

IN THE MATTER OF

AMERICAN PSYCHOLOGICAL ASSOCIATION

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

Docket C-3406. Complaint, Dec. 16, 1992--Decision, Dec. 16, 1992

This consent order prohibits, among other things, a Washington, D.C. association from restricting the dissemination of truthful, non-deceptive information by its members. In addition, the respondent is prohibited from banning payments by psychologists to patient-referral services. Finally, the respondent must cease its affiliation with any state, regional or other psychological association that imposes similar restrictions.

Appearances

For the Commission: *Elizabeth R. Hilder.*

For the respondent: *Arthur N. Lerner, Michaels & Wishner,*
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, having reason to believe that the named American Psychological Association, a corporation, hereinafter sometimes referred to as respondent, has violated said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondent American Psychological Association is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its offices and principal place of business located at 1200 Seventeenth Street, N.W., Washington, D.C.

PAR. 2. Respondent is a professional and scientific association with more than 90,000 members or affiliates, who are psychologists, persons in training as psychologists, and teachers of psychology. Members and affiliates of respondent reside in and transact business in all fifty of the United States and in numerous foreign countries. A significant majority of persons licensed as psychologists in the United States are members or affiliates of respondent and a majority of such persons have received their professional training as psychologists in programs academically accredited by respondent. A majority of psychologists in the United States who are not subject to licensure requirements are members or affiliates of respondent. Respondent has the largest membership of any professional organization of psychologists in the United States. Respondent has as one of its purposes advancing psychology as a profession. A significant portion of respondent's activities furthers the pecuniary interests of its members.

PAR. 3. By virtue of the facts alleged in paragraph two, respondent is now and has at all times relevant herein been a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. Many of respondent's members provide psychological services, products, or publications for a fee. Included among these are members who provide clinical psychological services; who engage in employee evaluation, assessment, training, and management; who engage in market research and evaluation; who engage in psychological education and testing; and who lecture, train, and provide publications that enable members of the general public to help themselves in addressing various personal, career, and family problems, difficulties, and crises. Except to the extent that competition has been restrained as herein alleged, many of respondent's members have been and now are in competition among themselves.

PAR. 5. The acts and practices of respondent, including the acts and practices alleged herein, have been, or are, in or affecting commerce within the meaning of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 6. In selecting psychologist providers of services, products; and publications, prospective clients, patients, or other consumers consider factors, such as psychologists' ability, experience, and

competence; the utility and convenience of the offered services, products, and publications; and price and other terms of sale. Advertising, including the use of comparative advertisements and the use of testimonials, can enable psychologists to inform clients, patients, and other consumers better about such factors. Truthful and nondeceptive advertising benefits clients, patients, and other consumers by increasing the information available to them about the factors they employ in selecting among psychologists and by promoting competition among psychologists.

PAR. 7. In informing clients, patients, and other consumers of psychological services about their services, products and publications, some psychologists use means of communication in addition to advertising. Among these means are professional referral and marketing services. Such referral and marketing services can benefit clients, patients, and other consumers by offering comparative information to them so that they may better and more easily choose among a variety of alternative psychologists, products, and services, reducing search costs and thereby promoting competition among psychologists.

PAR. 8. Respondent has acted as a combination of its members or has conspired with at least some of its members to restrain competition in the sale and delivery of psychological services and the sale and delivery of psychologists' services, products, and publications by:

A. Prohibiting its members from engaging in certain forms of truthful, nondeceptive advertising and solicitation; and

B. Prohibiting or restricting its members' participation in patient referral services or other similar institutions or arrangements, to the extent their operation is financed, in whole or in part, through individual assessments based upon business referrals made to contracting providers by or through the institution or arrangement.

