

IN THE MATTER OF
GREAT DANE DISTRIBUTOR COUNCIL

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

Docket C-3121. Complaint, Oct. 13, 1983 —Decision, Oct. 13, 1983*

This consent order prohibits an unincorporated association of truck trailer dealers, and its individual members, from taking any action which frustrates or eliminates competition in the sale of new Great Dane truck trailers. The dealer's association must distribute a copy of the order to all current and future members and ensure that members' sales personnel are provided with a copy of the order.

Appearances

For the Commission: *Douglas B. Brown and Phyliss W. Richardson.*

For the respondents: *John M. Hewson, III, Hunter, Maclean, Exley & Dunne*, Savannah, Ga. and *Barry J. Brett, Parker, Chapin, Flattau & Klimpe*, New York City.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent Great Dane Distributor Council and its members named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office 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

Respondent Great Dane Distributor Council and respondent members and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent Great Dane Distributor Council and respondent members 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 complaint, 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 respondent

* Complaint previously published at 102 F.T.C. 1307.

Great Dane Distributor Council and respondent members 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 Great Dane Distributor Council is an unincorporated association, with membership comprised of dealers for respondent Great Dane located throughout the United States. Its respondent members are:

Ace-Chicago Great Dane Corporation	New England Trailer Equipment Corp.
Allied Body Works, Inc.	H. A. DeHart and Son
American Equipment & Trailer, Inc.	Jim Hawk Truck-Trailers, Inc.
Empire Southern Tier Equipment Corp.	Marathon Trailers Sales, Inc.
American Equipment & Trailer, Inc.	Nelson Trailers Sales, Inc.
A. W. Logan, Inc.	Road Equipment, Inc.
Colorado Semi-Trailer Sales, Inc.	Tom Nowatzke Transport Equipment
Double AA Trailer Sales	Trans Equipment Services, Inc.
Estes Great Dane Trailers, Inc.	Trudell Trailer Sales, Inc.
Freightliner Sales & Service of Portland, Inc.	Southwest Kenworth, Inc.
Kansas City Great Dane	Trailer Company of Lancaster, Inc.
Midwest Great Dane Trailer of Minnesota, Inc.	Truck Trailer Sales
V & W Sales, Inc.	Western Trailer Service

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

ORDER

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

A. *Truck trailer* is a property-carrying vehicle, or chassis thereof, drawn by a truck or truck tractor and having one or more axles with a rating of 10,000 pounds or more per axle.

B. *Dealer* is any proprietorship, partnership, firm, or corporation authorized by Great Dane Trailers, Inc., to sell its new truck trailers but which is not owned or controlled by Great Dane Trailers, Inc. *Provided, however,* That two or more dealers that are majority-owned subsidiaries of a common parent shall not be regarded as separate dealers for the purposes of this order.

C. *Area of primary responsibility* is a geographic area or customer or customers assigned to a dealer on a nonexclusive basis for which the dealer is responsible for sales penetration.

D. *Historic trading area* is a geographic area or specific customer for which primary responsibility has been assigned at some time in the past.

E. *Exclusive territory* is a geographic area or customer(s) designated by any agreement restricting or prohibiting a dealer from making sales outside of its territory, area of primary responsibility, or historic trading area.

I

It is ordered, That respondent, Great Dane Distributor Council, an unincorporated association, its successors, substitutes, and assigns, and its individual members, officers, agents, representatives, and employees, in connection with the sale or distribution of any new Great Dane truck trailer in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Entering into any agreement with a dealer not to make or solicit sales of new Great Dane truck trailers outside of any specific area of primary responsibility, historic trading area or exclusive territory.

2. Entering into any agreement with a dealer not to make or solicit sales of new Great Dane truck trailers to or from any specific customer or class of customers.

3. Encouraging or suggesting to a dealer that a dealer not solicit or make sales of new Great Dane truck trailers outside of its area of primary responsibility, historic trading area, or exclusive territory, or not solicit or make sales of new Great Dane truck trailers to or from any customer or class of customers.

4. Encouraging or suggesting to Great Dane Trailers, Inc., that it take any action or impose any restriction for the purpose of having extra-territorial sales or sales to a specific customer or class of customers stopped or inhibited, directly or indirectly.

Provided, however, That nothing in paragraph 4 of part I of this order shall prohibit any individual dealer, not in concert with any other dealer, from unilaterally suggesting or encouraging Great Dane Trailers, Inc., to take any action, otherwise lawful, with respect to the marketing or distribution of new Great Dane truck trailers.

II

A. *It is further ordered,* That respondent shall distribute a copy of this order to all of its members and that those members shall distribute copies of this order to all truck trailer salesmen employed by them. Respondent shall secure from each dealer a signed statement acknowledging receipt of this order and the distribution of this order to their salesmen within sixty (60) days after service upon them of this order. All new members must be given a copy of this order within sixty (60) days of affiliation.

B. *It is further ordered,* That respondent shall notify the Commission at least thirty (30) days prior to the disbanding or incorporation of the Great Dane Distributor Council or the formation of a successor or substitute or any other changes in the Great Dane Distributor Council which may affect compliance obligations under this order.

C. *It is further ordered,* That the respondent herein shall within ninety (90) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

III

A. Each dealer signing this order agrees to be individually bound by this order for any act it commits or for any act committed by an employee, agent, or representative of such dealer. No dealer signing this agreement shall be jointly and severally liable for civil penalties for the actions of the association unless it ratified or participated in the encouragement, institution, or carrying out of those actions.

B. This agreement may be executed in two or more counterparts and when so executed shall have the same force and effect as though all signatures appeared on one document.

Commissioners Miller and Douglas dissented.

IN THE MATTER OF

SPINAL HEALTH SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3122. Complaint, Oct. 13, 1983—Decision, Oct. 13, 1983*

This consent order requires two Florida chiropractors and the two companies which they operate, among other things, to cease representing without competent and reliable scientific tests or evidence, that their "laser face lift" or "biostimulation face lift" will reduce, smooth out or remove facial lines, depressions and wrinkles, or otherwise give the recipient a more youthful facial appearance; or that their cosmetic treatment will provide as long-lasting an improvement as that of a surgical face lift. The order also requires that respondents retain documentation substantiating claims for a period of three years, and provide its sales and advertising personnel with a copy of the order and an acknowledgement form.

Appearances

For the Commission: *Matthew Daynard.*

For the respondents: *Roger W. Calton, Kansas City, Mo.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Spinal Health Services, Inc., a corporation, Laser Toning Center, Inc., a corporation, Fred J. Gehl, D.C. and Samuel Lux, D.C., hereinafter referred to as respondents, have violated the provisions of that 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. For purposes of this complaint, the following definitions shall apply:

A. *Commerce* means commerce as defined in the Federal Trade Commission Act (15 U.S.C. 44).

B. *Class II laser device* means a Class II laser device as defined in regulations promulgated by the United States Food and Drug Administration, Performance Standard for Laser Products, 21 CFR 1040.10.

C. *Class III device* means a Class III medical device as defined in the Food, Drug and Cosmetic Act, 21 U.S.C. 360c.

PARAGRAPH 1. Respondent Spinal Health Services, Inc. ("SHS") is