

Complaint

104 F.T.C.

IN THE MATTER OF

THE ESTES PARK ACCOMMODATIONS ASSOCIATION, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3143. Complaint, Aug. 21, 1984—Decision, Aug. 21, 1984*

This consent order requires an association composed of operators of motels, hotels, cabins and campgrounds in the area of Estes Park, Colorado, to cease inhibiting competition by restricting, impeding or advising its members and others against the truthful advertising of the terms and conditions of their accommodations; and by declaring such activities unethical. The association is precluded from taking any 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. Respondent must also remove from its membership application, policy statement or guidelines, any provision which is inconsistent with the prohibitions contained in the order.

Appearances

For the Commission: *Claude C. Wild, III.*

For the respondent: *R. Hallberg*, Estes Park, Col.

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, The Estes Park Accommodations Association, Inc., is a corporation formed pursuant to the laws of the State of Colorado, with its mailing address at P.O. Box 178, Estes Park, Colorado.

PAR. 2. Respondent is an association formed to represent the interests of operators of motels, hotels, campgrounds, cabins, and other lodging facilities for travelers in the area of Estes Park, Colorado. Respondent has approximately 80 members, and these members control a substantial majority of the lodging facilities available to travelers in that area.

PAR. 3. Members of respondent are engaged in the business of pro-

viding lodging facilities to travelers for a profit. 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 operators of lodging facilities for travelers.

PAR. 4. Respondent is organized for the purpose, among others, of guarding and fostering the interests of its members. Respondent engages in 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 provide lodging facilities for travelers from other states and countries. Additionally, the respondent and its individual members send advertisements to recipients in other states, place advertisements in publications with interstate circulation, and participate in trade shows in other states. The acts and practices described below are "in or affecting 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 the operators of lodging facilities for travelers in the Estes Park, Colorado, area by:

A. Prohibiting its members from truthfully advertising their facilities and prices to the public, from distributing truthful information about their prices and facilities, and from otherwise soliciting travelers' business; and

B. Coercing individual members into abandoning their efforts to truthfully advertise their facilities, to distribute truthful information about their prices, and to otherwise solicit travelers' business.

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

A. Adopting and implementing written and unwritten codes of ethics, policy statements and guidelines that prohibit efforts by its members to truthfully advertise the prices for their lodging facilities by means of posting price signs, or to otherwise distribute truthful information to the public about their facilities and prices;

B. Publishing statements by some of its officials advising members that certain advertising of prices is unethical and threatening expulsion and other sanctions against members that post price signs; and

C. Sending letters to individual members who truthfully advertised their facilities and prices that pressured such members to abandon such activities.

PAR. 8. Through the combination or conspiracy and the acts or

practices described above, certain members of respondent have agreed not to, and do not, advertise or post the prices of their lodging facilities, and certain individual members of respondent have been coerced into abandoning the advertising of prices for their lodging facilities. Consequently, competition among the operators of lodging facilities for customers has been foreclosed, frustrated and eliminated, and customers have been deprived of the benefits of competition among the operators of lodging facilities.

PAR. 9. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition or unfair or deceptive acts or practices in violation of 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 named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Denver Regional Office 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 aforesaid draft of 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 provision 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 has 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 The Estes Park Accommodations Association, Inc., 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 178, Estes Park, 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. *EPAA* means The Estes Park Accommodations Association, Inc., its members, officers, directors, committees, representatives, agents, employees, successors and assigns.

B. The term *lodging facilities* means motel rooms, hotel rooms, cottages, cabins and any other accommodations designed for the housing of travelers.

II.

It is ordered, That EPAA 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, publishing, or posting by any person of the prices, terms, or conditions concerned with the furnishing of lodging facilities; and

B. Suggesting, inducing, urging, encouraging or assisting any person, business, or any other nongovernmental organization to take any of the actions prohibited by Part II (A).

Nothing contained in Part II shall prohibit EPAA from (1) filing any complaint with a governmental agency concerning violations of any law, or (2) 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 would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

It is further ordered, That EPAA shall cease and desist from taking any action against a person alleged to have violated any ethical standard promulgated in conformity with this Order without first providing such person with:

- A. 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 EPAA with respect to such allegations.