PAR. 9. Respondent has engaged in various acts and practices in furtherance of the combination or conspiracy described in paragraph eight above. These acts and practices include, among other things, adopting in 1981; enforcing until at least December 1986; and, until rescinded in June 1989, maintaining provisions in respondent's

Ethical Principles of Psychologists, which have restrained competition in the following ways, among others:

A. Prohibiting psychologists from advertising or otherwise making any public statement "concerning the comparative desirability of offered services" (Ethical Principle 4b.(vii)(1981 *ed.*)). This restriction has deterred or may have deterred psychologists from advertising a broad range of truthful claims about the merits of the services they offer, such as significant scientific advances in certain psychological testing and evaluation procedures.

B. Prohibiting psychologists from advertising or otherwise making any public statement "implying unusual, unique, or one of a kind abilities" (Ethical Principle 4b.(v)(1981 *ed.*)). This restriction has deterred or may have deterred psychologists from making such wholly accurate claims as representations that they are the only psychologist in a particular market who provides particular evaluation services, who is trained to use a new therapeutic approach or who provides certain copyrighted testing materials.

C. Prohibiting psychologists from advertising or otherwise making any public statement "intended or likely to appeal to a client's fears, anxieties, or emotions concerning the possible results of failure to obtain the offered services." (Ethical Principle 4b.(vi)(1981 *ed.*)). This restriction has deterred or may have deterred psychologists from using in advertising virtually any statement about matters of concern to prospective clients, patients, or other consumers, such as, statements pointing out the risks of obesity or the symptoms of depression or alcoholism.

D. Prohibiting the use of a testimonial from a patient regarding the "quality" of a psychologist's services or products (Ethical Principle 4b.(iii)(1981 *ed.*)). This restriction, which is not limited to solicitation of testimonials from individuals who are vulnerable to undue influence, has deterred or may have deterred psychologists from supporting truthful claims about their practices with statements from patients, such as claims that accurately describe the personal qualities of the psychologist, the convenience of the psychologist's office hours, or the utility and perceived value of the psychologist's practice of providing psychological therapy jointly with such other services as dietary or vocational counseling.

E. Prohibiting psychologists from:

1. Making "a statement of direct solicitation of individual clients" (Ethical Principle 4b.(viii)(1981 *ed.*)). This restriction, which is not limited to solicitation of individuals who are vulnerable to undue influence, has deterred or may have deterred psychologists from initiating one-on-one discussions with individuals about the provision of therapeutic services or such services as market testing and evaluation; or

2. "Offering their own services directly" to "a person receiving similar services from another professional" (Ethical Principle 7b.(1981 *ed.*)). This restriction, which is not limited to offerings of services to individuals who are vulnerable to undue influence, has deterred or may have deterred psychologists from approaching individuals such as parents enrolled in a social worker's seminar on child development, and presenting to individuals information as to the advantages that can be gained from enrolling in the psychologist's own program apposed to remaining enrolled in the competing seminar;

F. Forbidding psychologists from giving or receiving "any remuneration for referring clients for professional services" (Ethical Principle 6d.(1981 *ed.*)). This restriction has deterred or may have deterred psychologists from operating or participating in such institutions as client or patient referral services or other similar institutions to the extent that operation of these institutions is or may be financed, in whole or in part, through individual assessments based upon business referrals made to contracting providers by or through the service or institution.

PAR. 10. The purposes, effects, tendency and capacity of the combination or conspiracy and the acts and practices described above have been and are to restrain competition unreasonably and to injure clients, patients, and other consumers in the following ways, among others:

A. Hindering, restraining, foreclosing and frustrating competition in the delivery of psychological services, and the sale of products and

publications by psychologists, on the basis of price, service, and quality.

B. Depriving clients, patients, and other consumers of the benefits of truthful information about the availability of psychologists' services, products, and publications; and

C. Depriving clients, patients, and other consumers of the benefits of competition among psychologists in the provision of their services, products, and publications through competing referral services and institutional arrangements.

PAR. 11. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The acts and practices of respondent, as herein alleged, or the effects thereof, are continuing and will continue or recur in the absence 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 that the Bureau of Competition proposed to present to the Commission for its consideration and that, 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 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 respondent has violated the said Act, and that a 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 American Psychological Association is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1200 17th Street, N.W., Washington, D.C.
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.

