

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. Final Order, Sept. 6, 1979—Modifying Order, Feb. 7, 1983

This order reopens the proceeding and modifies the Commission order issued on Sept. 6, 1979 (94 F.T.C. 403), *modified* Aug. 3, 1982 (100 F.T.C. 448), by relieving respondent of its obligation under Paragraph III(A) of the order, to send by first-class mail a copy of Appendix A to the Final Order to each of its current members, and by reducing the number of years that Paragraphs III(A), IV(C), and IV(D) require the association to provide new members with notice of the order; make particular records available to the Commission; and file compliance reports.

MODIFICATION OF DECISION AND ORDER

The American Dental Association ("ADA") has requested that the Commission modify its Final Order in Docket No. 9093 to (1) relieve ADA of its obligation under Paragraph III(A) of the order to send by first-class mail a copy of a letter, Appendix A to the Final Order, to each of its present members, and (2) reduce the number of years ADA is required by Paragraphs III(B), IV(C), and IV(D) to provide new members with notice of the Final Order, make certain records available to Commission staff, and file reports of compliance.

As an alternative to the requirement of Paragraph III(A) that it send separate notice of the Final Order to each of its present members, ADA has proposed that it include an explanatory article when, as required by Paragraph IV(A) of the Final Order, it publishes a copy of the Final Order in the *Journal of the American Dental Association* and *ADA News*. Because under a temporary order ADA provided separate notice to each of its members that it was subject to a Commission order that, except under certain circumstances, prohibited ADA from restricting the advertising of dentists' services, and because with respect to individual members of ADA the Final Order prohibits essentially the same conduct, the Commission has determined that the alternative to separate notice ADA has proposed is in the public interest. The Commission has also determined that it is in the public interest to modify the Final Order to reduce the number of years ADA is required to provide new members with notice of the Final Order, make records available to the Commission, and file compliance reports. Accordingly,

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the Final Order be, and it hereby is,

modified by substituting for Paragraphs III(A), III(B), IV(C), and IV(D) of the Final Order, the following:

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 constituent and component organization of respondent, within sixty (60) days after this Order becomes final.

B. For a period of two 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.

IV.

It is further ordered, That respondent American Dental Association:

C. For a period of two 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 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 one year, 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.

Commissioner Pertschuk dissented.

SEPARATE STATEMENT OF CHAIRMAN MILLER

The petition of the ADA to modify the compliance burdens in its order boils down to two issues, both of which lead me to clear and obvious answers. The first issue arises from the settlement the ADA reached with the Commission in 1979. The Commission agreed with the ADA that it would be treated on equal terms with the order

ultimately reached with the AMA. Then for three years, the ADA operated under a temporary order that imposed essentially the same burdens as the final order. But the final order does not recognize the three years of compliance that the ADA performed while the AMA case was pending. I have no trouble deciding that the ADA should not incur three extra years of expensive compliance because it settled with the Commission.

The second issue concerns the purpose of reporting and record-keeping under Commission orders. Unlike the provisions relating to lawful conduct, which are perpetual in this order, the compliance requirements run for a term of several years. The ADA was required, for example, to provide copies of the order to all new members for ten years. Such compliance procedures are typically held to a limited term for an economic reason: the balance between the costs of the procedure and the probability of harm from noncompliance. While the Commission may expect that a respondent will comply immediately, there remains a chance that it will not. As the respondent gains experience in complying with an order over time however, the likelihood of future problems diminishes. The Commission limits the term for such expensive procedures as reporting, notifying and record-keeping because at some point the probability of a problem arising will no longer justify the extra expense of special monitoring for it.

The Commission originally determined that it would take ten years before the notice to new members had served its remedial purpose. However, the developments in the market for dental services and ADA's past compliance with its order demonstrate to my satisfaction that we can revise this assessment. The likelihood that future dental school graduates will violate the Commission order is sufficiently remote that the expense of continuing to mail it beyond five years does not appear justified. Therefore, I support the Commission's decision to reduce the notice requirement from ten years to five.

DISSENTING STATEMENT OF COMMISSIONER PERTSCHUK

I dissent from the decision of the Commission to reduce the period for which ADA is obligated to inform new members of the order, to make compliance reports available, and to make records available to the Commission. As I understand it, ADA's principal grounds for modification are: 1) ADA is obligated to carry out these obligations longer than the AMA even though the ADA settled and the AMA litigated its case to the Supreme Court; 2) ADA has complied with the order faithfully during the interim period (before the AMA order was finalized) and should get credit for this period; and 3) there is less need to give notice to new members since the legal standard for advertising

has changed and new members will, therefore, be less likely to reintroduce restrictions. While the Commission, in granting the petition, appears to place reliance on all three of these factors, none actually meet the standard of Rule 2.51—that changed conditions of law or fact or the public interest “requires” the order to be modified.