IV.

It is further ordered, That EPAA shall:

- A. For a period of three years after service of the final Order, provide each new member of EPAA with a copy of the letter attached as Appendix A at the time the member is accepted into EPAA;
- B. Within thirty (30) days after service of the final Order, send a copy of the letter attached as Appendix A to each current member of EPAA;
- C. Within thirty (30) days after service of the final Order, remove from any existing EPAA membership application, policy statement, or guideline, any provision, interpretation, or policy statement which is inconsistent with Part II or Part III of this Order;
- D. Within sixty (60) days after service of the final Order, 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 three (3) years after service of the final Order, 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 or Part III of this Order; and
- F. Within one year after service of the final Order, and annually thereafter for a period of three (3) 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 or Part III of this Order.

V.

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

APPENDIX A

[Letterhead of EPAA]

Dear Member:

The Estes Park Accommodations Association, Inc. (EPAA), and the Federal Trade Commission have entered into an agreement which resulted in an Order prohibiting EPAA or its members from:

1. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising, publishing, or posting by any person of the prices, terms, or conditions concerned with the furnishing of lodging facilities; and
2. Suggesting, inducing, urging, encouraging or assisting any person, business, or any other nongovernmental organization to take any of the actions prohibited by the above paragraph.

The Order does not prohibit EPAA from:

1. Filing any complaint with a governmental agency concerning violations of any law, or
2. 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 would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

EPAA may not take any action against a person alleged to have violated any ethical standard promulgated in conformity with this Order without providing such person with:

1. Written notice of the allegations against him or her;
2. A hearing wherein such person, or a person retained by him or her, may seek to rebut such allegations; and
3. The written findings or conclusions of EPAA with respect to such allegations.

A copy of the Complaint and Order issued pursuant to this agreement will be furnished by EPAA upon request.

Thank you for your cooperation.

Sincerely,

President
The Estes Park Accommodations
Association, Inc.

IN THE MATTER OF

THE AMERICAN COLLEGE OF OBSTETRICIANS AND
GYNECOLOGISTSMODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket C-2855. Consent Order, Dec. 14, 1976—Modifying Order, Aug. 28, 1984

This Order reopens the proceeding and modifies the Consent Order entered against The American College of Obstetricians and Gynecologists ("ACOG"), 88 F.T.C. 955. Pursuant to ACOG's request, the Order has been modified by deleting Paragraph II(B), which barred the association from advising in favor of or against any relative value scale developed by third parties; and by inserting a provision identical to that contained in the Commission Order entered against *Michigan State Medical Society*, 101 F.T.C. 191. This provision allows ACOG more freedom to discuss any issue, including reimbursement, with third-party payers and governmental entities.

ORDER REOPENING AND MODIFYING FINAL ORDER

By petition filed May 2, 1984, the American College of Obstetricians and Gynecologists ("ACOG") asked the Commission to reopen and modify the Commission order in Docket No. C-2855 entered by consent against ACOG on December 14, 1976 ("Order") [88 F.T.C. 955]. ACOG requested that the Commission modify the Order by a) deleting Paragraph II(B) of the Order, which prohibits ACOG from advising in favor of or against any relative value scale developed by third parties (except that ACOG is permitted to provide historical data), and b) inserting a provision identical to a provision contained in the Commission's Order in *Michigan State Medical Society*, Docket No. 9129, 101 F.T.C. 191 (1983) ("*Michigan State*") that would allow ACOG more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. ACOG's petition was placed on the public record and no comments were received.

Upon consideration of ACOG's petition and other relevant information, the Commission finds that the public interest would be served by deleting Paragraph II(B) of the Order and by inserting the relevant provision contained in the order in *Michigan State*. ACOG has demonstrated that the Order's restriction on ACOG's ability to discuss relative value scales with third-party payers and governmental entities has caused injury to ACOG and the public that outweighs any benefit that may be derived from the restriction. Modification is also consistent with the Commission's decision in *Michigan State*.

The Order continues to prohibit ACOG from developing or circulat-