

IN THE MATTER OF

WYOMING STATE BOARD OF CHIROPRACTIC EXAMINERS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3221. Complaint, Jan. 13, 1988—Decision, Jan. 13, 1988*

This consent order requires, among other things, the Lander, Wyoming board, which has exclusive authority to license chiropractors in the state, to refrain from prohibiting, restricting, impeding or discouraging any person from advertising truthful, nondeceptive information made available by any licensed chiropractor. Respondent is prohibited from characterizing such advertising as unethical or unprofessional.

Appearances

For the Commission: *R. Norman Cramer, Jr.*

For the respondent: *Glenn R. Harrison, Wyoming State Board of Chiropractic Examiners, Lander, WY.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, *as amended*, 15 U.S.C. Section 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 Wyoming State Board of Chiropractic Examiners 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:

RESPONDENT

PARAGRAPH 1. Respondent Wyoming State Board of Chiropractic Examiners ("the Board") is organized, exists and transacts business under the laws of the State of Wyoming, with its principal office and place of business located at the office of Glenn R. Harrison, D.C., its Secretary-Treasurer, 550 Main Street, Lander, Wyoming. The Board is subject to the Commission's jurisdiction pursuant to Section 5 of the Federal Trade Commission Act.

PAR. 2. Membership on the Board is limited to practicing chiropractors. The Board is composed of three chiropractors, who are appointed by the governor to staggered three-year terms. Wyo. Stat. Sections 33-10-102, -103 (1977).

PAR. 3. All Board members must have practiced chiropractic con-

tinuously in Wyoming for at least three years preceding their appointment to the Board, and members must continue to practice chiropractic while on the Board. Wyo. Stat. Section 33-10-102 (1977). Board members spend a relatively small percentage of their time on Board matters, and compensation is limited to \$10.00 per day of actual service plus a per diem and mileage allowance. Wyo. Stat. Section 33-10-114(b) (1977).

PAR. 4. The Board has exclusive authority to license chiropractors in Wyoming. It is unlawful to practice chiropractic in Wyoming without first obtaining a license from the Board. Wyo. Stat. Section 33-10-105 (1977).

PAR. 5. The Board is authorized to adopt rules and regulations necessary for the performance of its duties. Wyo. Stat. Section 33-10-104 (1977). The Board is also authorized to refuse to issue a license to, or to suspend or revoke an existing license of, any person found guilty of any of fourteen enumerated offenses. Wyo. Stat. Section 33-10-110 (a, b) (1977).

TRADE AND COMMERCE

PAR. 6. Except to the extent that competition has been restrained as alleged herein, and depending on their geographic location, chiropractors in Wyoming compete with one another, and with members of the Board.

PAR. 7. In the conduct of their businesses, chiropractors in Wyoming advertise in media having interstate circulation, receive and treat patients from other states, use supplies and equipment that are shipped across state lines, and for rendering chiropractic services, receive from the federal government and from private insurers substantial sums of money that flow across state lines. The acts and practices described below are in or affect interstate commerce within the meaning of Section 5 (a)(1) of the Federal Trade Commission Act. 15 U.S.C. Section 45 (a)(1) (1982).

STATE POLICY CONCERNING CHIROPRACTIC ADVERTISING

PAR. 8. The Board is authorized by statute to discipline chiropractors for "dishonest, unethical or unprofessional conduct likely to deceive, defraud or harm the public", and for "advertis[ing] . . . in any unethical or unprofessional manner." Wyo. Stat. Section 33-10-110 (a)(vi, xii) (1977). After these statutory provisions were enacted, the United States Supreme Court issued decisions holding broad bans on truthful, nondeceptive advertising to be contrary to the First Amendment of the United States Constitution. In 1978, the Wyoming Legislative Service Office and the Governor of Wyoming advised the Board

that some of its restrictions on truthful, nondeceptive advertising were invalid and probably unenforceable. In 1983, the Wyoming Attorney General's Office also informed the Board of the constitutional problems created by its restrictions on truthful, nondeceptive advertising. The State of Wyoming has no articulated policy to restrict truthful, nondeceptive advertising by chiropractors.

