

IN THE MATTER OF
AMERICAN ACADEMY OF OPTOMETRY, INC.

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

Docket C-3193. Complaint, July 21, 1986—Decision, July 21, 1986

This consent order, among other things, prohibits a Washington, D.C.-based professional association from restricting or declaring unethical any truthful advertising, solicitation of patients or choice of a location to practice.

Appearances

For the Commission: *George R. Bellack.*

For the respondent: *John W. Hazard, Jr., Webster, Chamberlain & Bean, Washington, D.C.*

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 American Academy of Optometry, Inc., is a corporation formed pursuant to the laws of the District of Columbia with its mailing address at 5530 Wisconsin Avenue, N.W., Suite 950, Washington, D.C.

PAR. 2. Respondent is a professional association of optometrists. Respondent has approximately 2,700 members.

PAR. 3. Most members of respondent are engaged in the business of providing optometric health care services for a fee and selling eye-care products. 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 eye care providers.

PAR. 4. 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, receive substantial sums of money from the federal government and from other third party payers for providing optometric services and products, which monies flow across state lines, and use supplies and equipment and sell products that are shipped across state lines. 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. In selecting an optometrist or purchasing optical products, consumers consider factors such as price and other terms of sale, quality of the service or product offered, convenience, reputation, and experience.

PAR. 7. Most optometric services have traditionally been provided by optometrists practicing from a single, private office location. Most optometrists practicing in this manner also have sold optical products from the same location. Most have engaged in little or no advertising regarding their services or products. Some optometrists do not conduct business in a traditional, private office setting. They may, for example, locate their practices in shopping centers or other locations customarily considered "commercial" in nature. They may practice in, or in proximity to, retail optical stores or retail stores for which optometric services and optical products are not the main line of business. Such practices can increase consumer access to optometric care and achieve operating efficiencies that may lower costs of many optometric services and optical products. These optometrists, or firms with which some of them affiliate, typically engage in more advertising than traditional practitioners. Advertising enables optometrists to inform consumers about factors important to their choice of an optometrist, and can benefit consumers by increasing the information available to them and promoting competition among optometrists.

PAR. 8. Respondent has combined or agreed with at least some of its members to restrain or lessen competition among themselves and with other eye care providers by:

A. Restricting truthful advertising by AAO members or prospective members concerning their prices, products, services, and qualifications;

B. Inducing or attempting to induce individual members or prospective members to cease advertising their prices, products, services, or qualifications, or otherwise cease seeking to solicit patients' business;

C. Withholding membership from prospective members who truthfully advertised their prices, products, services, or qualifications; and

D. Restricting the types of practice locations AAO members or prospective members may use.

PAR. 9. Respondent has engaged in various acts or practices in furtherance of this combination or agreement, including:

A. Enacting and adopting ethical restrictions, standards of conduct, policy statements, and guidelines that, among other things:

1. Require members' public statements, announcements of services, and promotional activities to "emphasize professional services" and prohibit all "direct solicitations" of patients; and

2. Require members to "practice in locations consistent with the majority of other health professionals in the area"; and

B. Interpreting and implementing the above ethical restrictions, standards of conduct, policy statements, and guidelines so as to, among other things:

1. Restrict truthful advertising by its members or prospective members of, among other things, their prices, fees, or charges, types of methods of treatment, professional training and experience, special expertise, and products, such as contact lenses, offered for sale; and

2. Prevent members or prospective members from practicing in commercial locations.

PAR. 10. The purposes or effects, and the tendency and capacity, of the combination or agreement and acts or practices of respondent as described above have been and are to unreasonably restrain competition and affect consumers in one or more of the following ways, among others:

A. Consumers are being deprived of the benefits of vigorous price and service competition among optometrists;

B. Consumers are being deprived of truthful information about optometrists' prices, products, services, and qualifications;

C. Optometrists are being prevented from disseminating truthful information about their prices, products, services, and qualifications; and

D. Consumers may have been deprived of the potential cost savings, convenience, and efficiency benefits of optometric practices located in commercial settings in their purchases of optometric services and optical products.

