

IN THE MATTER OF
HAWAII DENTAL SERVICE CORPORATION

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

Docket C-3158. Complaint, July 26, 1985—Decision, July 26, 1985

This consent order requires the Hawaii Dental Service Corporation ("HDS"), an organization engaged in the administration and operation of pre-paid dental care programs whose dentist members provide dental care service for a fee, among other things, to cease basing its decision to send dentists to the counties of Maui, Kauai, and Hawaii, on the approval or consent of member dentists who reside in those counties. The order bars the organization from denying membership to any dentist licensed to practice in Hawaii, based in whole or in part on the approval of other dentists in the geographic location of the dentist's proposed practice, and from inducing, encouraging, or assisting any dentist or other nongovernmental organization to take any of the prohibited actions. Within thirty days from the effective date of the order, HDS is required to remove from its constitution and bylaws or other guidelines, any provision, interpretation or policy statement that is inconsistent with the order and publish in its newsletter and another publication, a notice of such removal.

Appearances

For the Commission: *Erika Woodinski* and *Ralph E. Stone*.

For the respondents: *Wesley Ishikawa*, Honolulu, Hawaii.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (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 Hawaii Dental Service Corporation ("HDS") is a dental service corporation formed pursuant to the laws of the State of Hawaii with its mailing address at 700 Bishop Street, Suite 700, Honolulu, Hawaii. HDS is engaged in the business of the administration and operation of prepaid dental care programs.

PAR. 2. Members of HDS are engaged in the business of providing dental care services for a fee. Except to the extent that competition

has been restrained as herein alleged, members of HDS have been and are now in competition among themselves and with other dentists. Members of HDS elect the board of directors of HDS.

PAR. 3. HDS engages in substantial activities which further its members' pecuniary interests. By virtue of its purposes and activities, HDS is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. In the conduct of their business, members of HDS receive and treat patients from other states, receive substantial sums of money for rendering dental services, which monies flow across state lines, and use supplies which are shipped in interstate commerce. The acts or practices described below are in interstate commerce, or affect the interstate activities of HDS's members, third-party payers, other third parties, and some patients of HDS'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. 5. One factor that consumers consider in deciding whether to purchase a prepaid dental service plan is whether the plan has an adequate supply of participating dentists. In the absence of the restraints on competition alleged in this complaint, HDS would be able to make its plan more attractive to consumers by seeking to recruit dentists and send them to be participating dentists in the counties of Maui, Kauai, and Hawaii. Such activities by HDS could increase competition among dentists and increase access to dental care in those counties.

PAR. 6. HDS has acted as a combination of at least some of its members or has agreed with at least some of its members to limit, foreclose, frustrate, or eliminate competition among dentists in the State of Hawaii by agreeing to restrictions on its ability to freely recruit and send dentists to the counties of Maui, Kauai, and Hawaii.

PAR. 7. HDS has acted in furtherance of this combination or agreement by enacting restrictions in its bylaws that prohibit HDS from recruiting and sending dentists to the counties of Maui, Kauai, or Hawaii without the approval of the majority of its members who reside in the affected county, thereby according HDS's members in these counties the power to exclude competition.

PAR. 8. Through the combination or agreement and the acts described above, certain individual members or potential members of HDS are likely to have been or are likely to be deterred from establishing practices in the counties of Maui, Kauai, and Hawaii, to the effect that:

A. Competition among dentists for patients may have been and may be limited, foreclosed, frustrated or eliminated; and

B. Consumers may have been and may be deprived of the benefits of competition among dentists.

PAR. 9. The combination or agreement and the acts 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 agreement is continuing and will continue absent the entry against HDS 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 San Francisco 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 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 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 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 Hawaii Dental Service Corporation is a corporation, existing and doing business under and by virtue of the laws of the State of Hawaii with its office and principal place of business located at 700 Bishop Street, Suite 700, Honolulu, Hawaii.

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. *HDS* means respondent Hawaii Dental Service Corporation, its Board of Directors, officers, committees, representatives, agents, employees, successors, and assigns; and

B. *Member dentist* means a dentist with whom HDS has a contractual agreement to render dental care to beneficiaries of HDS dental care plans.

II.

It is ordered, That HDS, directly or indirectly, or through any corporation or other device, in connection with the administration and operation of prepaid dental care programs in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Basing the decision to send dentists, dentist groups, or dentist panels to the counties of Maui, Kauai, and Hawaii, in whole or in part, on the approval or consent of other member dentists who reside in those counties;

B. Denying membership in HDS to a dentist licensed to practice in the State of Hawaii based in whole or in part on the approval or consent of other member dentists to the geographic location of the dentist's proposed practice; and

C. Inducing, urging, encouraging, or assisting any dentist, group of dentists, or any other non-governmental organization to take any of the actions prohibited by Part II of this order.

III.

It is further ordered, That HDS shall:

A. Within thirty (30) days after this order becomes final, remove from its constitution and bylaws, and from any other existing policy statements or guidelines of HDS, any provision, interpretation or policy statement which is inconsistent with Part II of this order, and within sixty (60) days after this order becomes final, publish in the *Hawaii Dental Service Newsletter* and one other publication generally circulated to dentists practicing in the State of Hawaii, a notice of the

removal of such provision, interpretation, policy statement or guideline;

B. Within thirty (30) days after this order becomes final, distribute a copy of this order to each of HDS's supervisory personnel having procedural or policy responsibilities with respect to the subject matter of this order, and secure a signed statement acknowledging receipt of said order;

C. Within ninety (90) 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;

D. 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 this order; and

E. Within one (1) year after this order becomes final, and annually thereafter for a period of four (4) years, file, if requested by Commission staff, a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by this order.

IV.

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

IN THE MATTER OF
DECORATING PRODUCTS ASSOCIATION OF
CENTRAL FLORIDA

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

Docket C-3159. Complaint, July 26, 1985—Decision, July 26, 1985

This consent order requires Decorating Products Association of Central Florida (DPACF), an association composed of wallcovering retailers and suppliers, among other things, to cease, individually or in concert with others, engaging in conduct having the purpose or effect of fixing prices, terms or conditions of sale of wallcoverings; coercing sellers of wallcoverings to adopt or abandon any practice or policy concerning pricing, conditions of sale, distribution method, or choice of customers. DPACF is also barred from suggesting or recommending to its members that they refuse to deal or otherwise attempt to affect a supplier's pricing or distribution methods; and from assisting any affiliated organization or its members in engaging in the prohibited conduct. The organization is further required to mail a copy of the order to each of its members and to publish it in its newsletter in a timely fashion. Finally, the order obligates DPACF to require its members to agree in writing to be bound by the terms of the order as a condition of membership; and to terminate for a period of one year any member believed to have engaged in the prohibited practices after the effective date of the order.

Appearances

For the Commission: *Kevin T. Cronin and Joseph Eckhaus.*

For the respondents: *J. Thomas Cardwell, Akerman, Senterfitt & Eidson, Orlando, Fla.*

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 above caption 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 this complaint stating its charges as follows:

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply: