

Complaint

120 F.T.C.

IN THE MATTER OF

SANTA CLARA COUNTY MOTOR CAR DEALERS ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3630. Complaint, Dec. 13, 1995--Decision, Dec. 13, 1995*

This consent order prohibits, among other things, a California association from carrying out, participating in, inducing or assisting any boycott or concerted refusal to deal with any newspaper, periodical, television or radio station, and requires the association to amend its by-laws to incorporate the stipulated prohibition, and to distribute the amended by-laws and the final Commission order to each of its members.

Appearances

For the Commission: *Ralph E. Stone and Pamela A. Gill.*

For the respondent: *Stephen V. Bomse, Heller, Ehram, White & McAuliffe, San Francisco, CA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Santa Clara County Motor Car Dealers Association, an unincorporated association, hereinafter sometimes referred to as "the Association" or "respondent," 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 Association is an unincorporated association organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 336 East Hamilton Avenue, Campbell, California.

PAR. 2. The Association is a trade association representing the interests of new automobile and truck dealers in Santa Clara County,

California. The Association's members are generally engaged in the advertising, offering for sale, and sale of new automobiles and trucks at retail. The Association has approximately 47 members, constituting approximately 50% of the new automobile and truck dealers in Santa Clara County. Except to the extent that competition has been restrained as alleged herein, Association members have been and are now in competition among themselves and with other new automobile and truck dealers.

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

PAR. 4. The Association'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, as amended, 15 U.S.C. 45.

PAR. 5. The Association has been and is acting in agreement, combination or conspiracy with its members, or in agreement, combination or conspiracy with some of its members, to restrain trade in the advertising, offering for sale, and sale of new automobiles and trucks in Santa Clara County, by canceling advertising in, and thereafter withholding advertising from, the San Jose Mercury News newspaper in retaliation for a San Jose Mercury News article that informed consumers how to analyze a manufacturer's factory invoice as part of the automobile-purchasing process.

PAR. 6. The purposes or effects of the agreement, combination or conspiracy and the Association's acts or practices as described above have been and are to restrain competition unreasonably and to injure consumers in one or more of the following ways, among others:

A. By foreclosing, reducing and restraining competition among new automobile and truck dealers in Santa Clara County;

B. By depriving consumers of truthful information concerning dealers' products and services; and

C. By depriving consumers of the benefits of competition among dealers in the advertising, offering for sale, and sale of new automobiles and trucks.

PAR. 7. 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, 15 U.S.C. 45. 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 San Francisco 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 Santa Clara County Motor Car Dealers Association is an unincorporated association organized existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 336 East Hamilton Avenue, Campbell, California.

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, "respondent" or "Association" shall mean the Santa Clara County Motor Car Dealers Association, its predecessors, successors and assigns, and its directors, committees, officers, delegates, representatives, agents, and employees.

II.

It is further ordered, That the Association, directly or indirectly, or through any person or any corporate or other device, in or in connection with its activities as a trade association, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from carrying out, participating in, inducing, suggesting, urging, encouraging, or assisting any boycott of, or concerted refusal to deal with, any newspaper, periodical, television station, or radio station, provide, however, that nothing in this order shall prohibit the Association or any of its members from establishing, participating in, or maintaining joint advertising programs, so long as such joint advertising programs are not a part of any boycott or concerted refusal to deal and do not otherwise violate this order.

III.

It is further ordered, That the Association shall:

A. Within sixty (60) days after the date this order becomes final, amend its by-laws to incorporate by reference paragraph II of this order, and distribute by first-class mail a copy of the amended by-laws to each of its members;

B. Within thirty (30) days after the date this order becomes final, distribute by first-class mail a copy of this order and the complaint to each of its members;

C. For a period of five (5) years after the date this order becomes final, provide each new member with a copy of this order, the complaint, and the amended by-laws within thirty (30) days of the new member's admission to the Association; and

D. Within seventy-five (75) days after the date this order becomes final, and annually thereafter for a period of five (5) years on the anniversary of the date this order became final, file with the Secretary of the Commission a verified written report setting forth in detail the manner and form in which the Association has complied with and is complying with this order.

IV.

It is further ordered, That the Association shall notify the Commission at least thirty (30) days prior to any change in the Association, 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.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission:

A. Upon seven (7) days' notice to respondent, to have access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon seven (7) days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

VI.

It is further ordered, That this order shall terminate on December 13, 2015.

IN THE MATTER OF

FEDERAL NEWS SERVICE GROUP, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3631. Complaint, Dec. 18, 1995--Decision, Dec. 18, 1995*

This consent order prohibits, among other things, a District of Columbia corporation that sells verbatim news transcripts, and its president, from agreeing, or soliciting an agreement, to allocate customers or divide markets with any provider of news transcripts; entering into, continuing, or renewing any agreement that prevents Reuters American from competing with the respondents in the production, marketing or sale of news transcripts; renewing its news transcript supply agreement with Reuters America for five years; agreeing, or soliciting agreements, with competitors to fix or maintain resale prices for news transcripts; and requiring or pressuring any competitor to maintain or adopt any resale price for news transcripts.

Appearances

For the Commission: *Michael E. Antalics, Barry Costilo and William Baer.*

For the respondents: *Katherine Boland, Bayh, Connaughton & Malone, 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 Federal News Service Group, Inc., a corporation, and Cortes W. Randell, an individual (sometimes referred to as "respondents"), have 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 Federal News Service Group, Inc. ("FNS") 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 at 620 National Press Building, Washington, D.C.