

IN THE MATTER OF
INDEPENDENT INSURANCE AGENTS ASSOCIATION OF
MONTANA, INC.

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

Docket C-3199. Complaint, Aug. 25, 1986—Decision, Aug. 25, 1986

This consent order, among other things, prohibits a Helena, Montana-based insurance agent association from encouraging its members to refuse to deal with companies based on the companies' sales policies.

Appearances

For the Commission: *Michael E. Antalics.*

For the respondent: *Mark F. Horning, Steptoe & Johnson, 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 respondent named in the caption hereof 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:

Definition

PARAGRAPH 1. For purposes of this complaint, the term *direct marketing* shall mean attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

Complaint

108 F.T.C.

Respondent

PAR. 2. Respondent Independent Insurance Agents Association of Montana, Inc. is a corporation organized and existing under the laws of the State of Montana, with its mailing address at P.O. Box 5593, Helena, Montana.

PAR. 3. Respondent is a trade association established to promote and represent the common business interests of its members. Respondent operates in substantial part for the economic benefit of its members and is a corporation within the meaning of Section 4 of the Federal Trade Commission Act.

PAR. 4. Members of respondent are engaged in the business of marketing property and casualty insurance for insurance companies. Members of respondent are not employees of the insurance companies they represent, and members typically represent more than one insurance company.

Jurisdiction

PAR. 5. In the course of their businesses, members of respondent receive substantial sums of money as commissions for the writing of insurance policies for the insurance companies they represent, which money flows across state lines. The acts and practices described herein are in interstate commerce, or affect the interstate activities of respondent's members, insurance companies, and consumers who purchase insurance, and are in or affecting commerce within the meaning of the Federal Trade Commission Act.

PAR. 6. The anticompetitive acts and practices alleged herein constitute an "agreement to boycott, coerce, or intimidate" or an "act of boycott, coercion, or intimidation" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. 1013(b).

Competition in the Sale Of Insurance

PAR. 7. Property and casualty insurance is marketed to consumers through a variety of channels. Certain insurance companies employ sales personnel; others use independent agents; and some use both employees and independent agents. When a company uses employees to market coverages similar to those marketed through independent agents, the employees, in effect, compete with independent agents for policy sales.

PAR. 8. Certain insurance companies that have traditionally used independent agents have begun to experiment with direct marketing approaches to reduce costs and achieve operating efficiencies in the sale of policies to consumers. The Hartford Insurance Company, for example, developed a direct marketing program under which it would

provide coverage to members of the American Association of Retired Persons, an organization to which many elderly Americans belong.

Anticompetitive Acts And Practices

PAR. 9. Respondent, acting as a conspiracy of at least some of its members or by combining or conspiring with some of its members, has undertaken acts to frustrate or deter insurance companies in their efforts to develop and implement direct marketing programs. Among other things, respondent has combined or conspired, through or with its members, to engage in threatened or actual refusals to deal with insurance companies that have proposed or adopted direct marketing programs.

PAR. 10. In furtherance of this combination or conspiracy, respondent, through or with its members, has engaged in various acts and practices, including among other things:

a. recommending, inducing, encouraging, urging or advising association members, through speeches and other means, to refuse to deal with insurance companies that have proposed or adopted direct marketing programs that compete with the sales efforts of independent agents; and

b. collecting and disseminating information on actual or threatened refusals to deal by independent insurance agents to coerce insurance companies that have proposed or adopted direct marketing programs that compete with the sales efforts of independent agents.

Anticompetitive Effects

PAR. 11. The purposes or effects, and the tendency and capacity, of the combination or conspiracy and acts or practices of respondent as described in Paragraphs Nine and Ten above have been and are to unreasonably restrain competition and injure consumers in one or more of the following ways, among others:

a. insurance companies have been or are likely to be frustrated or deterred in their efforts to reduce costs, achieve efficiencies, and provide consumers with alternatives to purchasing insurance through independent agents;

b. consumers have been deprived of the benefits of competition among sellers of insurance, including the availability of insurance policies marketed directly by insurance companies; and

c. competition among marketers of insurance has been or is likely to be adversely affected.

PAR. 12. The combination or conspiracy and the acts and practices alleged herein constitute unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce in violation of

Section 5 of the Federal Trade Commission Act. This combination or conspiracy is continuing and will continue unless the Commission enters appropriate relief against respondent.

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 a complaint which, if issued by the Commission would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended; and

Respondent, Independent Insurance Agents Association of Montana, Inc. ("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 facts set forth in the amended 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 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

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

ORDER

I.

It is ordered, That for purposes of this order the following definitions shall apply:

A. *IIAAM* means Independent Insurance Agents Association of Montana, Inc., its officers, employees, directors, committee and task force members, its successors and assigns;

B. *Independent insurance agents* means persons who are engaged in

the business of selling insurance as agents for insurance companies and who are not employees of such insurance companies; and

C. *Direct marketing* means attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II.

It is further ordered, That IIAAM, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIAAM's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIAAM or any member of IIAAM in engaging in any of the acts prohibited by this Part II.

III.

It is further ordered, That the provisions of Part II of this order shall not be construed to prevent IIAAM from: (1) participating, in good

faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade group; (3) providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV.

It is further ordered, That IIAAM shall:

A. Within sixty days from the date this order becomes final, mail a copy of this order, to every IIAAM local affiliate; and

B. Within sixty days from the date this order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this order, publish this order in *Montana TAGS* in the same type size normally used for articles that are published in *Montana TAGS*.

V.

It is further ordered, That IIAAM shall:

A. Within ninety days from the date this order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIAAM, require;

B. For a period of three years from the date this order becomes final, maintain in its files for a period of three years a copy of all correspondence referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIAAM affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIAAM's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this order.

IN THE MATTER OF

WARNER COMMUNICATIONS INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION AND SEC. 7 OF THE CLAYTON ACTS

Docket 9174. Complaint, March 19, 1984—Decision, Sept. 8, 1986

This consent order requires, among other things, a New York City record company to obtain prior FTC approval before acquiring any interest in major record companies and to notify the FTC about distribution agreements planned with those companies.

Appearances

For the Commission: *Robert W. Doyle, Jr. and Richard Malatt.*

For the respondents: *Stuart Robinowitz and Martin Flumenbaum, Paul, Weiss, Rifkind, Wharton & Garrison, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents, Warner Communications Inc., Warner Bros. Records, Inc., (collectively "Warner"), Chappell & Co., Inc., and PolyGram Records, Inc. (collectively "PolyGram"), subject to the jurisdiction of the Commission, have agreed to a merger of each firm's prerecorded music businesses that, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); and it appearing that a proceeding by the Commission in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITION

1. For the purposes of this complaint, *prerecorded music* refers to music sold to consumers in the form of records (singles, LPs, and compact discs) and tapes (cassettes, 8-track cartridges, and reel-to-reel tapes).