PAR. 11. The combination or agreement 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 agreement 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 respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional allegations 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 American Academy of Optometry, Inc., 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 5530 Wisconsin Avenue, N.W., Suite 950, in the City of Washington, District of Columbia.

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. AAO means respondent American Academy of Optometry, Inc., its officers, councils, committees, representatives, agents, employees, successors, and assigns.

B. *Adverse action* means the revocation or suspension of, or refusal to grant, membership in AAO, or the disciplining or penalizing of any optometrist.

II.

It is ordered, That AAO, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or advertising against the truthful, non-deceptive advertising or publishing by any person of the prices, terms, or conditions of sale of optometric services or optical products, or of information about optometrists' services that are offered for sale or made available by optometrists or by any organization with which optometrists are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through truthful, non-deceptive advertising or by any other means, of patients, patronage, or contracts to supply optometric services or optical products, by any optometrist or by any organization with which optometrists are affiliated;

C. Restricting, regulating, or interfering with any optometrist's choice of a location at which the optometrist will practice; and

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

Nothing contained in Part II of this order shall prohibit AAO 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 AAO 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 AAO shall cease and desist from:

A. Taking any adverse action against a person alleged to have violated any rule, policy, guideline, or ethical standard without first

providing such person with written notice of any such allegation, and without providing such person a reasonable opportunity to respond. The notice required by this part shall, at a minimum, clearly specify the rule, policy, guideline, or ethical standard alleged to have been violated, the specific conduct that is alleged to have violated the rule, policy, guideline, or ethical standard, and the reasons the conduct is alleged to have violated the rule, policy, guideline, or ethical standard; and

B. Failing to maintain for five (5) years following the taking of any action referred to in this part, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

IV.

It is further ordered, That AAO shall:

A. For a period of three (3) years, commencing on the date this order becomes final, provide each applicant for membership in AAO with a copy of the synopsis, attached hereto as Attachment A, of the complaint and this order at the time the applicant files his or her application for membership in AAO;

B. Within sixty (60) days after this order becomes final, send by first-class mail the letter attached hereto as Attachment B, together with a copy of the synopsis, attached hereto as Attachment A, of the complaint and this order to every optometrist who applied for membership in AAO within the last five (5) years but was not accepted for membership, and during whose application review process AAO or any committee or member of AAO raised an issue regarding any practices that are the subject of this order;

C. Within sixty (60) days after this order becomes final, publish the synopsis, attached hereto as Attachment A, of the complaint and this order in the *American Journal of Optometry and Physiological Optics*, or in any successor publication, with the same prominence as regularly published feature articles, and distribute a copy of that issue to each optometrist who is a member of AAO at the time this order becomes final;

D. Within ninety (90) days after this order becomes final, remove from its constitution, bylaws, and any other existing policy statements or guidelines of AAO, any provision, interpretation, or policy statement that is inconsistent with Part II of this order, and within one hundred and twenty (120) days after this order becomes final, publish and distribute, in the manner described in Part IV.C. of this

order, a copy of the revised versions of such documents, statements, or guidelines to each of its members;

E. Within one hundred and 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 and is complying with this order;

F. 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 Parts II and III of this order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any optometrist or any entity with which optometrists are affiliated; and

G. Annually for a period of five (5) years after this order becomes final, and commencing twelve (12) months after this order becomes final, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Parts II, III, and IV of this order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any optometrist or any entity with which optometrists are affiliated.

V.

It is further ordered, That AAO shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution or reorganization 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.

Chairman Oliver did not participate.

ATTACHMENT A

SYNOPSIS OF CONSENT AGREEMENT BETWEEN AMERICAN ACADEMY OF OPTOMETRY AND FEDERAL TRADE COMMISSION

The American Academy of Optometry ("Academy") has agreed to comply with the terms of a Consent Order issued by the Federal Trade Commission. A Complaint, setting forth the Commission's allegations against the Academy, has also been issued by the Commission. The Academy's agreement to the Consent Order is for settlement purposes only, and does not constitute an admission by the Academy of a law violation. In December 1981, the Academy adopted a set of guidelines that allow advertising by its members, but such guidelines require further amendment.

