March 24, 1974, constitute a change of the law warranting reopening the proceeding and modifying paragraphs 5 and 6 of the Commission's Order. Regulation 301.7216-3 reads in pertinent parts:

Disclosure or use only with formal consent of taxpayer.—(a) Written consent to use or disclosure—(1) Solicitation of other business. (i) If a tax return preparer has obtained from the taxpayer a consent described in paragraph (b) of this section, he may use the tax return information of such taxpayer to solicit from the taxpayer any additional current business, in matters not related to the Internal Revenue Service, which the