For the purposes of this order:

"Respondent" means the American Psychological Association, its directors, trustees, councils, committees, boards, divisions, officers, representatives, delegates, agents, employees, successors, or assigns.

"Members" means the Fellows, Members, and Associates classes of members of the American Psychological Association, and persons that hold Affiliate status with the American Psychological Association.

"Psychotherapy" means the therapeutic treatment of mental, emotional, or behavioral disorders by psychological means, and excludes programs, seminars, workshops, or consultations that address specific limited goals, such as career planning; improving employment skills or performance; increasing assertiveness; losing weight, giving up smoking; or obtaining non-individualized information about methods of coping with concerns common in everyday life.

"Current psychotherapy patient" means a patient who has commenced an evaluation for or a planned course of individual,

family, or group psychotherapy, where the patient and the therapist have not agreed to terminate the treatment. However, a person who has not participated in psychotherapy with the psychologist for one year shall not be deemed a current psychotherapy patient.

II.

It is ordered, That respondent, directly, indirectly, or through any corporate or other device, in or in connection with respondent's activities as a professional association, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, do forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or restraining the advertising, publishing, stating, or disseminating by any person of the prices, terms, availability, characteristics, or conditions of sale of services, products, or publications offered for sale or made available by any psychologist, or by any organization or institution with which a psychologist is affiliated, through any means, including but not limited to the adoption or maintenance of any principle, rule, guideline, or policy that restricts any psychologist from:

1. Making public statements about the comparative desirability of offered services, products, or publications,

2. Making public statements claiming or implying unusual, unique, or one-of-a-kind abilities;

3. Making public statements likely to appeal to a client, patient or other consumer's emotions, fears, or anxieties concerning the possible results of obtaining or failing to obtain offered services, products, or publications;

4. Presenting testimonials from clients, patients, or other consumers;

5. Engaging in any direct solicitation of business from actual or prospective clients, patients, or other consumers or offering of services directly to a client, patient, or other consumer receiving similar services from another professional.

Provided that, nothing contained in this order shall prohibit respondent from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its members with respect to:

1. Representations that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act;
2. Uninvited, in-person solicitation of business from persons who, because of their particular circumstances; are vulnerable to undue influence; or
3. Solicitation of testimonial endorsements (including solicitation of consent to use the person's prior statement as a testimonial endorsement) from current psychotherapy patients, or from other persons who, because of their particular circumstances, are vulnerable to undue influence.

Provided further, that nothing in this order shall prohibit respondent from adopting and enforcing editorial, scientific, peer review, or display standards for its publications and conferences.

B. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or restraining any of its members, or any organization or institution with which any of its members, is associated from giving or paying any remuneration to any patient referral service or other similar institution for referral of clients, patients, or other consumers for professional services.

Provided that, nothing contained in this order shall prohibit respondent from formulating, adopting, disseminating, and enforcing reasonable principles, rules, guidelines, or policies requiring that disclosures be made to clients, patients, or other consumers that the psychologist, or organization or institution with which he or she is associated, will pay or give, or has paid or given, remuneration for the referral of the clients, patients, or other consumers for professional services.

III.

It is further ordered, That respondent shall:

A. Cease and desist for ten (10) years from the date at which this order becomes final, from taking any action against a person alleged to have violated any ethical principle, rule, policy, guideline, or standard, or taking disciplinary action on any other basis against a person, so as to restrain or otherwise restrict advertising, solicitation of business, or the payment of fees for the referral of clients, patients, or other consumers for services without first providing such person, at a minimum, with written notice of any such allegation and without providing such person a reasonable opportunity to respond. The notice required by this part shall, at a minimum, clearly specify the ethical principle, rule, policy, guideline, or other basis of the allegation and the reasons the conduct is alleged to have violated the ethical principle, rule, policy, guideline, or standard or other applicable criterion.

B. Maintain for five (5) years following the taking of any action referred to in Part III. A. of this order, in one separate file, segregated by the names of any person against whom such action was taken, and make available to Commission staff for inspection and copying, upon reasonable notice, all documents and correspondence that embody, discuss, mention, refer, or relate to the action taken and all bases for or allegations relating to it.

