

IN THE MATTER OF

AMERICAN SOCIETY OF INTERPRETERS

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

Docket C-3525. Complaint, Aug. 31, 1994--Decision, Aug. 31, 1994

This consent order prohibits, among other things, the professional association of interpreters, based in Washington, D.C., from fixing or otherwise interfering with any form of price or fee competition among language specialists in the future; from maintaining any agreement or plan to limit or restrict the specialists working time or condition; for ten years, from making statements at an association meeting concerning fees; and, for three years, from compiling and distributing aggregate information concerning fees already charged.

Appearances

For the Commission: *Michael McNeely* and *Kent Cox*.

For the respondent: *Mario L. Herman, Purvin & Herman*,
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 American Society of Interpreters ("ASI"), 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 in that respect as follows:

PARAGRAPH 1. Respondent American Society of Interpreters is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal place of business located in Washington, D.C. ASI is a voluntary professional association of individuals engaged in the business of conference interpreting.

PAR. 2. Conference interpreting is the practice of expressing, in spoken form, ideas in a language different from an original spoken

statement made at conferences or other high level business, scientific, governmental, or intergovernmental meetings.

PAR. 3. Except to the extent that ASI has restrained competition as described herein, ASI members have been and are in competition among themselves and with other interpreters.

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

PAR. 5. ASI'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. 6. ASI decisions are made by the Assembly and the Board of Directors ("ASI Board"). The Assembly consists of all ASI members and meets annually. Assembly decisions are reached by consensus. The ASI Board acts for the Assembly in the interim and makes recommendations to the Assembly, including recommendations on fees. The ASI Board consists of seven ASI members elected at the annual Assembly.

PAR. 7. ASI maintains a set of work rules ("ASI Work Rules") approved by the ASI Board and disseminated to all ASI members. The ASI Work Rules are embodied in the "Code of Professional Standards," the "Professional Guidelines," and on the last page of the annual yearbook.

PAR. 8. The ASI Work Rules are binding on members and forbid members from accepting fees and staffing arrangements inferior to those recommended by ASI. ASI imposes penalties, including expulsion from ASI, on its members for deviating from the ASI Work Rules.

PAR. 9. The ASI Work Rules are a collection of minimum working conditions to be demanded by those providing interpretation services. ASI members have been required to advise the ASI Board before deviating from ASI Work Rules. ASI has encouraged its members to report instances of members and nonmembers undercutting the ASI Work Rules and fees.

PAR. 10. Until 1991, the ASI Yearbook Guidelines included each year's minimum daily fee for conference interpretation services charged to purchasers in the private sector ("Minimum Daily Fee"). ASI members could be expelled from the association for charging

less than the Minimum Daily Fee for conference interpretation services.

COUNT I

PAR. 11. Each of the allegations in paragraphs one through ten herein are incorporated in this Count I as though set forth in full.

PAR. 12. From as early as 1967, ASI annually created and distributed a list of Minimum Daily Fees. ASI has required its members to refrain from accepting fees in the private sector below the specified Minimum Daily Fees. ASI has encouraged its members to report instances of members and nonmembers undercutting the ASI Minimum Daily Fee.

PAR. 13. ASI Work Rules require that members charge at least the ASI Minimum Daily Fee for conference interpretation services. The Minimum Daily Fees were adopted by consensus of the ASI general membership at annual Assembly meetings.

PAR. 14. The ASI Work Rules require identical compensation for members working on the same interpretation team and performing the same function regardless of differences in interpreters' experience, skill, or other characteristics.

PAR. 15. The ASI Work Rules deter members from performing services free of charge except in welfare cases or cases of national or international emergencies.

PAR. 16. The ASI Work Rules require members to calculate conference interpretation fees on an indivisible full-day basis, regardless of the duration of the actual assignment during the day.

PAR. 17. The ASI Work Rules require members to charge 150 percent of the Minimum Daily Fee when interpreting alone.

PAR. 18. The ASI Work Rules prescribe mandatory minimum standards for the: rate of compensation for interpreting legal proceedings in an attorney's office; amount, type, and time of payment of subsistence expense allowances for conferences at which members work; rate of compensation for travel time, briefing time, and other time not worked, such as intervening weekends and holidays; rate of compensation for chief interpreters who coordinate and supervise conference interpretation services; and amount and applicability of cancellation fees. The ASI Work Rules prohibit members from accepting engagements on terms inferior to those prescribed.

PAR. 19. The ASI Board has promulgated a minimum daily rate for members to charge clients for the rental of portable interpretation equipment.

PAR. 20. ASI promulgated the above ASI Work Rules and the Minimum Daily Fees for the purpose and with the intended effect of raising and sustaining the general level of fees and other compensation paid to interpreters in the United States so that interpreters could earn more money and greater profits.