BOARD CONDUCT

PAR. 9. The Board has restrained competition among chiropractors in Wyoming by combining or conspiring with its members or others, or by acting as a combination of its members or others, to restrict unreasonably the dissemination by chiropractors of truthful, nondeceptive information. In furtherance of this combination or conspiracy, the Board has engaged in the following acts or practices, among others:

(A) Adopted and maintained "Standards To Be Followed" that:

(1) characterize advertisements in telephone directories as unethical; prohibit all advertising in the telephone directory with the exception of a practitioner's name, address and —two additional descriptive lines of information"; and ban "box ads" in telephone directories; and

(2) prohibit various forms of advertising in other media, without regard to whether such advertising is false or deceptive, by stating that "public relations" material "will deal strictly with the principles of chiropractic as a health science. The copy will never be flamboyant; will never promise cures or radical results; will never offer nor imply free consultations or examinations, nor make any statement regarding fees; will never refer to special types of technic [sic] or other methods in any manner that would imply superiority over others; will never adversely criticize other health sciences; will never make claims that cannot be substantiated by standard laboratory and diagnostic procedures";

(B) Encouraged private competing chiropractors to agree on the extent and type of advertising to permit in their area; and

(C) Directed individual chiropractors to abandon their efforts to disseminate truthful, nondeceptive information, and to stop offering free consultations or examinations.

CONSUMER AND COMPETITIVE INJURY

PAR. 10. The combination or conspiracy, and the acts and practices described above have restrained and continue to restrain truthful, nondeceptive advertising, and thereby have restrained, and have the tendency and capacity to restrain competition unreasonably, and to injure consumers, in the following ways, among others:

(A) Consumers of chiropractic services are deprived of the benefits of vigorous competition among chiropractors;

(B) Consumers are deprived of truthful, nondeceptive information about chiropractic fees and services;

(C) Chiropractors are prevented from disseminating truthful, nondeceptive information about their fees and services; and

(D) Chiropractors are unreasonably restrained from competing in or entering the market for chiropractic services.

PAR. 11. The acts and practices described above constitute unfair methods of competition and unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act. The acts and practices, or the effects thereof, are continuing and will continue in the absence of the relief requested.

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 the Commission for its consideration and which, if issued by the Commission, would charge the 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 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 Wyoming State Board of Chiropractic Examiners is organized, exists and does business under and by virtue of the laws of the State of Wyoming, with its office and principal place of business

located at the office of Glenn R. Harrison, D.C., its Secretary-Treasurer, at 550 Main Street, in the City of Lander, State of Wyoming.

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.

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

A. "Board" shall mean the Wyoming State Board of Chiropractic Examiners, its members, officers, agents, representatives, employees, successors and assigns.

B. "Disciplinary action" shall mean: (1) A refusal to grant, or the revocation or suspension of, a license to practice chiropractic in Wyoming; (2) a refusal to admit a person to examination for a license to practice chiropractic; (3) the issuance of a formal or informal warning, reprimand, censure, or cease and desist order against any person or organization; (4) the imposition of a fine, probation, or other penalty or condition; or (5) the initiation of an administrative, criminal, or civil court proceeding against any person or organization.

C. "Person" shall mean any natural person, corporation, partnership, governmental entity, association, organization, or other entity.

II.

It is further ordered, That after the date of service of this order, the Board, directly or indirectly, or through any device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, impeding or discouraging any person from offering, publishing or advertising any price, term or condition of, or any other information concerning, any chiropractic service offered for sale or made available by any licensed chiropractor. The practices from which the Board shall cease and desist include, but are not limited to:

1. adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits or seeks to prohibit advertising information about any chiropractic service;

2. taking or threatening to take any disciplinary action against any person for advertising information about any chiropractic service; or
3. declaring it to be an illegal, unethical, unprofessional, or otherwise improper or questionable practice for any person to advertise information about any chiropractic service; and

B. Inducing, urging, encouraging or assisting any nongovernmental person to take any action that if taken by the Board would be prohibited by part II(A) above.

Provided that, Nothing contained in this part shall prohibit the Board from formulating, adopting, disseminating and enforcing reasonable rules or taking disciplinary or other action, to prohibit advertising that the Board reasonably believes to be false or deceptive within the meaning of Wyo. Stat. Section 33-10-110(a)(vi), as limited by the First and Fourteenth Amendments to the United States Constitution.

Provided further that, This order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the practice of chiropractic.

