

IN THE MATTER OF
CONNECTICUT CHIROPRACTIC ASSOCIATION

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

Docket C-3351. Complaint, Nov. 19, 1991—Decision, Nov. 19, 1991

This consent order requires, among other things, an association of approximately 350 chiropractors to cease and desist from prohibiting, regulating, or interfering with its members offering free services or services at discounted fees and from prohibiting, regulating, or interfering with its members' advertising.

Appearances

For the Commission: *Andrew D. Caverly* and *Phoebe D. Morse*.

For the respondent: *Robert L. Hirtle, Jr., Rogin, Nassau, Kaplan, Lassman & Hirtle*, Hartford, CT.

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 Connecticut Chiropractic Association, a corporation, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Federal Trade 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:

PARAGRAPH 1. Respondent Connecticut Chiropractic Association ("respondent" or "CCA") is a corporation formed and doing business pursuant to the laws of the State of Connecticut. Respondent is a voluntary association of approximately 350 chiropractors, constituting approximately 86 percent of the chiropractors practicing in Connecticut. Its principal business office is located at 28 Main Street, East Hartford, Connecticut.

PAR. 2. Respondent is a corporation organized for the purpose, among others, of serving the interests of its members by associating them into a practical business organization and is engaged 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.

PAR. 3. Respondent's members are engaged in the business of providing chiropractic services for a fee. Except to the extent that competition has been restrained as alleged herein, and depending on their geographic location, respondent's members have been and are now in competition among themselves and with other chiropractors.

PAR. 4. The acts and practices of CCA, including those herein alleged, are in commerce or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 5. Respondent has acted as a combination of its members, or conspired with at least some of its members, to restrain competition among chiropractors in the State of Connecticut by prohibiting its members from offering free services and services at discounted fees, and from disseminating truthful, nondeceptive information through advertising and other means.

PAR. 6. In furtherance of the combination or conspiracy alleged in paragraph five, CCA has engaged in the following acts or practices, among others:

A. Adopted and maintained provisions in its Ethical Code that prohibit its members from:

1. Offering free services or services at discounted fees to consumers, thereby deterring price competition among members;
2. Advertising free or discounted services to consumers, including by use of coupons, thereby deterring members from offering such services and depriving consumers of truthful information;
3. Advertising that CCA considers to be "sensational," "undignified," and not in "good taste," thereby discouraging advertising that is effective because it attracts attention or is memorable; and
4. Implying that they possess "unusual expertise" without meeting additional experience and educational requirements that a recognized chiropractic accrediting agency has approved, thereby depriving consumers of truthful information regarding the quality of chiropractors in areas of practice for which no certification exists, and the quality of chiropractors who acquire expertise in areas of practice without receiving certification.

B. Coerced its members to comply with its Ethical Code by, among other things:

1. Threatening members who violate the Code with expulsion from CCA;

2. Threatening, in the CCA quarterly journal and at CCA meetings, members who advertise free or discounted services that CCA will attempt to influence health insurance companies to disallow or reduce reimbursements to their patients; and

3. Threatening, in the CCA quarterly journal and at CCA meetings, members who violate the Code that CCA will report them to chiropractic malpractice insurance carriers.

PAR. 7. Respondent's actions described in paragraphs five and six have had, or have the tendency and capacity to have, the following effects, among others:

A. Restraining competition among chiropractors with respect to price, quality, and other terms of service;

B. Depriving consumers of truthful, nondeceptive information about the availability, price, and quality of chiropractic services; and

C. Depriving consumers of the benefits of free and open competition among chiropractors.

PAR. 8. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Such combination or conspiracy, or the effects thereof, is continuing and will continue or recur 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 Boston 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 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, and having duly considered the comment filed thereafter by an interested person 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 Connecticut Chiropractic Association is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal business office located at 28 Main Street, East Hartford, Connecticut.

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. "CCA" means the Connecticut Chiropractic Association and its Executive Board, committees, officers, directors, agents, representatives, employees, successors, and assigns;

B. "Disciplinary action" means, but is not limited to, revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, warning, probation, or any other penalty or condition;

C. "Person" means any natural person, corporation, partnership, unincorporated association, or other entity; and

D. "Regulating" means (1) adopting or maintaining any rule, regulation, interpretation, ethical ruling, policy, or course of conduct; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting investigations or inquiries.

II.

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

A. Prohibiting, regulating, or interfering with any of the following practices of its members:

1. Offering free services or services at discounted fees to consumers;

2. Advertising, including but not limited to:

(a) Advertising free services or services at discounted fees to consumers, including by use of coupons;

(b) Advertising that CCA considers to be "sensational," "undignified," or not in "good taste;" and

(c) Implying that they possess "unusual expertise," *provided, however,* that CCA may restrict members' claims of specialization, unless additional experience and educational requirements have been met that are approved by a recognized chiropractic accrediting agency.