The Complaint alleges that the Academy maintained and enforced ethical standards

and guidelines and interpreted and implemented standards and guidelines which restricted truthful advertising and solicitation by members or prospective members, and prevented members or prospective members from practicing in commercial locations.

The Consent Order requires that the Academy not restrain advertising of prices, products and services, and other forms of solicitation by any optometrist, or any optometrist's choice of practice location. However, the Consent Order does not prohibit the Academy from adopting reasonable ethical guidelines to prevent false or deceptive advertising or uninvited, in-person solicitations of patients whose particular circumstances make them vulnerable to undue influence. The Consent Order also does not restrict the Academy from maintaining standards on the competency of its members.

The Consent Order requires that the Academy not revoke, suspend, or refuse to grant Academy membership, or discipline or penalize any optometrist, without first providing him or her with written notice of any allegations, and a reasonable opportunity to respond to them.

The Consent Order also requires the Academy to remove from its constitution, bylaws, policy statements, and guidelines any provision that is inconsistent with the Consent Order.

This synopsis is not intended to constitute an official interpretation of the Consent Order or Complaint, or to modify in any way their terms.

ATTACHMENT B

Dear Dr. _____:

This letter is to inform you of a Consent Order entered by the Federal Trade Commission. (A synopsis of the Order and the Complaint issued by the Commission is enclosed.) Under the terms of this Order, the American Academy of Optometry has agreed, without admitting to the non-jurisdictional factual or legal allegations in the Complaint, that we will not prevent or impede any optometrist from engaging in any form of truthful, non-deceptive advertising or solicitation, or interfere with any optometrist's choice of practice location. The Order does not prohibit the Academy from adopting and enforcing reasonable guidelines to prevent advertising that the Academy reasonably believes is false or deceptive, or uninvited, in-person solicitation of patients whose particular circumstances make them vulnerable to undue influence.

Under the Consent Order, we must ensure that our Constitution, Bylaws, policy statements and other ethical guidelines comply with the terms of the Order. In addition, if we take adverse action against a person alleged to have violated any of our ethical standards, we must provide that person with written notice of the allegations and a reasonable opportunity to respond to them.

We are sending copies of the enclosed synopsis of the Consent Order and Complaint, as it is published in the American Journal of Optometry and Physiological Optics, to you as an optometrist who applied for membership in the Academy within the last five years, but were not accepted for membership. Transmittal of this notice to you does not reflect an admission by the Academy that your non-acceptance for membership in the Academy was the result of any activity of the Academy now prohibited by the Consent Order. However, you are free, if you desire, to contact the Academy regarding either the submission of a new application for membership, or reconsideration of a previous application.

A copy of the Complaint and Consent Order are freely available upon request.

Sincerely,

(Name and Title)
American Academy of Optometry

Enclosure

IN THE MATTER OF
LITHIUM CORPORATION OF AMERICA

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

Docket C-3194. Complaint, July 22, 1986—Decision, July 22, 1986

This consent order prohibits, among other things, a Gastonia, North Carolina chemical company from entering into any agreements fixing prices or restricting sales of any lithium product. Additionally, respondent is prohibited from acting as an agent for any lithium producer when such action might unreasonably restrain competition.

Appearances

For the Commission: *Allee A. Ramadhan.*

For the respondent: *David L. Foster, Willkie, Farr & Gallagher,*
New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that Glithco Energy Corporation (Glithco), formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corp., a corporation subject to the jurisdiction of the Commission has violated the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

I. DEFINITION

1. *Lithium product(s)* means any lithium chemical mined, extracted or milled from a natural resource including but not limited to: (a) lithium ore (petalite, lepidolite or spodumene); (b) lithium carbonate; (c) lithium hydroxide; (d) lithium chloride; and (e) lithium sulfate.

II. RESPONDENT

2. Lithium Corporation of America (LCA) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware maintaining its principal place of business at 449 North Cox Road, Gastonia, North Carolina.

3. On or about July 19, 1985, LCA acquired substantially all of the