

IN THE MATTER OF

COMMUNITY ASSOCIATIONS INSTITUTE

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3498. Complaint, June 6, 1994--Decision, June 6, 1994*

This consent order prohibits, among other things, a Virginia-based association, whose members are managers of residential community associations, from interfering in any way with the truthful advertising and solicitation efforts of its members, and requires the respondent to remove from its codes of ethics any provisions inconsistent with the order's prohibition, and to make the changes known by publishing the revised code and the Commission's order in two of the respondent's publications.

Appearances

For the Commission: *Michael D. McNeely, Randall Marks and Jonathan D. Draluck.*

For the respondent: *Julie Carpenter and Anthony Epstein, Jenner & Block, 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 respondent Community Associations Institute, a corporation, has violated the provisions of 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 as follows:

PARAGRAPH 1. Respondent Community Associations Institute ("CAI") is a corporation organized, existing, and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 1630 Duke Street, Alexandria, Virginia. CAI is a voluntary professional association of professional residential community association managers, residential community home owners associations, real estate developers,

lawyers, accountants, landscapers, and others having interests in the management of residential housing developments.

PAR. 2. CAI's members include professional residential community association managers. Except to the extent that CAI has restrained competition as described herein, CAI's professional residential community association manager members have been and are in competition among themselves and with other professional residential community association managers.

PAR. 3. CAI engages in substantial activities that further its members' pecuniary interests. By virtue of its purposes and activities, CAI is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. CAI's acts and practices, including the acts and practices alleged herein, are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. CAI has conferred the designation "Professional Community Associations Manager" ("PCAM") on certain of its members who have met educational and experience qualifications and who agree to abide by its Code of Professional Ethics for Professional Community Association Managers.

PAR. 6. By promulgating and enforcing the professional courtesy provisions of its various codes of ethics, CAI has been and is acting as a combination of its members, or in conspiracy with some of its members, to restrain trade in the provision of professional residential community association management services in the United States by restricting advertising and client solicitation.

PAR. 7. In furtherance of this combination or conspiracy, CAI:

A. Adopted and maintained (until June 22, 1993) Section B.4, "Professional Courtesy," of its Code of Professional Ethics for Professional Community Association Managers ("Code"), which states that PCAMs shall (1) exhibit professional courtesy by not interfering with contractual relationships between other professional managers and their clients and (2) give notice to other professional managers of any contacts with their clients to the extent that, such notice is useful and does not interfere with the ability to compete fully;

B. Circulated a task force report regarding guidelines for "Marketing Versus Unethical Solicitation" that declared unethical, among other things, (1) certain truthful, nondeceptive advertising and

client solicitation, including solicitations designed to attract an association away from its current manager; (2) quotations for management services given to a prospective client before being selected to bid; (3) and offering free, non-management services, such as insurance and landscaping, as marketing incentives; and

C. Enforced (until June 22, 1993) Section B.4 of the Code of Professional Ethics for Professional Community Association Managers to restrict, among other things, general mailings to condominium or homeowner associations, solicitation targeting specific condominium or homeowner associations, telephone or personal solicitation designed to attract current clients of another manager, communicating with condominium or homeowners, and quoting prices for services before being asked to do so, by conducting investigations of and issuing warning letters to managers who solicited the business of condominium or homeowner associations.

PAR. 8. At least some CAI local chapters have discouraged their members from soliciting the business of condominium or homeowner associations.

PAR. 9. The purposes and effects of the combination or conspiracy and CAI's acts or practices have been and are to restrain competition unreasonably and to injure consumers by:

A. Depriving consumers of truthful information pertinent to the availability of a professional residential community association manager; and

B. Depriving consumers of the benefits of competition among professional residential community association managers.

PAR. 10. The acts and practices herein alleged were and are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, 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 Bureau of Competition 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, 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. CAI is a corporation organized, existing and doing business under, and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 1630 Duke Street, Alexandria, Virginia.

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 purposes of this order, the terms "respondent" or "CAI" mean the Community Associations Institute, its trustees, councils, committees, boards, divisions, officers, representatives, delegates, agents, employees, successors, and assigns.

II.

It is further ordered, That respondent, directly or indirectly, or through any person or any corporate or other device, in or in connection with its activities as a professional association in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against truthful, non-deceptive advertising and solicitation, including, but not limited to: general mailings to condominium or homeowner associations, solicitation targeting specific condominium or homeowner associations, telephone or personal solicitation designed to attract current clients of another manager, communicating with condominium or homeowners, quoting prices for services before being asked to do so, and offering to provide free services; or

B. Inducing, suggesting, urging, encouraging, or assisting any non-governmental person or organization to take any action that if taken by respondent would violate this order;

Provided that nothing contained herein shall prohibit respondent from formulating, adopting, disseminating to its component societies and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that respondent 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 respondent shall:

A. Within thirty (30) days after the date this order becomes final:

1. Remove any current code of ethics provision that is inconsistent with the provisions of Part II of this order; and
2. Revoke any interpretation or policy statement, including any report regarding “Marketing Versus Unethical Solicitation,” that is inconsistent with the provisions of Part II of this order.

