

IN THE MATTER OF

OKLAHOMA STATE BOARD OF
VETERINARY MEDICAL EXAMINERSCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3283. Complaint, Jan. 31, 1990—Decision, Jan. 31, 1990*

This consent order prohibits, among other things, the five member board, that is the sole licensing authority for veterinarians in Oklahoma, from restricting any veterinarian from being partners with, employed by or otherwise associating with non-veterinarians or veterinarians licensed in other states. Respondent also is prohibited from restricting any veterinarian from providing testimonials or making endorsements regarding veterinary products and services.

Appearances

For the Commission: *James E. Elliott* and *Thomas B. Carter*.

For the respondent: *Janie Simms Hipp*, Assistant Attorney General, Oklahoma City, OK.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Oklahoma State Board of Veterinary Medical Examiners has violated Section 5 of the Federal Trade Commission 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 in that respect as follows:

RESPONDENT

PARAGRAPH 1. Respondent Oklahoma State Board of Veterinary Medical Examiners ("the Board") is organized, exists and transacts business under the laws of the State of Oklahoma, and has its principal office and place of business at 5629 North Pennsylvania, Oklahoma City, Oklahoma. The Board is subject to the Commission's jurisdiction pursuant to Section 5 of the Federal Trade Commission Act.

PAR. 2. The Board is composed of five members who are appointed by the governor to staggered five-year terms. No more than one member of the Board may be appointed from a single congressional district. All of the members of the Board must have practiced veterinary medicine continuously for at least three years prior to their appointment to the Board, and the members must continue to practice veterinary medicine while on the Board. 59 Okla. Stat. 698.3, 698.4. Board members spend a relatively small percentage of their time on Board matters, and compensation is limited to a per diem and transportation allowance for days of actual service. 59 Okla. Stat. 698.6.

PAR. 3. The Board has exclusive authority to license veterinarians in Oklahoma. It is unlawful to practice veterinary medicine in Oklahoma without first obtaining a license from the Board. 59 Okla. Stat. 698.8. The Board is authorized to adopt rules and regulations necessary for the performance of its duties. 59 Okla. Stat. 698.7. The Board also is authorized to suspend or revoke an existing license of any person found guilty of any of seven enumerated offenses or to refuse to issue a license to a new applicant. 59 Okla. Stat. 698.7(8), 698.14(A).

TRADE AND COMMERCE

PAR. 4. Except to the extent that competition has been restrained as alleged herein, and depending on their geographic location, veterinarians in Oklahoma compete with one another and with the members of the Board.

PAR. 5. The acts and practices of the Board described below are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

STATE POLICY CONCERNING VETERINARY ADVERTISING AND BUSINESS ARRANGEMENTS

PAR. 6. The State of Oklahoma has no articulated and affirmatively expressed policy to restrict either truthful, nondeceptive advertising by veterinarians or the business arrangements under which veterinarians may practice.

UNLAWFUL BOARD CONDUCT

PAR. 7. The Board has restrained competition among veterinarians by combining or conspiring with its members or others, or by acting as a combination of its members or others, to restrict unreasonably the

business arrangements under which veterinarians may practice. In furtherance of this combination or conspiracy, the Board has, among other things:

(A) Adopted, maintained, and enforced a Rule of Professional Conduct that prohibits a veterinarian from forming a partnership with a non-veterinarian if any of the partnership employment involves the practice of veterinary medicine (Rule 6);

(B) Interpreted and enforced a Rule of Professional Conduct governing the relationship between veterinarians and their clients as prohibiting not merely lay interference with a veterinarian's professional judgment, but any employment by a non-veterinarian (Rule 7); and

(C) Adopted, maintained, and enforced a Rule of Professional Conduct that prohibits a veterinarian from accepting employment from a nonlicensed person, company, firm or corporation which involves the sale of the veterinarian's services to the public (Rule 8).

PAR. 8. The Board has restrained competition among veterinarians 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 of truthful, nondeceptive information about veterinary products. In furtherance of this combination or conspiracy, the Board has, among other things, adopted and maintained a Rule of Professional Conduct that declares it to be unprofessional conduct for a veterinarian to write testimonials about or endorse proprietary remedies, instruments, equipment, or food except to report the results of properly controlled experiments or clinical studies to scientific journals and/or meetings (Rule 20).

CONSUMER AND COMPETITIVE INJURY

PAR. 9. The combination or conspiracy and the acts and practices described above have restrained and continue to restrain truthful, nondeceptive advertising about veterinary products and to restrict the business arrangements under which veterinarians may practice, 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) Depriving consumers of the benefits of competition among veterinarians;

(B) Depriving consumers of the benefits of, and preventing

veterinarians from offering, potentially more efficient business arrangements that may result in lower prices; and

(C) Depriving consumers of the benefits of, and preventing veterinarians as well as sellers of veterinary products from providing, truthful, nondeceptive information about veterinary products.

PAR. 10. The acts and practices described above constitute unfair methods of competition and unfair acts or practices that violate 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 herein requested.

Commissioner Owen not participating.