PAR. 21. ASI members have used the ASI Work Rules and the Minimum Daily Fees when setting their own fees and working conditions.

PAR. 22. Respondent ASI has been and is acting as a combination of its members or in conspiracy with some of its members and others, to restrain price competition in the sale of interpretation services, to fix or stabilize fees and other terms, and to prevent discounting of fees in the provision of interpretation services.

PAR. 23. The combination or conspiracy and ASI's acts or practices described above constitute price fixing, whose purpose and effects have been and are to restrain competition unreasonably and to injure consumers by, among other ways, depriving consumers of the benefits of price competition on fees and other terms among interpreters in the provision of interpretation services.

PAR. 24. The acts and practices herein alleged were and are to the prejudice and injury of the public, will continue in the absence of the relief herein requested, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 25. Each of the allegations in paragraphs one through ten are incorporated in this Count II as though set forth in full.

PAR. 26. The ASI Work Rules prescribe mandatory standards for:

- A. Hours worked per day and per shift by interpreters; and
- B. The number of interpreters per language spoken at a conference.

The ASI Work Rules prohibit members from accepting engagements on terms inferior to those prescribed.

PAR. 27. ASI promulgated the ASI Work Rules alleged in paragraph twenty-six for the purpose and with the intended effect of restraining competition by attempting to control the output and marketing of interpretation services in the United States so that interpreters could earn more money and greater profits.

PAR. 28. By enacting and enforcing the Work Rules, respondent ASI has been and is acting as a combination of its members or in conspiracy with some of its members and others, to restrain competition by attempting to control the output and marketing of interpretation services.

PAR. 29. The combination or conspiracy and ASI's acts or practices described above have had and continue to have the purpose and effects of restraining competition unreasonably and injuring consumers by, among other ways, depriving consumers of the benefits of competition among interpreters in the provision of interpretation services.

PAR. 30. The acts and practices herein alleged were and are to the prejudice and injury of the public, will continue in the absence of the relief herein requested, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

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 a violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 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, 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 ASI 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 P.O. Box 9603, 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.

It is ordered, That for purposes of this order, the following definitions shall apply:

"Respondent" or *"ASF"* mean American Society of Interpreters, its directors, trustees, general assemblies, councils, committees, working groups, boards, divisions, chapters, officers, representatives, delegates, agents, employees, successors, and assigns.

"Fees" means any cash or non-cash charges, rates, prices, benefits or other compensation received or intended to be received for the rendering of interpretation, translation, or other language services, including but not limited to, salaries, wages, transportation, lodging, meals, allowances, reimbursements for expenses, compensation for time not worked, compensation for travel time and preparation and study time, cancellation fees, and payments in kind.

“Interpretation” means the act of expressing, in oral form, ideas in a language different from an original spoken statement.

“Translation” means the act of expressing, in written form, ideas in a language different from an original writing.

“Other language service” means any service that has as an element the conversion of any form of expression from one language into another or any service incident to or related to interpretation and translation including briefing or conference preparation, equipment rental, conference organizing, teleconferencing, précis writing, supervision or coordination of interpreters, reviewing or revising translations, or providing recordings of interpretations.

“Interpreter” means one who practices interpretation.

“Translator” means one who practices translation.

“Language specialist” means one who practices interpretation, translation, or any other language service.

“Unbiased” means lacking any systematic errors that would result from the selection or encouragement of one outcome or answer over others.

“Person” means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

II.

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

A. Creating, formulating, compiling, distributing, publishing, recommending, suggesting, encouraging adherence to, endorsing, publishing letters or articles supporting, or authorizing any list or schedule of fees for interpretation, translation, or any other language service, including but not limited to fee reports, fee guidelines, suggested fees, proposed fees, fee sheets, standard fees, or recommended fees;

B. Entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to construct, fix, stabilize, raise, maintain, or otherwise interfere with

or restrict the fees for interpretation, translation, or other language services;

C. Suggesting, urging, encouraging, recommending, or attempting to persuade in any way interpreters, translators, or other language specialists to charge, pay, file, or adhere to any existing or proposed fee, or otherwise to charge or refrain from charging any particular fee;

D. For a period of ten (10) years after the date this order becomes final, continuing a meeting of interpreters, translators, or other language specialists, after 1) any person makes a statement, addressed to or audible to the body of the meeting, concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and ASI fails to declare such statement to be out of order, 2) any person makes two such statements and ASI fails to eject him or her from the meeting, or 3) two people make such statements;

E. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any form of price competition, including but not limited to offering to do work for less remuneration than a specific competitor, undercutting a competitor's actual fee, offering to work for less than a customer's announced fee, advertising discounted rates, or accepting any particular lodging or travel arrangements;

F. Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, half-day fees, weekly fees, or fees calculated on other than a full-day basis; and

G. Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or at a discount, or from paying their own travel, lodging, meals, or other expenses.