ADA agreed at the time the interim order was entered to be bound by an order identical—with one exception—to any final order in the AMA case. This eventual identity of orders meant ADA would have to comply with notice and reporting requirements for the period required by the interim order *plus* the period required by the AMA order.¹ Consequently, the period required for notice and reporting can hardly be called unfair or unanticipated. As for the supposed change in advertising law, the antitrust and constitutional problems in restricting advertising were well known before the ADA order was entered and, in fact, the cases ADA cites in support of its petition—except for the AMA case itself—were decided before the interim order issued.

The Commission appears to shorten ADA's requirements principally on theory that it has made a quicker than expected transition to full compliance with the order. Chairman Miller's statement, in fact, suggests that the Commission thought in 1979 that it would take an extended period for the ADA to undergo a total transition to compliance. This idea is troubling in two respects. First, the ADA order includes at least one substantive provision concerning disciplining member societies which was not in the interim order and for which we have no compliance record. More importantly, the idea that we should shorten the period of notice and reporting obligations as a reward for a rapid *transition* to compliance does not strike me as satisfying the “changed conditions of law or fact” or “public interest” requirement within the meaning of Rule 2.51. We expect immediate compliance with orders (subject to any express grace periods) and bringing an organization into conformity with order obligations in a short period of time has, heretofore at least, not been grounds to shorten compliance requirements. While the low probability of ADA violating the order is all to the good, that is precisely what we expected when the order was issued. Consequently, I would have agreed with the Bureau of Competition that the period for notice and reporting be left unchanged.

¹ The ADA not only wants to cut back the period for giving notice to take into account the three year period of the interim order but also to cut back the total notice period to five years, instead of the ten now required in both the AMA and the ADA orders.

Modifying Order

101 F.T.C.

IN THE MATTER OF

G C SERVICES CORP., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND FAIR DEBT COLLECTION PRACTICES ACTS*Docket C-2511. Consent Order, April 16, 1974—Modifying Order, Feb. 8, 1983*

This order reopens the proceeding and modifies the Commission's order issued on April 16, 1974 (83 F.T.C. 1521), *modified* June 21, 1978 (91 F.T.C. 1150), by deleting Paragraph Six from the order and substituting a new Paragraph Six, which incorporates restrictions concerning the use of post-dated checks contained in Section 808(2), (3) and (4) of the Fair Debt Collection Practices Act.

ORDER REOPENING PROCEEDING AND MODIFYING
ORDER TO CEASE AND DESIST

By petition filed September 21, 1982, pursuant to Rule 2.51, petitioners G C Services Corporation and Jerold B. Katz, William A. Inglehart and Martin M. Katz, ("GCSC"), request the Commission to reopen this proceeding and modify Paragraph 6 of the Order to Cease and Desist issued on April 16, 1974, and amended on June 21, 1978.

Paragraph 6, as written in the original 1974 Order, prohibited GCSC from receiving from debtors post-dated checks which would not be deposited immediately or which would be held for more than 15 business days after their receipt. On June 21, 1978, the Commission modified this Order Paragraph to permit GCSC to hold debtor's checks up to 60 days provided GCSC complied with certain conditions, including the requirement that GCSC make a good faith effort to reach debtors by attempting to contact them by telephone three times to obtain their permission to deposit any post-dated checks.

The present petition seeks modification of Paragraph 6 by eliminating, 1) the 60 day period limitation for GCSC's holding of post-dated checks and 2) the telephone contact requirement. In place of the current Paragraph 6, GCSC requests that the Section 808(2), (3) and (4), of the FDCPA, as well as other requirements, be incorporated into the Order. In addition to being bound by the FDCPA requirements, GCSC requests that the Order prohibit respondents for a period of 5 years from accepting a check post-dated by more than 60 days unless the debtor is given, along with the notice required by Section 808(2) of the FDCPA, a notice, a) of the date and amount of each additional post-dated check that GCSC holds and intends to cash and b) that advises the debtor to contact GCSC in the event the debtor is unable to cover the check to arrange a revised payment schedule. Additional-