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 the complaint which the Dallas 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, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Oklahoma State Board of Veterinary Medical Examiners is organized, exists and transacts business under the laws of the State of Oklahoma, with its principal place of business located at 5629 North Pennsylvania, Oklahoma City, Oklahoma.

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 purposes of this order, the following definitions shall apply:

A. “*Board*” shall mean the Oklahoma State Board of Veterinary Medical 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 veterinary medicine in Oklahoma; (2) a refusal to admit a person to examination for a license to practice veterinary medicine; (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.

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

D. “*Veterinary product*” shall mean any remedy, instrument, equipment, or food that is sold by veterinarians or utilized by veterinarians in the care or treatment of animals.

II.

It is further ordered, That the Board, directly or indirectly, or through any device, in connection with its activities in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Prohibiting, restricting, impeding or discouraging any person from displaying, offering, publishing or advertising any testimonial or endorsement with respect to any veterinary product. 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 veterinary product;

(2) Taking or threatening to take any disciplinary action against any person for advertising information about any veterinary product; or

(3) Declaring it to be an illegal, unethical, unprofessional, or otherwise improper or questionable practice for any person to advertise information about any veterinary product.

B. Prohibiting, restricting, impeding, or discouraging any veterinarian from associating with, being employed by or forming and maintaining a partnership with any non-veterinarian. 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 any veterinarian from associating with, being employed by or forming a partnership with any non-veterinarian;

(2) Taking or threatening to take any disciplinary action against any veterinarian for associating with, being employed by or forming a partnership with any non-veterinarian; or

(3) Declaring it to be an illegal, unethical, unprofessional, or otherwise improper or questionable practice for any veterinarian to associate with, be employed by or form a partnership with any non-veterinarian.

C. Inducing, urging, encouraging or assisting any nongovernmental person to take any action that if taken by the Board would be prohibited by part IIA or B 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, misleading or deceptive within the meaning of 59 Okla. Stat. 698.7(9) and 698.14(A)(6), as limited by the First and Fourteenth Amendments to the United States Constitution.

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 in the following manner:

(1) Within thirty (30) days after the date this order becomes final, to each person licensed to practice veterinary medicine in Oklahoma as of the date this order becomes final 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 this order becomes final, to each person who applies for a license to practice veterinary medicine in Oklahoma within (30) days after the Board received such application;

B. Within thirty (30) days after the date this order becomes final, revise, repeal or revoke Rules 6, 8, and 20 of the Rules of the Board; revise, repeal or revoke Rule 7 of the Rules of the Board or issue an interpretation of Rule 7 of the Rules of the Board that is consistent with Part II of this order; and revise, repeal or revoke any other provision of the Rules of the Board and any policy statement or guideline, provision, interpretation or statement that is inconsistent with Part II of this order;

C. For a period of five (5) years after the date this order becomes final, maintain and upon request make available to the Federal Trade Commission (or its 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 relating to advertising or the business arrangements under which veterinarians may practice, including but not limited to written communications and any summaries of oral communications to or from the Board regarding the displaying, offering, publishing or advertising of information about any veterinary product or regarding the business arrangements under which veterinarians may practice;

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 veterinary medicine in Oklahoma that may affect compliance obligations arising out of this order, such as 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 sixty (60) 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.

Commissioner Owen not participating.

Initial Decision

113 F.T.C.

IN THE MATTER OF

GENERAL NUTRITION, INC.

*Docket 9175. Initial Decision**, February 24, 1986

INITIAL DECISION BY

MONTGOMERY K. HYUN, ADMINISTRATIVE LAW JUDGE

FEBRUARY 24, 1986

PRELIMINARY STATEMENT

On March 20, 1984, the Federal Trade Commission ("Commission") issued an administrative complaint charging General Nutrition, Inc. ("General Nutrition") with unfair methods of competition and unfair or deceptive acts or practices in violation of Sections 5 and 12 of the Federal Trade Commission Act (15 U.S.C. 45, 52). Specifically, the complaint charged that General Nutrition made a number of misrepresentations in connection with its product "Healthy Greens," including (a) the representation that the findings of the National Research Council's Report *Diet, Nutrition and Cancer* support the claim that use of Healthy Greens tablets (and food supplements of dehydrated vegetables such as Healthy Greens) is associated with reduced incidence of certain cancers in humans, (b) the representation that research indicates that vitamin E plays an important role in reducing the risk of cancer, (c) the representation that the use of Healthy Greens is associated with a reduced incidence of certain cancers in humans, and (d) the [2] representation that vitamin E plays an important role in reducing the risk of cancer (Complaint ¶ 7). The complaint also charged that the representations listed in 7(a) and (b) are false (Complaint ¶¶ 8, 9). The complaint further charged that General Nutrition did not possess and rely on a reasonable basis for the claims listed in 7(c) and (d) (Complaint ¶ 10).

The case, initially assigned to Administrative Law Judge Thomas F. Howder, was reassigned to me on April 25, 1985. After conclusion of prehearing proceedings including discovery and filing of pre-trial memoranda, the hearing for the presentation of complaint counsel's case-in-chief was held from June 25, 1985 to July 17, 1985 and the

* Decision and Order issued February 2, 1989 (111 FTC 387).