Provided, that nothing contained in this paragraph II shall prohibit respondent from:

1. Compiling or distributing accurate aggregate historical market information concerning past fees actually charged in transactions completed no earlier than three (3) years after the date this order becomes final, provided that such information is compiled and

presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions;

2. Collecting or publishing accurate and otherwise publicly available fees paid by governmental and intergovernmental agencies, if such publication states the qualifications and requirements to be eligible to receive such fees; or

3. Continuing a meeting following statements concerning historical, governmental, or intergovernmental fees that are made in order to undertake the activities permitted in paragraphs II.1 and II.2. of this order.

III.

It is further ordered, That respondent shall clearly and conspicuously state the following in any publication of fees made pursuant to paragraphs II.1 and II.2 of this order:

BY ORDER OF THE FEDERAL TRADE COMMISSION, ASI IS PROHIBITED FROM RECOMMENDING, SUGGESTING, OR ENFORCING FEES. UNDER UNITED STATES LAW, INTERPRETERS AND OTHER LANGUAGE SPECIALISTS MUST UNILATERALLY AND INDEPENDENTLY DETERMINE THEIR OWN FEES.

IV.

It is further ordered, That respondent, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, cease and desist from entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to:

A. Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists work in a given period, or for which they are paid for preparation or study; or

B. Limit, restrict, or mandate the number of interpreters, translators, or other language specialists used for a given job or type of job.

Provided, that nothing contained in paragraph IV of this order shall prohibit respondent from providing information or its nonbinding and non-coercive views concerning the hours of work or preparation or the number of language specialists used for types of jobs.

V.

It is further ordered, That respondent shall, within thirty (30) days after the date this order becomes final, amend its Code of Professional Standards and all Professional Guidelines, including those found in the annual Membership List of ASI, and all appendices to conform to the requirements of paragraphs II and IV of this order and amend its bylaws to require each member, chapter, or other subdivision, to observe the provisions of paragraphs II and IV of this order.

VI.

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute to each ASI member, affiliate, chapter, organizational subdivision, or other entity associated directly or indirectly with ASI, copies of: (1) this order, (2) the accompanying complaint, (3) Appendix A to this order, (4) and any document that ASI revises pursuant to this order, with the exception of the annual Membership List; and

B. Within one-hundred eighty (180) days after the date this order becomes final, distribute copies of the annual Membership List as revised pursuant to this order; and

C. For a period of five (5) years after the date this order becomes final, distribute to all new ASI officers, directors, and members, and any newly created affiliates, chapters, or other organizational subdivisions, within thirty days of their admission, election, appointment, or creation, a copy of: (1) this order, (2) the accompanying complaint, (3) Appendix A to this order, and (4) any document that ASI revises pursuant to this order.

VII.

It is further ordered, That respondent shall:

A. Within ninety (90) days after the date this order becomes final, and annually for three (3) years thereafter on the anniversary of the date this order becomes final, 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, and any instances in which respondent has taken any action within the scope of the provisos in paragraphs II.1 or II.2 or II.3 of this order:

B. For a period of five (5) years after the date this order becomes final, notify and provide copies to the Federal Trade Commission staff, within thirty (30) days, of any fee reports, fee lists, fee schedules, fee guidelines or similar materials produced by or for any association that come into respondent's possession;

C. For a period of five (5) years after the date this order becomes final, collect, maintain and make available to the Federal Trade Commission staff for inspection and copying: records adequate to describe in detail any action taken in connection with the activities covered in this order; all minutes, records, reports or tape recordings of meetings of the Board General Assembly, and all chapters, committees, subcommittees, working groups, or any other organizational subdivisions of ASI; and all ASI mailings to the ASI Board or general membership;

D. For a period of three (3) years after the date this order becomes final, provide copies to the Federal Trade Commission, within thirty (30) days of its adoption, of the text of any amendment to the ASI Bylaws, ASI Professional Guidelines, ASI Code of Professional Standards, ASI Yearbook Professional Guidelines, and any new rules, regulations or guidelines of respondent; and

E. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution or reorganization of itself or any chapter, division, or of any proposed change resulting in the emergence of a successor corporation or

association, or any other change in the corporation or association that may affect compliance obligations arising out of this order.