B. Maintain Article XII, Section 12, of the CAI Bylaws as amended and adopted on June 21, 1993, and revoke, during its recertification process, the charter of any local chapter unless and until the chapter certifies that it will ensure compliance with and the integrity of said Bylaw provision.

C. Cease and desist for a period of one (1) year from maintaining or continuing respondent's affiliation with any local chapter or other organization of homeowner association managers within one hundred and twenty (120) days after respondent learns or obtains information that would lead a reasonable person to conclude that said organization has engaged, after the date this order becomes final, in any act or practice that if engaged in by CAI would be prohibited by paragraph II of this order; unless prior to the expiration of the 120 day period said organization informs respondent by verified written statement of an officer that the organization has ceased and will not resume such act or practice, and respondent has no grounds to believe otherwise.

D. Within thirty (30) days after respondent takes any action pursuant to Part III.B or III.C above, notify the Federal Trade Commission of such action and provide all documentation related thereto.

E. Within thirty (30) days after the date this order becomes final, distribute by United States mail an announcement in the form shown in Appendix A to this order (hereinafter "Appendix A") to each Professional Community Association Manager, each member of the CAI Association Management Specialist and Chief Executive Officers of Management Companies committees, and each local chapter, and use its best efforts to encourage each chapter to publish Appendix A in its newsletter.

F. Within ninety (90) days after the date this order becomes final, publish in Community Management and Common Ground, or any successor publications: (1) this order, (2) the accompanying complaint, (3) Appendix A, and (4) any Code of Ethics provision, interpretation, policy statement, or other document that CAI revises pursuant to Part III.A above.

G. Within one hundred and twenty (120) days after the date this order becomes final, and annually for five (5) years thereafter on the anniversary date of this order, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the

manner and form in which respondent has complied and is complying with this order.

H. 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 any action taken in connection with the activities covered by this order.

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

APPENDIX A

Dear Member:

This letter is to inform you that, without admitting liability or any wrongdoing, we have voluntarily entered into an agreement with the Federal Trade Commission that resulted in the entry of a consent order on [enter date]. Although the consent order required that CAI take specific actions with regard to CAI's ethics provisions and by-laws, CAI had already taken some of those actions before entry of the order. In June, 1993, CAI repealed the Professional Courtesy provision of the various CAI Codes of Ethics, and amended the by-laws to provide that all ethics provisions which relate to advertising or solicitation would be limited to prohibition of false or deceptive advertising by members, and that CAI would not otherwise limit or control advertising or soliciting practices.

In accordance with the terms of the order, you are hereby notified that, among other requirements of the order, CAI may not prohibit or restrict its members from engaging in any advertising or solicitation that is truthful and nondeceptive, by any means, including through provisions in the Code of Professional Ethics for PCAMS, the AMS Code of Professional Ethics, and the CEO-MC Code of Ethics. In particular, CAI may not interfere if its members solicit or advertise truthfully and nondeceptively, including, but not limited to, engaging in any of the following activities:

1. solicitation targeting specific condominium or homeowner associations;
2. telephone or personal solicitation designed to attract clients of another manager;
3. communicating with owners;
4. quoting prices for services before being asked to do so;
5. offering to provide free services; and
6. sending general mailings to condominium or homeowner associations.

Similarly, the order bars local chapters from interfering with members' advertising and solicitation activities, including, but not limited to, the type listed above.

The order contains a proviso permitting CAI and its chapters to adopt and enforce reasonable ethical guidelines prohibiting advertising, including unsubstantiated representations, that they reasonably believe would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

The order does not bar CAI from taking action against any member that a court or state regulatory agency has found engaged in tortious interference with contract.

For more specific information, members should refer to the FTC order itself. CAI will provide any member with a copy of the order and accompanying complaint upon request.

Counsel

Community Associations Institute

IN THE MATTER OF

THE COCA-COLA COMPANY

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 9207. Complaint, July 15, 1986--Final Order, June 13, 1994

This final order requires Coca-Cola, for ten years, to obtain Commission approval before acquiring any part of the stock or interest in any company that manufactures or sells branded concentrate, syrup, or carbonated soft drinks in the United States.

Appearances

For the Commission: *Joseph S. Brownman, Ronald Rowe, Mary Lou Steptoe and Steven J. Rurka.*

For the respondent: *Gordon Spivack and Wendy Addiss, Coudert Brothers, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, The Coca-Cola Company, a corporation subject to the jurisdiction of the Federal Trade Commission, has entered into an agreement with DP Holdings, Inc., described in paragraph four herein, that, if consummated, 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 agreement and the actions of the respondent to implement that agreement constitute violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, the Commission 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: