

IN THE MATTER OF

MADISON COUNTY VETERINARY MEDICAL
ASSOCIATION, ET AL.

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

Docket C-3340. Complaint, Aug. 16, 1991—Decision, Aug. 16, 1991

This consent order prohibits, among other things, an Alabama association and four individual veterinarians from entering into any agreement: to refuse to deal with any person or program promoting the sale of veterinary services at discounted prices; or to fix or standardize the manner of sale, promotion or advertising of veterinary goods or services.

Appearances

For the Commission: *Chris M. Couillou.*

For the respondents: *E. Cutter Hughes, Jr., Bradley, Arant, Rose & White, Huntsville, AL.*

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 respondents have 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:

RESPONDENTS

1. Respondent Madison County Veterinary Medical Association ("MCVMA") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business at 106 Rainbow Drive, Madison, Alabama.

2. Respondent MCVMA is a professional association formed to represent the interests of veterinarians who practice in and around Huntsville, Alabama.

3. Members of respondent MCVMA are engaged in the business of providing veterinary health care services for a fee.

4. Respondents Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith are members of MCVMA and are veterinarians practicing in Madison County, Alabama.

5. The following are the business addresses of the individual respondents: Robert Neil Cole, D.V.M., 3415 Governors Drive, S.W., Huntsville, AL.; Donald Butler Popejoy, D.V.M., 7708 Carlton Drive, S.W., Huntsville, AL.; Billy Joe Renfroe, D.V.M., 931 Cook Avenue, N.W., Huntsville, AL.; Charles L. Smith, D.V.M., 3303 North Memorial Parkway, Huntsville, AL.

6. Respondent MCVMA engages in substantial activities that further its members' pecuniary interests. 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.

7. Members of respondent MCVMA including, but not limited to, respondents Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith purchase equipment and supplies and prescribe medicines which are shipped in interstate commerce. Respondents' general business practices, and the acts and practices described below, 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).

8. Except to the extent that competition has been restrained as alleged herein, members of respondent MCVMA including, but not limited to, Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith have been and are now in competition with at least some of the other respondents and/or with other veterinarians.

9. Respondent MCVMA has acted as a combination of its members or has conspired with at least some of its members to restrain competition in the provision of spaying and neutering services and to restrain competition in the promotion or advertising of veterinary services. In furtherance thereof, at least some members of respondent MCVMA, among other things, have:

(a) Agreed not to participate or agreed to cease participation in a program offered through the National Animal Welfare Association promoting low cost spays and neuters; and

(b) Agreed to restrict the nature of their listings in the Yellow Pages for Huntsville, Alabama.

10. Each of respondents Robert Neil Cole, Donald Butler Popejoy,

Billy Joe Renfro, and Charles L. Smith have combined or conspired with at least some of the other respondents or others to restrain competition in the provision of spaying and neutering services and to restrain competition in the promotion or advertising of veterinary services. In furtherance thereof, respondents, among other things, have:

(a) Agreed not to participate or agreed to cease participation in a program offered through the National Animal Welfare Association promoting low cost spays and neuters; and

(b) Agreed to restrict the nature of their listings in the Yellow Pages for Huntsville, Alabama.

11. Respondents' actions described above in paragraphs nine and ten have had, or have the tendency to have, the following effects, among others:

(a) Competition among veterinarians in the Huntsville area has been lessened, limited, or restrained; and

(b) Fees for spaying and neutering services have been raised, fixed, or stabilized.

12. The combinations or conspiracies and the acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. Such combinations or conspiracies and these acts or practices are continuing and will continue in the absence of the relief requested.

Commissioner Yao not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 5 of the Federal Trade Commission Act, as amended;

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 Madison County Veterinary Medical Association ("MCVMA") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business at 106 Rainbow Drive, Madison, Alabama.

2. Respondent MCVMA is a professional association formed to represent the interests of veterinarians who practice in and around Huntsville, Alabama.

3. Members of respondent MCVMA are engaged in the business of providing veterinary health care services for a fee.

4. Individual respondents Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith are members of MCVMA and are veterinarians practicing in Madison County, Alabama.

5. The following are the business addresses of the proposed individual respondents: Robert Neil Cole, D.V.M., 3415 Governors Drive, S.W., Huntsville, AL.; Donald Butler Popejoy, D.V.M., 7708 Carlton Drive, S.W., Huntsville, AL.; Billy Joe Renfroe, D.V.M., 931 Cook Avenue, N.W., Huntsville, AL.; Charles L. Smith, D.V.M., 3303 North Memorial Parkway, Huntsville, AL.

6. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, 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. “*MCVMA*” means the Madison County Veterinary Medical Association.

B. “*Veterinary goods*” means any commodity used in the care or treatment of animals.

C. “*Veterinary service*” means any service that a person duly registered and licensed to practice veterinary medicine in Alabama is authorized to perform.

II.

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

A. Organizing, agreeing or combining, attempting to agree or combine, threatening to agree or combine, or taking any action in furtherance of any agreement or combination with any person to refuse to deal, or to deal only on collectively determined terms, with any person or any program that offers or promotes the sale to consumers of veterinary services at discounted prices; and

B. Organizing, agreeing or combining, attempting to agree or combine, threatening to agree or combine, or taking any action in furtherance of any agreement or combination with any person to adopt, establish, fix, maintain or standardize the manner of sale, promotion or advertising or veterinary goods or services.

III.

It is further ordered, That respondent MCVMA, directly or indirectly, or through any device, for a period of ten (10) years after the date this order becomes final, forthwith cease and desist from:

A. Continuing a formal or informal meeting after

(1) (a) any person makes any statement concerning one or more

veterinarians' intentions or decisions with respect to refusing to enter into, threatening to refuse to enter into, threatening to withdraw from, or withdrawing from any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices and MCVMA fails to eject such person from the meeting, or (b) two persons make such statements; or

(2) (a) any person makes any statement concerning adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services and MCVMA fails to eject such person from the meeting, or (b) two persons make such statements;

B. Communicating to any veterinarian or veterinary firm any information concerning any other veterinarian's intention or decision with respect to (1) refusing to enter into, threatening to refuse to enter into, threatening to withdraw from, or withdrawing from any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices, or (2) adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services; and

C. Providing comments or advice to any veterinarian or veterinary firm on the desirability or appropriateness of (1) participating in any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices or (2) adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services.

Provided that nothing in this order shall be construed to prevent respondents from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any federal or state administrative or judicial proceeding. Provided further that nothing in this paragraph shall prohibit MCVMA from communicating to any veterinarian or veterinary firm purely factual information describing the terms and conditions of any program offered or proposed by an independent third party that offers or promotes the sale to consumers of veterinary services at discounted prices.

IV.

It is further ordered, That respondents Robert Neil Cole, Donald

Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith, directly or indirectly, or through any device, for a period of ten (10) years after the date this order becomes final, forthwith cease and desist from stating or communicating in any way to any veterinarian or to any veterinary firm an intention, decision or advice with respect to (1) refusing to enter into, threatening to refuse to enter into, threatening to withdraw from, or withdrawing from any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices, or (2) adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services.

V.

It is further ordered, That respondent MCVMA:

A. Within sixty days of the date this order becomes final, send a copy of this order and accompanying complaint by first class mail to each and every one of its members;

B. For a period of five years, commencing on the date this order becomes final, provide a copy of this order and accompanying complaint to each new member of MCVMA; and

C. Within sixty days of the date this order becomes final, send a copy of this order and accompanying complaint by first class mail to Judy Scott, Customer Service Manager, Bell South Advertising and Publishing Company, 400 Chase Park South, Birmingham, Alabama 35244.

VI.

It is further ordered, That each respondent:

A. Within ninety days after the date this order becomes final, annually for a period of five years on or before the anniversary of the date on which this order becomes final and at such other times as the Federal Trade Commission may by written notice to the respondents require, submit a verified written report to the Federal Trade Commission setting forth in detail the manner in which that respondent has complied and is complying with this order;

B. For a period of five years after the date 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 all action taken in connection with any activity covered by paragraphs II, III and IV of this order, including all written communication and all summaries of oral communication.

Provided that if a respondent other than MCVMA retires from the practice of veterinary medicine, he shall be exempted from future compliance with paragraph VI(A) for the period subsequent to his retirement if he files, within one month of his retirement, a verified written report stating that he has retired from the practice of veterinary medicine and the date of his retirement and setting forth in detail the manner in which he has complied and is complying with this order. In the event that respondent ends his retirement and resumes the practice of veterinary medicine, he shall once again be subject to the requirements of paragraph VI(A).

VII.

It is further ordered, That MCVMA shall notify the Commission at least thirty days prior to any proposed change in MCVMA, 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.

Commissioner Yao not participating.

IN THE MATTER OF
HARBOUR GROUP INVESTMENTS, L.P.

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

Docket 9244. Complaint, Nov. 28, 1990—Decision, Aug. 19, 1991

This consent order requires, among other things, a Missouri producer of telescopes, for a period of ten years, to seek prior Commission approval for certain mergers or acquisitions.

Appearances

For the Commission: *Claudia R. Higgins* and *Steven A. Newborn*.

For the respondent: *Sidney Dickstein, Dickstein, Shapiro & Morin*, Washington, D.C.

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 ("Commission"), having reason to believe that the respondents, Harbour Group Investments L.P., a limited partnership subject to the jurisdiction of the Commission, and Diethelm Holding (U.S.A.) Ltd., a corporation subject to the jurisdiction of the Commission, have offered to enter into a joint venture between their respective subsidiaries Meade Instruments and Celestron International which, if completed, would violate the provisions 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; that said joint venture agreement constitutes a violation of Section 5 of the FTC Act, 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, 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: