

IN THE MATTER OF
WASHINGTON, D.C., DERMATOLOGICAL SOCIETY

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

Docket C-3118. Complaint, Oct. 5, 1983—Decision, Oct. 5, 1983

This consent order requires a Washington, D.C. medical society, among other things, to cease inhibiting competition by restricting or advising member dermatologists against the truthful advertising of their fees and services; and by declaring such activities unethical. The society must remove from its Principals of Professional Conduct, constitution and bylaws, any provision which is inconsistent with the prohibitions contained in the order; and publish revised versions of these documents. The order also requires that the society take no formal action against a person charged with violating an ethical standard without first providing that person with reasonable notice of the allegations and a hearing, as well as written findings and conclusions concerning the allegations. Further, for a period of 5 years, the society must provide each new member with a copy of the complaint and order in this matter.

Appearances

For the Commission: *Jill M. Frumin.*

For the respondents: *Pro se.*

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 Washington, D.C., Dermatological Society is a corporation formed pursuant to the laws of District of Columbia with its mailing address at George Washington University Medical School, c/o Department of Dermatology, 2150 Pennsylvania Avenue, N.W., Washington, D.C.

PAR. 2. Respondent is a professional association of physicians who limit their practice to dermatology, and who are Diplomates of the American Board of Dermatology. Respondent has approximately one

hundred (100) members, constituting a substantial majority of dermatologic physicians in the greater Washington metropolitan area.

PAR. 3. Members of respondent are engaged in the business of providing dermatologic health care services 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 dermatologists.

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 business, members of respondent receive and treat patients from other states and counties, receive substantial sums of money from the federal government and from private insurers for rendering dermatologic services, which monies flow across state lines, and prescribe medicines 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 acted as a combination of at least some of its members or has conspired with at least some of its members to foreclose, frustrate, and eliminate competition among dermatologic physicians in the greater Washington metropolitan area by:

A. Prohibiting its members from truthfully advertising their prices, fees, or charges, and otherwise restricting truthful advertising by its members; and

B. Attempting to coerce individual members or prospective members into ceasing to advertise their services truthfully, to disseminate truthful information about their fees and services, and otherwise to solicit patients' business.

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

A. Enacting ethical restrictions that prohibit its members from truthfully advertising any financial matters, and otherwise restricting truthful advertising by its members. By virtue of such ethical restraints, members are prohibited from truthfully advertising, among other things, their prices, fees, or charges, types or methods of treatment, professional training and experience, and special expertise; and

B. Threatening to exclude from membership any physician who is associated with a health care delivery organization that advertises the identity, fees, or services of an affiliated physician.

PAR. 8. Through the combination or conspiracy and the acts or practices described above, members of respondent have agreed not to advertise their services or otherwise solicit patients' business, and certain individual members of respondent may have been coerced into abandoning advertising their services or otherwise soliciting patients' business. Such advertising and solicitation enables physicians to compete on the basis of price and quality, and enables individual patients to choose among dermatologic physicians on the basis of price or quality. Consequently:

A. Competition among dermatologic physicians for patients is being foreclosed, frustrated, and eliminated; and

B. Consumers are being deprived of the benefits of competition among dermatologic physicians. In particular, patients are being deprived of truthful information about dermatologic physicians' fees and services, including, among other things: physicians' prices, fees, or charges, types or methods of treatment, professional training and experience, and special expertise.

PAR. 9. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition and unfair acts or practices which violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. 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 named in the caption hereof, 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 respondents with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents that the law has been violated as alleged in such com-

plaint, 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 respondents have 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 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 Washington, D.C., Dermatological Society is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at George Washington University Medical School, c/o Department of Dermatology, 2150 Pennsylvania Avenue, N.W., in the City of Washington, D.C.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

I.

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

A. DCDS means respondent Washington, D.C., Dermatological Society, its delegates, trustees, councils, committees, Board of Directors, officers, representatives, agents, employees, successors, and assigns.

II.

It is ordered, That DCDS shall cease and desist from, directly or indirectly, or through any corporate or other device:

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 dermatologic physicians' services, or of information about dermatologic physicians' facilities or equipment that are offered for sale or made available by dermatologic physicians or by any organization with which dermatologic physicians are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfer-

ing with, or advising against the solicitation, through advertising or by any other means, of patients, patronage, or contracts to supply dermatologic physicians' services, by any dermatologic physician or by any organization with which dermatologic physicians are affiliated; and

C. Inducing, urging, encouraging, or assisting any dermatologic physician, group of dermatologic physicians, 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 members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that DCDS 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.

III.

It is further ordered, That DCDS shall 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 respondent with respect to such allegations.

IV.

It is further ordered, That DCDS shall:

- A. For a period of five (5) years, provide each new member of DCDS with a copy of the complaint and this Order at the time the member is accepted into membership;
- B. Within sixty (60) days after the Order becomes final, publish and distribute a copy of the complaint and this Order to each of its members;
- C. Within ninety (90) days after this Order becomes final, remove from respondent's Principles of Professional Conduct, its constitution and bylaws, and any other existing policy statements or guidelines of respondent, any provision, interpretation, or policy statement which

is inconsistent with Part II of this Order, and within one hundred and twenty (120) days after this Order becomes final, publish and distribute a copy of the revised versions of such documents, statements, or guidelines to each of its members;

D. Within one hundred 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;

E. 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 II of this Order, including but not limited to any advice or interpretation rendered with respect to advertising or solicitation involving any of its members; and

F. 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 II 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 DCDS 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.

Interlocutory Order

102 F.T.C.

IN THE MATTER OF
ITT CONTINENTAL BAKING COMPANY

Docket 7880. Interlocutory Order, Oct. 12, 1983

ORDER SETTING ASIDE ORDER REQUIRING FILING OF SPECIAL REPORT

By a petition filed on June 13, 1983, respondent ITT Continental Baking Company ("ITT Continental") requests that the Commission reopen this proceeding and set aside or in the alternative modify the November 26, 1974 Order Requiring Filing of Special Report, which requires ITT Continental to give sixty days prior notice before making any acquisition in the baking industry. *See ITT Continental Baking Co.*, 84 F.T.C. 1349 (1974). Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comment. No comments were received.

Upon consideration of ITT Continental's request and supporting materials, and other relevant information, the Commission finds that the public interest and changed conditions of law warrant reopening of the proceeding and setting aside of the order.

Since the Order to File Special Report was issued, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, was passed. ITT Continental must now notify the Commission and the Assistant Attorney General in charge of the Antitrust Division of any acquisitions in the baking industry that are required to be reported by the statute and implementing rules. In view of this overlap between the Hart-Scott-Rodino premerger reporting requirements and the reporting requirements of the Order, the Commission believes that the Order is no longer necessary in order for the Commission to have the opportunity to scrutinize respondent's acquisitions in the baking industry that are subject to the Hart-Scott-Rodino premerger reporting requirements. As to other acquisitions, the Commission believes the costs of continuing to require reporting under the Order outweigh the benefits of the prior notice because such acquisitions, generally those that do not meet the Hart-Scott-Rodino dollar threshold, do not appear sufficiently likely to raise competitive concern.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that the Order Requiring Filing of Special Report be set aside as of the effective date of this order.