B. Inducing, suggesting, urging, encouraging, or assisting any non-governmental person or organization to take any action that if taken by CCA would violate Part II.A. of this order.

Provided That, nothing contained in this order shall prohibit CCA from adopting, maintaining, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, advertising, or other communications that CCA reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

It is further ordered, That CCA shall:

A. Distribute by first-class mail hard copies of this order, the accompanying complaint, and an announcement in the form shown in Appendix A to this order in the following manner:

(1) Within thirty (30) days after the date this order becomes final, to each CCA member; and

(2) For five (5) years after the date this order becomes final, to each applicant for membership in CCA within thirty (30) days after CCA receives such application;

B. Within ninety (90) days after the date this order becomes final, publish this order, the accompanying complaint, and an announcement in the form shown in Appendix A to this order in *The Connecticut Yankee* (CCA's quarterly journal), or any successor publication, in the same size type normally used for articles that are published in *The Connecticut Yankee* or in that successor publication;

C. Within thirty (30) days after this order becomes final, remove from CCA's Ethical Code, Bylaws, and any other existing policy statement or guideline of CCA, any provision, interpretation, or policy statement that is inconsistent with Part II of this order;

D. Within sixty (60) days after this order becomes final, publish and distribute to all members of CCA and to all personnel, agents, or representatives of CCA, revised versions of CCA's Ethical Code, Bylaws, and any other existing policy statement or guideline of CCA;

E. File with the Federal Trade Commission within one hundred and twenty (120) days after the date this order becomes final, one (1) year after the date this order becomes final, and at such other times as the Federal Trade Commission may by written notice to CCA request, a verified report in writing setting forth in detail the manner and form in which CCA has complied and is complying with this order;

F. For a period of five (5) 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 Parts II and III of this order, including all written communications and all summaries of oral communications, and all disciplinary action; and

G. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed changes in CCA, 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.

APPENDIX A

[Date]

ANNOUNCEMENT

As you may be aware, the Connecticut Chiropractic Association ("CCA") has entered into a consent agreement with the Federal Trade Commission that became final on [Date]. The order issued pursuant to the consent agreement provides that CCA may not interfere if its members wish to engage in any of the following activities:

- (1) Offering free services or services at discounted fees to consumers;
- (2) Advertising free services or services at discounted fees to consumers, including by use of coupons;
- (3) Advertising that CCA considers to be "sensational," "undignified," or not in "good taste"; and
- (4) Implying that they possess "unusual expertise," provided, however, that CCA may restrict members' claims of specialization, unless additional experience and educational requirements have been met that are approved by a recognized chiropractic accrediting agency.

The order does not prevent CCA from formulating reasonable ethical guidelines prohibiting advertising or other communications that CCA reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

In particular, the agreement between CCA and the Federal Trade Commission means that as long as its members do not engage in falsehood or deception, CCA cannot prevent or discourage them from engaging in the practices listed above, among others.

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

Keith Overland, D.C.
President
Connecticut Chiropractic
Association

IN THE MATTER OF

REMOVATRON INTERNATIONAL CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9200. Final Order, Nov. 4, 1988—Modifying Order, Nov. 20, 1991

This order reopens the proceeding and modifies the Commission's 1988 final order [111 FTC 206]—requiring respondents to cease making certain claims about their hair-removal device—by setting aside a provision requiring an affirmative disclosure in conjunction with certain efficacy claims. However, the respondents are still prohibited by the order from making unsubstantiated hair-removal claims.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On July 23, 1991, Removatron International Corporation and Frederick E. Goodman (Petitioners) filed a petition pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Rules 2.51 and 3.72 of the Commission's Rules of Practice, 16 CFR 2.51 and 3.72, to reopen the proceeding and modify the final cease and desist order issued against them by the Commission on November 4, 1988, in Docket No. 9200 (111 FTC 206), and upheld by the United States Court of Appeals for the First Circuit on September 11, 1989, in *Removatron International Corp. v. FTC*, 884 F.2d 1489 (1st Cir. 1989).

The final order in this matter was the product of litigation concerning unsubstantiated claims of permanent or long-term (as opposed to temporary) hair removal for the Removatron radio frequency energy (RFE) tweezer-type epilation device. Part I.A of the order prohibits Petitioners from making permanent or long-term hair removal representations with respect to their RFE epilator unless they possess and rely upon competent and reliable scientific evidence that substantiates such representation. The order defines competent and reliable scientific evidence as adequate and well-controlled, double-blind clinical testing conforming to acceptable designs and protocols and conducted by a person or persons qualified by training and experience to conduct such testing. Part I.B of the order prohibits Petitioners, for a period of five (5) years, from representing that their