IV.

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date this order becomes final, remove or amend to eliminate from the respondent's Ethical Principles, Bylaws, and any officially promulgated or authorized guidelines or interpretations of respondent's official policies any statement of policy that is inconsistent with Parts II and III of this order.

B. Within sixty (60) days after the date this order becomes final, publish in The APA Monitor, or any successor publication that serves

as an official journal of respondent, a copy of this order with such prominence as is therein given to regularly published feature articles.

C. Within sixty (60) days after the date this order becomes final, publish in The APA Monitor, or any successor publication that serves as an official journal of respondent:

1. Notice of the removal or amendment, pursuant to this order, of any Principle, Bylaw, guideline, interpretation, provision, or statement, together with;

2. A copy of any such Principle, Bylaw, guideline, interpretation, provision, or statement, as worded after any such amendment.

D. Within sixty (60) days after the date this order becomes final, distribute by mail a copy of Appendix A to this order, along with a copy of the order itself, to each of respondent's members and to each state psychological association affiliate.

E. Cease and desist for a period of one (1) year from maintaining or continuing respondent's affiliation with any state, regional, or other psychological association affiliate within one hundred twenty (120) days after respondent learns or obtains information that would lead a reasonable person to conclude that said association has, following the effective date of this order, maintained or enforced any prohibition against:

1. Advertising or making public statements concerning the comparative desirability of offered services;

2. Advertising or making any public statement representing or implying unusual, unique, or one of a kind abilities;

3. Advertising or making any public statement intended or likely to appeal to a client's fears, anxieties, or emotions;

4. Using a testimonial regarding the quality of a psychologist's services or products;

5. Directly soliciting individual clients;

6. Offering services directly to persons receiving similar services from another professional; or

7. Making payments to patient referral services;

where maintenance or enforcement of such prohibition by the respondent would be prohibited by Part II of this order; unless, prior to the expiration of the one hundred twenty (120) day period, said association informs respondent by a verified written statement of an officer that the association has eliminated and will not reimpose such prohibitions(s), and respondent has no grounds to believe otherwise.

V.

It is further ordered, That respondent shall:

A. Within ninety (90) days after the date this order becomes final, and at such other times as the Commission may require by written notice to the respondent, file with the Commission a written report setting forth in detail the manner and form in which respondent has complied and is complying with the order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II, III, and IV of this order, including but not limited to all documents generated by the respondent or that come into the possession, custody, or control of respondent, regardless of the source, that discuss refer to, or relate to any advice or interpretation rendered with respect to advertising, solicitation, or giving or receiving any remuneration for referring clients for professional services, involving any of its members.

VI.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance obligations arising out of this order.

APPENDIX A

ANNOUNCEMENT

Dear _____ :

As you may be aware, the American Psychological Association ("APA" of "the Association") has signed a consent agreement with the Federal Trade Commission under which the Commission has entered a cease and desist order that became final on [insert date]. A copy of that order is enclosed with this letter. The order is also printed in the [insert date] issue of The APA Monitor, which may be obtained from APA headquarters. The agreement between the Commission and the APA is for settlement purposes. It does not constitute an admission by the Association that it has violated any law.

Under the terms of the order, APA may not ban any of its members from engaging in truthful, nondeceptive advertising and marketing. Specifically, the Association may not prohibit its members from:

1. Making public statements about the comparative desirability of offered services;
2. Making public statements implying or expressing unusual, unique, or one-of-a-kind abilities;
3. Making public statements likely to appeal to a person's emotions, fears, or anxieties concerning the possible results of obtaining or failing to obtain offered services, products or publications; or
4. Presenting testimonials regarding the quality of a psychologist's services, products, or publications; except that the Association may formulate and enforce reasonable guidelines with respect to the solicitation of testimonials from persons who are vulnerable to undue influence.

Under the order, Association also may not prohibit its members from making statements of direct solicitation of individuals, including offering services directly to persons who may be receiving similar services from other professionals.

In addition, the Association may not prohibit its members from paying any patient referral service or similar institution for referrals, including those where the institution's operations are funded, in whole or in part, through individual assessments of participating psychologists that are based on the referrals that have been made.

The order, however, provides that the Association may formulate and enforce reasonable principles or ethical guidelines to prevent deceptive advertising and solicitation practices. APA also may issue principles or guidelines with respect to uninvited, in-person solicitation of business, or the solicitation of testimonials from current psychotherapy patients, as defined in the order, or other persons who, because of their particular circumstances, are vulnerable to undue influence by a psychologist.

And, under the order, APA also may issue reasonable principles or guidelines requiring that disclosures be made to clients, patients, or other consumers regarding fees paid by any psychologist to any patient referral service or similar institution for referring the client, patient, or other consumer for professional services.

The Association is required, under the terms of the order, to provide any person against whom it initiates or takes action for any alleged violation of any of the Association's Ethical Principles, rules, or other standards that relate to advertising and solicitation of business or to the payment of referral fees to patient referral services or similar institutions, written notice of the specific allegations and of the opportunity to respond to those allegations. The procedures that have been in effect under the Rules and Procedure of the Ethics Committee of the American Psychological Association may continue to be employed by APA in this regard.

Finally, the order requires APA to amend the Ethical Principles of Psychologists, its Bylaws, and any guidelines or interpretations officially promulgated or authorized by APA to delete any provisions that are in conflict with the order and to cease its affiliation for one year with any of its state or regional associations that engage in conduct prohibited by the order and that does not notify APA that it has ceased, and will not repeat such conduct.

In entering into an agreement with the Association, the Federal Trade Commission has not endorsed any principle, guideline, policy, or practice of the Association. For more specific information, you should refer to the Federal Trade Commission's order itself.

Thank you for your cooperation.

Sincerely,

President
American Psychological Association

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

The Commission today accepts a consent order that bars the American Psychological Association ("APA"), through its Ethical Principles (code of ethics for its members), from restricting the advertising of its members. I concur in the general prohibition of the order. Part of the order, however, is troubling in the context of this case and raises concerns about the Commission's general approach to analyzing horizontal agreements and, in particular, agreements embodied in professional codes of ethics.

In addition to the general prohibition of restraints on advertising, the order enumerates several specific prohibitions designed to force the APA to repeal specific ethical principles. One in particular raises an issue about the extent to which the Commission is willing to substitute its judgment for the professional judgment of a psychologist. The order bars the APA from restricting its members from advertising that is "intended or likely to appeal to a client's fears, anxieties, or emotions concerning the possible results of failure to obtain" psychotherapy services.¹ I dissent from this provision of the order because of its potential for harm to patients and prospective patients, given the nature of psychotherapy services.²

Appeals to the "fears, anxieties and emotions" of consumers can be an effective form of advertising. The Commission normally would view a broad restriction of this kind of advertising with a high degree of skepticism. The APA rule in question is limited, but even assuming it is inherently suspect, under *Massachusetts Board of Registration in Optometry*, 110 FTC 549, 602-04 (1988), that is not the end of the inquiry. Instead, in deciding whether a restraint on advertising is unlawful under Section 5 of the Federal Trade Commission Act, it is necessary to consider the possible justifications for the restriction. *Id.* at 604. Broad order prohibitions that are appropriate in one context may not apply in the same fashion in another context. Before banning the APA's restriction on this form of advertising, we must consider whether the APA has legitimate reasons for the restriction.

Here, the challenged rule restricts advertising by psychologists that is intended to arouse consumers' fears, anxieties or other emotions about the consequences of failing to obtain psychotherapy services. The plausible justification for this restriction is the professional concern about compounding the psychological problems of vulnerable individuals and interfering with psychotherapy. An individual who fears the consequences of failing to obtain psycho-

¹ The APA had such a restriction in its ethical code but repealed it in the face of the Commission's investigation. See ¶ II.3 of the order and ¶ 9.C of the complaint.

² "The therapeutic treatment of mental, emotional, or behavioral disorders by psychological means." Order ¶ I.

therapy may be less successful in psychotherapy or require a longer course of treatment than one who has positive expectations.³ On the record before us, I do not know that this is a valid professional justification, but, more importantly, in deciding whether the APA's restriction may be unlawful, I do not know that it is not.

When we are presented with a plausible justification for restrictive conduct that involves or may involve a professional judgment, we should substitute our judgment for that of the professional only if we have a sound basis for doing so. The Commission has deferred to the professional judgments of professionals in the past, especially where quality of care has been involved. At the very least, it has not rushed to overturn such judgments absent compelling cause. Here, the justification is plausible, we have nothing to weigh against it and the Commission lacks expertise concerning psychotherapy. The decision to ignore the plausible justification and invalidate the rule is based on a truncated record. Everything the record contains on this point supports the justification, and nothing, even hypothetically, suggests that the justification is either implausible or invalid. In addition, as often happens in cases of this nature, the respondent has substantial financial incentives to accept the settlement rather than litigate.

The order partly concedes the validity of the APA's concerns about engendering fears and anxieties in consumers and interfering with the therapeutic process by permitting the APA to restrict its members from direct solicitation of business and the solicitation of testimonials from current psychotherapy patients and others who may be "vulnerable to undue influence."⁴ The same potential for harm to vulnerable persons might have been recognized by allowing the APA to restrict emotional appeals regarding failure to obtain psycho-

³ The APA Ethical Principle at issue fully supports the justification. By its terms, the APA's rule did not restrict emotional appeals about the benefits of obtaining psychotherapy services but rather advertising that is intended to appeal to a client's "fears, anxieties or emotions concerning the possible results of failure to obtain [psychotherapy] services." *See* Complaint ¶ 9.C.

⁴ Order ¶ II.A, provisos 2 & 3. Although I might have addressed these issues differently in the context of the order as a whole, the provisos appropriately credit plausible justifications offered by the APA.

therapy services in advertisements. The majority instead paints with a broader brush, to the possible detriment of consumers.

As a matter of law, the Commission necessarily substitutes its judgment on this professional question for that of the APA when it invalidates the APA's rule. Making that judgment without better reason than is apparent here suggests a willingness to expand the *per se* rule, is unnecessarily intrusive and has serious implications for future cases, particularly in view of the recognized difficulty of identifying and articulating plausible efficiency justifications. Overly broad orders may deter other legitimate conduct. Our zeal to promote competition should not override our attention to the interests of consumers. In evaluating the reasonableness of private conduct and the validity of justifications for that conduct, the Commission should be cautious about overriding the tenets of professionalism, especially in the context of a consent order.

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

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

Docket 9205. Complaint, April 11, 1986--Final Order, Dec. 22, 1992*

This final order upholds the ruling of the administrative law judge, which requires Occidental, a California-based corporation, to divest certain Tenneco PVC plants to a Commission-approved acquirer within one year. The order prohibits Occidental, for 10 years, from acquiring all or any part of the stock or assets of, or any interest in, any producer of PVC located in the United States, without prior Commission approval.

Appearances

For the Commission: *Rhett R. Krulla and Marc G. Schildkraut.*

For the respondents: *Michael Sohn, Arnold & Porter, Washington, D.C. Louis Nizer Phillips, Nizer, Benjamin Krim & Ballon, New York, N.Y. and Robert Luss, in-house counsel for respondent Occidental Chemical Corporation, Dallas, TX.*

INITIAL DECISION BY

THOMAS F. HOWDER, ADMINISTRATIVE LAW JUDGE
SEPTEMBER 30, 1988

CITATION FORMAT

Hearing testimony presented by affidavit or declaration in this proceeding is identified by the name of the witness, the exhibit number and the appropriate page and paragraph reference (e.g., Pflugrath CX 177F ¶10).

Hearing testimony from The B.F. Goodrich Co., FTC Docket 9159, is identified by the name of the witness followed by the

* Complaint previously published at 111 FTC 27 (1988).