

Complaint

100 F.T.C.

IN THE MATTER OF

TEXAS DENTAL ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9139. Complaint, June 17, 1980—Decision, Nov. 19, 1982*

This consent order requires a Texas dental association to cease, among other things, inhibiting competition by inducing its members to withhold x-rays and other diagnostic information from third-party payers and independent dental consultants for use in reviewing claims and establishing cost containment programs. The association is barred from coercing independent dental consultants and third-party payers into altering the terms and conditions of any dental health care plan, and from compelling third-party payers to select a particular independent dental consultant. Further, previous agreements entered into by the association and dental insurers which do not conform to the terms of the order are not binding upon the signatories. The association is also required to mail a copy of the order together with a letter explaining its provisions to all its members and to any person who joins the association within the next four years.

Appearances

For the Commission: *Julian V. Buenger, Steven L. Page and Edward C. Johnson.*

For the respondent: *Robert A. Hall and Roger A. Wright, Jr., Woodard, Hall & Primm, Houston, Tex.*

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 respondent named in the caption hereof 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. The following definition shall apply in this Complaint: *Third-party payer or payer* means any entity that provides a program of reimbursement for dental health care services to employees or members of any business organization, and any person, such as an independent claims adjuster, who provides

evaluative services in connection with any such reimbursement program.

PAR. 2. Respondent Texas Dental Association ("TDA") is a Texas corporation with its principal place of business at 420 North Interregional Highway, Austin, Texas. TDA has approximately 5500 members, all of whom are either licensed to practice dentistry in Texas, or students of dentistry. TDA charters approximately twenty-four regional component societies.

PAR. 3. Members of respondent are engaged in the business of providing dental health care services to patients for a fee and are paid for such services from the patients' personal funds and/or from funds provided under dental health care benefits programs. 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.

PAR. 4. In 1976, total expenditures for dental health care services in the United States were approximately \$8.6 billion. Annual expenditures for dental health care services in Texas are at least \$100 million.

PAR. 5. The acts and practices of respondent and its members are in or affect interstate commerce 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. A significant portion of the population of Texas is covered by dental health care benefits programs administered by third-party payers. Many of such programs provide for determination of benefits in advance of treatment ("predetermination"), limit coverage to the adequate, but not necessarily the most expensive, course of treatment, and require that radiographs ("X-rays") be submitted to aid in benefit determinations. The purpose of such provisions is to contain the costs of dental care. Their efficient utilization requires cooperation from treating dentists.

PAR. 7. Respondent, constituting a combination of its members, and respondent, in combination with certain of its members and others, has combined, conspired, and engaged in acts, practices and methods of competition which eliminate, prevent, or hinder competition among dentists with respect to furnishing X-rays to third-party payers, participating in alternate course of treatment and pretreatment determination programs, and cooperating with third-party payers in claims review and cost containment programs.

PAR. 8. In the course of the conduct alleged in Paragraph Seven, respondents have, among other things:

(A) Encouraged and induced members to refuse to submit X-rays to third-party payers and to refuse to provide other professional services for use by payers in benefit determination;

(B) Conducted meetings and pledge card campaigns and promulgated, adopted, published, and distributed statements of policies and practices regarding the terms and conditions upon which members are encouraged to deal with third-party payers; and

(C) Insisted that payers execute Memoranda of Understanding imposing particular procedures by which TDA members deal with payers, including requiring payers to agree to submit disputes to respondent's designated consultants and peer review committees.

PAR. 9. The actual and potential effects of the acts, practices and methods of competition alleged in Paragraphs Seven and Eight, include the following, among others:

(A) Competition among dentists in Texas has been hindered, restrained, and frustrated;

(B) Competition among third-party payers regarding claims review programs has been hindered, restrained, and frustrated;

(C) Consumers have been deprived of the benefits of third-party payers' cost-containment measures, including lower or potentially lower costs for dental health care and dental health care benefits insurance.

PAR. 10. The aforesaid acts and practices constitute unfair methods of competition and unfair acts or practices by respondent in violation of Section 5 of the Federal Trade Commission Act, and are within the scope of Section 5 of said Act.

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 facts 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its 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, now in further conformity with the procedure prescribed in section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Texas Dental Association is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1946 S. Interregional Highway, in the City of Austin, State of Texas.

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

It is ordered, That for the purposes of this order the following definitions shall apply:

A. *TDA* means Texas Dental Association, its House of Delegates, councils, committees, officers, representatives, agents, employees, successors and assigns.

B. *Third-party payer* or *payer* means any person, corporation or other entity who or which administers or provides a risk-sharing reimbursement plan or a program of reimbursement, directly or indirectly, for all or part of any expense for dental health care services incurred by any person.

C. *Independent dental consultant* means a dentist who, acting either in an individual or corporate capacity, is employed by or contracts with a third-party payer to:

- 1) furnish evaluative services from a review of diagnostic information or dental claims forms; or
- 2) advise or deal with other dentists or third-party payers

regarding courses of dental treatment, appropriate fee reimbursements, or benefit determinations under any dental reimbursement plan or program.

D. *Evaluative services* means the review or rendering of opinions or determinations from diagnostic information or reports of attending dentists or from other sources, regarding courses of treatment, appropriate manner of reimbursement, or extent of benefit coverage, under any dental reimbursement plan or program.

