

IN THE MATTER OF

RHODE ISLAND BOARD OF ACCOUNTANCY

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

Docket 9181. Complaint, July 10, 1984—Decision, Feb. 25, 1986

This consent order requires the Rhode Island Board of Accountancy, the sole licensing authority for CPAs and PAs in the state, among other things, to cease prohibiting accountants in the state from seeking business by truthful advertisements or other non-deceptive forms of solicitation. Respondent may continue to impose restrictions authorized by the state legislature against dishonest or fraudulent practices and against persons who falsely identify themselves as accountants.

Appearances

For the Commission: *Rendell A. Davis, Jr.*

For the respondent: *Linda Buffardi*, Providence, R.I. and *Christopher H. Little* and *Steven E. Snow*, *Tillinghast, Collins & Graham*, Providence, R.I.

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 Rhode Island Board of Accountancy has violated 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:

I. DEFINITIONS

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

- (a) *Board* means the respondent named above, the Rhode Island Board of Accountancy;
- (b) *Rhode Island* means the State of Rhode Island and Providence Plantations;
- (c) *CPA* means certified public accountant;
- (d) *PA* means public accountant; and
- (e) *encroachment* means the endeavor of a CPA or PA to provide

services to persons or entities that are the clients of other CPAs or PAs.

II. RESPONDENT

2. The Board is organized, exists, and transacts business under the laws of Rhode Island (R.I. Gen. Laws § 5-3) with its principal office at 100 North Main Street, Providence, Rhode Island. The Board is subject to the Commission's jurisdiction under the Federal Trade Commission Act.

3. Three of the five members of the Board are required by R.I. Gen. Laws § 5-3-4 to be in "active practice" in Rhode Island as CPAs and one member of the Board is required to be in "active practice" as a PA.

4. Compensation for serving on the Board for each Board member is limited to no more than thirty dollars (\$30) per meeting of the Board and such compensation cannot exceed seven hundred fifty dollars (\$750) per year for any one Board member.

5. The Board members are appointed by the Governor of Rhode Island.

6. The Board is the sole licensing authority of CPAs in Rhode Island. It administers written examinations and otherwise supervises the qualification, certification, and licensing of CPAs for practice within Rhode Island.

7. Upon payment of fees, the Board issues annual permits to practice to properly qualified CPAs and PAs.

8. It is unlawful for individuals to practice as CPAs or PAs in Rhode Island unless they hold permits to practice issued by the Board.

9. Pursuant to R.I. Gen. Laws § 5-3-4(f)(2), the Board may prescribe rules and regulations concerning professional conduct for CPAs and PAs in Rhode Island. The Board is authorized by R.I. Gen. Laws § 5-3-12(d) to take disciplinary action against any CPAs or PAs in Rhode Island who violate any of the Board's regulations concerning professional conduct.

III. STATE REGULATION OF ADVERTISING, SOLICITATION, AND ENCROACHMENT BY ACCOUNTANTS

10. Rhode Island has no articulated or expressed state policy of restricting truthful advertising or prohibiting solicitation or encroachment by CPAs and PAs. The laws of Rhode Island are silent as to the form of, or content of, the Board's rules and regulations concerning professional conduct, except for instructions that the Board may issue "[r]ules and regulations of professional conduct for establishing and maintaining high standards of competence and integrity in the profession of public accounting."

IV. BOARD CONDUCT

11. The Board has restrained competition among CPAs and PAs in Rhode Island by combining or conspiring with its members or others, or by acting as a combination of its members or others,

(a) to prohibit advertising and solicitation by CPAs and PAs in Rhode Island and

(b) to prevent Rhode Island CPAs and PAs from endeavoring to provide any services to persons or entities that are the clients of other CPAs or PAs, unless such clients request such services or unless the auditing of a subsidiary, branch, or other component of such clients is necessary to express an opinion on the combined or consolidated financial statements of the clients.

12. In furtherance of this combination or conspiracy, the Board has promulgated Regulations 4.1 and 5.2 of its Regulations Concerning Professional Conduct of Holders of a Certificate to Practice as a Certified Public Accountant or of an Authority to Practice as a Public Accountant. Appendix A, attached to this complaint, sets forth the text of those regulations.

V. TRADE AND COMMERCE

13. Except to the extent that competition has been restrained as alleged below, and depending on their specialties and geographic location, CPAs and PAs in Rhode Island compete with each other and with the accountants serving on the Board.