By the Commission.¹

APPENDIX A

[DATE]

ANNOUNCEMENT

The American Society of Interpreters (“ASI”) has entered into a consent agreement with the Federal Trade Commission. Pursuant to this consent agreement, the Commission issued an order on [DATE] that prohibits ASI, including its chapters, committees, or organizational subdivisions, from:

(1) Creating, distributing, authorizing, or endorsing any list or schedule of fees or other charges for interpretation, translation, or other language services;

(2) Entering into, or maintaining any agreement, plan, or program, to construct, fix, stabilize, raise, maintain, or otherwise interfere with the fees or other charges for interpretation, translation, or other language services;

(3) Suggesting, recommending, or encouraging, in any way, interpreters, translators, or other language specialists that charge, adhere to, or refrain from charging any existing or proposed fee;

(4) For a period of ten (10) years after the date this order becomes final, continuing a meeting after a) any person makes a statement to the body of the meeting, concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and ASI fails to declare such statement to be out of order, b) any person makes two such statements and ASI fails to eject him or her from the meeting, or c) two people make such statements;

(5) Prohibiting, restricting, regulating, or advising against any form of price competition among its members or other interpreters, translators, or other language specialists, including undercutting a

¹ Prior to leaving the Commission, former Commissioner Owen registered her vote in the affirmative for the Complaint and the Decision and Order in this matter.

competitor's actual fee or a customer's announced fee, advertising discounted rates or accepting any particular lodging or travel arrangements;

(6) Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, weekly fees, or fees calculated on other than a full-day basis; and

(7) Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or from paying their own travel, lodging, meals, or other expenses.

In addition, the order prohibits ASI from maintaining any agreement, understanding, plan or program to:

(1) Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists work in a given period, or for which they are paid for preparation or study; or

(2) Limit, restrict, or mandate the number of interpreters, translators, or other language specialists hired for a job or type of job.

Under the order, "fees" are defined to include all cash or non-cash charges, rates, benefits, or other compensation for interpretation, translation or other language services, including but not limited to, lodging, meals, subsistence and travel allowances, reimbursements for expenses, cancellation fees, and compensation for time not worked, travel time or briefing time. "Language specialist" means one who performs "other language services," which are defined to refer to any services that involve the conversion of any form of expression from one language into another or any services incident to or related to interpretation and translation. Consequently, when the order mentions "language specialists," it includes anyone who rents equipment, organizes conferences, performs teleconferencing or précis writing, supervises or coordinates interpreters, reviews or revises translations, or provides recordings of interpretations.

Further, under the order, ASI must amend its Code of Professional Standards, Professional Guidelines, and Yearbook Professional Guidelines to conform to the requirements of paragraphs II and IV of the attached order, which are summarized above. ASI must also amend its bylaws to require each member, chapter, and organizational subdivision to observe the requirements of the order.

In addition, the order requires ASI to provide to its members and affiliates and to the Federal Trade Commission the text of each amendment to the ASI Bylaws, the ASI Code of Professional Standards, and all ASI Professional Guidelines, including those found in the ASI Membership Lists, and the texts of any new rules, regulations or guidelines. The order also requires that, within thirty days after obtaining them, ASI must provide to the Federal Trade Commission copies of all lists of fees that have been produced by any associations and come into ASI's possession.

We note, however, that ASI will be permitted to compile and distribute accurate aggregate historical market information concerning past fees that were actually charged no earlier than three years after this order becomes final, if presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions underlying such reports. Similarly, the order does not prohibit ASI from collecting and publishing accurate publicly available information on fees paid by governmental and intergovernmental agencies if such publication states the qualifications and requirements for such fees. With any publication of fees permitted by the order, ASI must include a statement that it is prohibited from recommending fees and that interpreters must independently determine their own fees. In addition, the order states that it does not prohibit ASI from providing information or its nonbinding and non-coercive views concerning the hours of work or preparation or the number of language specialists used for a type of job.

For more specific information, members should refer to the FTC order itself, which is enclosed.

Counsel
American Society of Interpreters

IN THE MATTER OF

THE COCA-COLA BOTTLING COMPANY
OF THE SOUTHWESTFINAL 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 9215. Complaint, July 29, 1988--Final Order, Aug. 31, 1994*

This final order requires Coca-Cola Bottling Company of the Southwest to divest, within 12 months, the Dr Pepper franchise it acquired from San Antonio Dr Pepper Bottling. If the divestiture is not completed within that period, the Commission may appoint a trustee to complete it. In addition, the order requires the respondent to obtain Commission approval before acquiring any branded carbonated soft drink interests in any area in which it already makes, distributes or sells branded concentrate or syrup, or branded carbonated soft drinks.

Appearances

For the Commission: *James E. Elliott, Thomas B. Carter and Mary Lou Steptoe.*

For the respondent: *Gregory Huffman, Thompson & Knight, Dallas, TX.*

INITIAL DECISION

BY JAMES P. TIMONY, ADMINISTRATIVE LAW JUDGE
JUNE 14, 1991

BACKGROUND

Companies and Persons

1. Respondent Coca-Cola Bottling Company of the Southwest ("CCSW") is a privately-held corporation with headquarters in San Antonio, Texas. (CX 980-R-U; RX 549-A.) Its sales in 1988 were \$145,496,000. (CX 3806-U.)

* Complaint previously published 112 FTC 588 (1989).