II

It is further ordered, That TDA, directly or through any subsidiary, division or other device, shall not engage in any act or practice which has the purpose or effect of:

A. Requiring, advocating, advising, requesting, or suggesting that any of its members: (1) submit or refuse to submit radiographs or other diagnostic information or other materials to any third-party payer or to any independent dental consultant designated by such third-party payers; or (2) refuse to deal with any third-party payer or independent dental consultant except on certain terms or under certain conditions;

B. Compelling, threatening, or coercing any third-party payer or independent dental consultant to alter any provision of, or means of administering, any dental health care coverage plan;

C. Compelling, threatening, or coercing any third-party payer or independent dental consultant to enter into agreements with TDA or others regarding the terms of any dental health care coverage plan or the methods by which any third-party payer or independent dental consultant makes determinations about dental insurance claims; or

D. Compelling, threatening, or coercing any third-party payer to select a particular independent dental consultant.

Provided, however, That nothing contained herein shall be deemed to prohibit individual members of TDA, acting individually, from dealing with third-party payers in such manner as they determine is in the best interest of their patients.

III

It is further ordered, That any "Memorandum of Understanding" or agreement between TDA or its members and any third-party payer providing for the circumstances under which radiographs or

other diagnostic information is to be furnished to third-party payers or independent dental consultants or providing in any manner for the way in which determinations about dental insurance claims are to be made is non-binding on TDA, its members and third-party payers.

IV

It is further ordered, That within thirty (30) days after this order becomes final, TDA shall mail to each of its members a copy of the Commission's complaint and order in this matter, as well as a letter in the form shown as "Attachment A" to this order. In addition to the foregoing, TDA shall mail a copy of the aforementioned complaint, order, and letter to every person who joins TDA within four (4) years of the date of service of this order. Such mailing shall occur within thirty (30) days after a person becomes a member of TDA.

V

It is further ordered, That within sixty (60) days after service of this order and again one (1) year thereafter, TDA shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied and intends to comply with this order.

VI

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

ATTACHMENT A

(Respondent's Letterhead)

Dear Doctor:

As you may be aware, the Federal Trade Commission (FTC) has issued a complaint against the Texas Dental Association (TDA). TDA has denied the allegations of the complaint and continues to deny that it has engaged in any unlawful conduct. Nevertheless, TDA has voluntarily entered into an agreement with the FTC which has resulted in the entry of a consent order on _____ which requires, in essence,

Decision and Order

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that TDA not engage in certain activities that are concerned with dental health care benefits programs. This order also requires that you be sent a copy of the complaint and order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that TDA shall not engage in any act or practice which has the purpose or effect of: (1) requiring, advocating, advising, requesting, or suggesting that any of its members submit or refuse to submit radiographic or other diagnostic information or other materials to any third-party payer or independent dental consultant or refuse to deal with any third-party payer or independent dental consultant except on certain terms or under certain conditions; (2) compelling, threatening, or coercing any third-party payer or independent dental consultant to alter any provision of, or means of administering, any dental health care coverage plan; (3) compelling, threatening, or coercing any third-party payer or independent dental consultant to enter into agreements with TDA or others regarding the terms of any dental health care coverage plan or the methods by which any third-party payer or independent dental consultant makes determinations about dental insurance claims; or (4) compelling, threatening, or coercing any third-party payer to select a particular dental consultant.

Additionally, the order also provides that Memoranda of Understanding or other agreements between TDA or its members and any third-party payer providing for the circumstances under which radiographic or other diagnostic information is to be furnished to third-party payers or providing in any manner for the way in which determinations about dental insurance claims are to be made are non-binding on TDA, its members and third-party payers. The order does not prohibit the use of the guidelines contained in such Memoranda of Understanding for the resolution of a dispute concerning dental insurance claims if the individual parties to a dispute in the future voluntarily wish to use them.

TDA adheres to the view that the primary goal of its members is to render to the public the best dental service of which they are capable. Nothing in this order changes or affects that goal. You remain free to deal individually with third-party payers and programs in such manner as you decide individually is best for your patients.

Copies of the FTC's complaint and order are enclosed. This letter has attempted to summarize the important parts of the order but you should read it carefully in its entirety.

Very truly yours,

/s/ O.V. Cartwright

IN THE MATTER OF

GERMAINE MONTEIL COSMETIQUES CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3098. Complaint, Nov. 19, 1982—Decision, Nov. 19, 1982

This consent order requires a New York City cosmetic manufacturer and seller to cease, among other things, attempting to fix and maintain the resale prices at which its products are advertised or sold, through coercion or otherwise. The firm is also prohibited from withholding any earned advertising credit or benefit from recalcitrant dealers; restricting the lawful use of its trademarks or brandnames; and seeking the identity of dealers who deviate from suggested resale prices. Additionally, for a two year period, the order precludes the dissemination of suggested resale prices unless accompanied by a statement advising that such prices are merely suggested; and requires the firm to mail a letter describing the provisions of the order to all present and future accounts.

Appearances

For the Commission: *Jeffrey Klurfeld and Ralph Stone.*

For the respondent: *Stuart L. Friedel, Davis & Gilbert, 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 Germaine Monteil Cosmetiques Corporation, 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 issues its complaint stating its charges in that respect as follows:

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

A. Product

Product is defined as any item of cosmetic, fragrance or soap, any accessory containing any item of cosmetic, fragrance or soap, or any related accessory, including but not limited to, any applicator or brush, which is manufactured, offered for sale or sold by respondent.

In addition to the foregoing, *product* is defined to include any item