14. Millions of dollars are spent each year on the services of the hundreds of CPAs and PAs practicing in Rhode Island.

15. The services provided by Rhode Island CPAs and PAs involve and affect individuals, corporations, and other business entities throughout the United States. Those services facilitate, direct, and shape the conduct of interstate business and contribute to the flow of persons, money, goods, and services into and out of Rhode Island. In the course of rendering services, many CPAs and PAs located in Rhode Island travel to states other than Rhode Island and make substantial use of interstate mail and telephone services in the transport of funds, financial statements, and other communications. Some Rhode Island CPAs are in partnership with CPAs practicing in states other than Rhode Island. The acts and practices described below are in interstate commerce, or affect the interstate activities of CPAs and PAs in Rhode Island and of persons who pay for their services, and 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).

VI. EFFECTS

16. The effects of the combination or conspiracy described above are and have been to restrain competition and injure consumers in the following ways, among others:

(a) competition in the sale of the services of CPAs and PAs has been unreasonably restricted;

(b) consumers of the services of CPAs and PAs have been deprived of information as to such services and of the benefits of free and open competition in the sale of such services; and

(c) CPAs and PAs have been unreasonably restrained in their ability to make their services readily and fully known and available to consumers requiring such services.

VII. VIOLATION

17. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition or unfair or deceptive acts or practices that violate Section 5 of the Federal Trade Commission Act. This combination or conspiracy, or the effects thereof, are continuing and will continue or reoccur unless the Commission enters appropriate relief against the Board.

APPENDIX A

Excerpts from the "Regulations Concerning Professional Conduct of Holders of a Certificate to Practice as a Certified Public Accountant or of an Authority to Practice As a Public Accountant" promulgated by the Board:

4.1 Encroachment: A Certified Public Accountant or Public Accountant shall not endeavor to provide a person or entity with a professional service which is currently provided by another Certified Public Accountant or Public Accountant except:

1. He may respond to a request for a proposal to render services and may furnish service to those who request it. However, if an audit client of another Certified Public Accountant or Public Accountant requests a different Certified Public Accountant or Public Accountant to provide professional advice on accounting or auditing matters in connection with an expression of opinion on financial statements, the accountant to whom the request has been made must first consult with the accountant currently engaged to ascertain that the accountant is aware of all the available relevant facts.

2. Where a Certified Public Accountant or Public Accountant is required to express an opinion on combined or consolidated financial statements which include a subsidiary, branch or other component audited by another independent Public Accountant, he may insist on auditing any such component which in his judgment is necessary to warrant the expression of his opinion.

A Certified Public Accountant or Public Accountant who receives an engagement for services by referral from another Certified Public Accountant or Public Accountant shall not accept the client's request to extend his service beyond the specific engagement without first notifying the referring accountant, nor shall he seek to obtain any additional engagement from the client.

* * * * *

5.2 Solicitation and Advertising: A Certified Public Accountant or Public Accountant shall not seek to obtain clients by solicitation. Advertising is a form of solicitation and is prohibited.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 jurisdictional facts, 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Rhode Island Board of Accountancy is organized, exists, and does business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its office and principal place of business located at 100 North Main Street, Providence, Rhode Island.

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. *Board* means the Rhode Island Board of Accountancy, its mem-

bers, committees, representatives, agents, employees, successors, and assigns.

B. *Person* means any natural person, corporation, partnership, governmental entity, association, organization, or other entity.

C. *Encroachment* means the endeavor of a person to provide services to the client of another person.

D. *Reasonably believes* refers only to that which a reasonable person would believe after having considered all relevant facts and legal precedent.

E. *Accountancy License* means any certificate, authority, registration, permit, or license issued by the Board, including, but not limited to,

1. a certificate of certified public accountant,
2. the authority to practice as a public accountant,
3. registration as an accountant licensed by a foreign country,
4. a permit to practice as a certified public accountant or public accountant, and
5. a limited permit to engage in the practice of accounting.

II.

It is ordered, That the Board, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall cease and desist from, directly or indirectly, or through any device:

A. Prohibiting, restricting, impeding, or discouraging any advertising, solicitation, or encroachment by any person. Such conduct includes, but is not limited to:

1. Adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits, restricts, impedes, or discourages any advertising, solicitation, or encroachment;
2. Taking or threatening to take disciplinary action against any person for advertising, soliciting, or encroaching; and
3. Declaring any practice of advertising, solicitation, or encroachment to be illegal, unethical, unprofessional, or otherwise improper.

B. Inducing, urging, assisting, or encouraging any person to take any action prohibited by this Part.

Provided, that nothing in this order shall prevent the Board from taking any action authorized by Chapter 5-3 of the General Laws of Rhode Island against those advertising, solicitation, or encroachment practices that respondent reasonably believes are dishonest or fraudulent within the meaning of Section 5-3-12(b) of those Laws, or

that respondent reasonably believes are unlawful under Section 5-3-16 of those Laws, as those statutes are limited by the First and Fourteenth Amendments to the United States Constitution.

III.

It is further ordered, That this order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the profession of accountancy.

IV.

It is further ordered, That the Board shall:

A. Distribute by first-class mail an announcement in the form shown in Appendix A, and a copy of this order:

1. Within thirty (30) days after this order becomes final, to each person who, at the time this order becomes final, has an Accountancy License;

2. Within thirty (30) days after this order becomes final, to each person who, at the time this order becomes final, has an application for, or a request for reinstatement of, an Accountancy License pending before the Board; and

3. For a period of five (5) years after this order becomes final, to each person who applies for an Accountancy License, within thirty (30) days after he or she applies for such a license;

B. Within ninety (90) days after this order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which the Board has complied and is complying with this order;

C. For a period of five (5) years after this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this order, including any written communications and any summaries of oral communications, and any records of rulemaking and enforcement proceedings, regarding advertising, solicitation, or encroachment;

D. In addition to the report required by Section IV.B. of this order, annually for a period of five (5) years on or before the anniversary of the date on which this order becomes final, and at such other times as the Commission may by written notice to the Board require, file a written report with the Federal Trade Commission setting forth in

detail the manner and form in which the Board has complied and is complying with this order; and

E. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in the Board's authority to regulate the profession of accountancy that may affect compliance obligations arising out of this order.

APPENDIX A

[Date]

ANNOUNCEMENT

As you may be aware, the Rhode Island Board of Accountancy has entered into a consent agreement with the Federal Trade Commission that became final on [date]. The order issued pursuant to the consent agreement provides that the Board may not prohibit, restrict, impede, or discourage any

- (1) advertising,
- (2) solicitation, or
- (3) endeavor of a person to provide services to the client of another person, a practice also known as "encroachment."

However, the order does not prevent the Board from prohibiting those advertising, solicitation, or encroachment practices that violate statutory prohibitions against dishonesty and fraud.

In particular, this means that as long as you do not engage in dishonesty or fraud, neither the Board nor any member of the Board can prevent or discourage you from engaging in the following practices: (a) in-person solicitation, (b) self-laudatory advertising, (c) comparative advertising, (d) endorsement or testimonial advertising, and (e) advertising that would have violated previously-imposed standards or rules, such as rules requiring that accountant advertising be "dignified" or "professional."

For more specific information, you should refer to the FTC order itself. A copy of the order is enclosed.

Chairman
Rhode Island Board of Accountancy

IN THE MATTER OF

UNITED STATES STEEL CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 760. Order, July 21, 1924—Modifying Order, March 10, 1986*

The Federal Trade Commission has modified a 1924 order (8 F.T.C. 1) issued against respondent by deleting a requirement that the company include specific price and transportation information on its contracts and invoices.

ORDER REOPENING AND MODIFYING ORDER ISSUED ON JULY 21, 1924

On November 7, 1985, respondent United States Steel Corporation ("USS") filed its "Request to Reopen and Set Aside in Part and Modify in Part the Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding in Docket No. 760 and to modify the order issued by the Commission in this case on July 21, 1924, by deleting Paragraph 3, which requires USS to state clearly on its contracts and invoices how much is charged for the steel f.o.b. the producing or shipping point and how much, if any, is charged for the actual transportation. USS also asks that the order be modified to specify that, "Quotations and sales may be made on a net delivered price basis so long as there is no concerted refusal to quote or sell rolled steel products f.o.b. the plant where the products are manufactured or from which they are shipped." USS' request was placed on the public record for thirty days; no comments were received.

After reviewing USS' request and other available information, the Commission has concluded that the public interest warrants reopening and modification of the order to eliminate Paragraph 3. The requirement that price and transportation information be included on USS' contracts and invoices for rolled steel products was adopted principally as a fencing-in restraint ancillary to the order's prohibitions against the use of the "Pittsburgh Plus" or other basing point pricing system and against price discrimination. USS has shown that since the deregulation of railroad freight rates by the Staggers Rail Act of 1980, 49 U.S.C. 10701 *et seq.*, enacted by Congress to promote competition by allowing carriers to negotiate confidential contract rates with their customers, many carriers have insisted that USS not disclose their negotiated rates. This change in the legal framework within which carriers and USS now operate, and the carriers' insist-