III.

It is further ordered, That the Board shall:

A. Distribute by first-class mail a copy of the announcement attached hereto as Appendix A, a copy of this order and a copy of the accompanying complaint:

1. Within thirty (30) days after the date of service of this order, to each person licensed to practice chiropractic in Wyoming as of the date of service of this order and to each person whose application for, or a request for reinstatement of, a license is pending on such date; and

2. For five (5) years after the date of service of this order, to each person who applies for a license to practice chiropractic in Wyoming within (30) days after the Board receives such application;

B. Within ninety (90) days after the date of service of this order, remove from its Rules and Regulations and any other policy statement or guidelines, any provision, interpretation or statement that is inconsistent with Part II of this order;

C. For five (5) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission (or its staff), for inspection and copying, copies of all records relating to advertising, including but not limited to written communications and any summaries of oral communications to or from the Board

regarding the offering, publishing or advertising of information about any chiropractic service;

D. 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 practice of chiropractic in Wyoming that may affect compliance obligations arising out of this order, such as the complete or partial elimination of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of (or other relevant change in) the Board; and

E. Within one hundred twenty (120) days after the date of service of this order, submit to the Federal Trade Commission a written report setting forth in detail the manner and form in which the Board has complied and is complying with this order.

APPENDIX A

ANNOUNCEMENT

As you may be aware, the Federal Trade Commission has issued a consent order against the Wyoming State Board of Chiropractic Examiners that became final on [date]. The order provides that the Board may not prohibit chiropractors from advertising their services in a truthful, nondeceptive manner. The Board may not (1) adopt or maintain rules, regulations or policies that prohibit truthful, nondeceptive advertising with respect to the sale of chiropractic services; (2) take disciplinary action (such as the suspension, revocation or refusal to issue a license) or threaten disciplinary action against any person or organization that so advertises; or (3) declare it to be illegal, unethical, unprofessional, or otherwise improper or questionable for persons to engage in truthful, nondeceptive advertising. The Board is also prohibited from encouraging any person or organization to take actions that the order prohibits the Board from taking. The order does not affect the Board's authority to prohibit advertising that is likely to deceive or mislead the public, nor does the order prevent the Board from disciplining licensees for engaging in such advertising. Further, the order does not prevent the Board from seeking legislation concerning the practice of chiropractic.

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

(Title)

Wyoming State Board of
Chiropractic Examiners

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Modifying Order

IN THE MATTER OF

INTERCO INCORPORATED, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND CLAYTON ACTS*Docket C-2929. Consent Order, Sept. 26, 1978—Modifying Order, Feb. 23, 1988*

The Federal Trade Commission has modified a 1978 consent order (92 F.T.C. 405) with respondent and its subsidiaries by removing the ban on "preticketing", the listing of suggested retail prices on tags, with respect to the raincoats and outerwear sold by Londontown. The Commission also ordered the respondents to show cause why the provision should not be set aside in its entirety.

ORDER REOPENING AND MODIFYING ORDER ISSUED SEPTEMBER 26, 1978,
AND ORDER TO SHOW CAUSE

October 26, 1987, respondents Interco Incorporated ("Interco"), Londontown Corporation ("Londontown") and Queen Casuals, Inc. ("Queen Casuals") filed a "Request As Supplemented To Reopen And Set Aside A Portion Of 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. Londontown is a division and Queen Casuals is a wholly owned subsidiary of Interco. The request asked the Commission to reopen the consent order issued on September 26, 1978 ("the order") and set aside a portion of paragraph 4 of Part I of the order. Respondents' request was placed on the public record for thirty days, pursuant to section 2.51 of the Commission's Rules. No comments were received.

Paragraph 4 of Part I of the order, the provision at issue here, prohibited respondents for a three year period ending October 10, 1981, from communicating in writing any resale price or sale period to any reseller or prospective reseller of its products. After October 10, 1981, respondents are permitted by the order to suggest resale prices on the pages of any list, book, advertising, promotional material or other document if they include the following statement on such material:

"THE (RESALE PRICES OR SALE PERIODS) QUOTED HERE-
IN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE
YOUR OWN (RESALE PRICE OR SALE PERIODS)."

Paragraph 4 of Part I of the order also provides:

"A respondent shall not, however, suggest resale prices on any