

Complaint

IN THE MATTER OF

INSTITUTE OF STORE PLANNERS

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

Docket C-4080; File No. 0210144
Complaint, May 27, 2003--Decision, May 27, 2003

This consent order addresses Respondent Institute of Store Planners (“ISP”), of Tarrytown, New York – which has approximately 800 members, many of whom are professional design practitioners who provide architectural, store design, store planning, merchandise planning, traffic flow planning fixture and lighting design, in-store graphics and visual presentation services to retail stores – and its adoption and maintenance of certain provisions in its Code of Ethics affecting competition among store planners. The order, among other things, prohibits the respondent from restricting, impeding, declaring unethical or unprofessional or advising against price competition among its members; that is, it prohibits the respondent from restricting its members from providing free or discounted services. The order also requires the respondent to remove – from its Code of Ethics, its constitution and bylaws, and any existing ISP policy statement, commentary or guideline – any provision, policy statement, commentary or guideline which is inconsistent with the order.

Participants

For the Commission: *L. Barry Costilo, Harry Schwirck,*
Richard B. Dagen, Russell Porter and Louis Silvia, Jr..

For the Respondent: *Alan Stanzler, Stanzler, Funderburk &*
Castellon, LLP.

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 Institute of Store Planners (“Respondent” or “ISP”), a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the

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Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

PARAGRAPH ONE: Respondent Institute of Store Planners, is a corporation organized and existing under the laws of the State of New York with its principal office and place of business at 25 North Broadway, Tarrytown, New York 10591.

PARAGRAPH TWO: Respondent is a professional association organized for the purpose, among others, of serving the interests of its members. It has approximately 860 members. ISP's members consist of professional design practitioners who provide architectural, store design, store planning, merchandise planning, traffic flow planning, fixture design, lighting design, in-store graphics, and visual presentation services to retail stores. Its members also consist of trade members, such as, fabricators and suppliers of products and materials used in store design, as well as general contractors who provide labor and project management services and build the projects.

PARAGRAPH THREE: The general business practices of Respondent and its members, including the acts and practices herein alleged, are in or affecting "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

PARAGRAPH FOUR: Respondent engages in substantial activities for the economic benefit of its members. At all times relevant to this Complaint, Respondent is and has been organized in substantial part for the profit of its members, and is therefore a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

PARAGRAPH FIVE: Many of Respondent's members provide store planning services for a fee or are employed by store planning or design firms that provide store planning services for a fee. Except to the extent that competition has been restrained as herein

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alleged, many of ISP's members have been and are now in competition among themselves and with others.

PARAGRAPH SIX: Respondent acting as a combination of its members, and in agreement with at least some of its members, has acted to restrain price and non-price competition among its members and others.

PARAGRAPH SEVEN: In furtherance of the combination and agreement alleged in Paragraph Six, Respondent has adopted and maintained provisions in its *ISP Code of Ethics* that state, among other things, "a member shall not render professional services without compensation" (*ISP Code of Ethics* Section 2) and "a member shall not knowingly compete with another member on the basis of professional charges, or use donations as a device for obtaining professional advantage" (*ISP Code of Ethics* Section 3). The Code further provides that "a member shall not offer his services in a competition except as provided by such competition codes as the Institute may establish" (*ISP Code of Ethics* Section 4).

PARAGRAPH EIGHT: The purpose, effects, tendency, or capacity of the combination, agreement, and acts or practices described in Paragraphs Six and Seven, have been and are to restrain competition unreasonably and to injure consumers by:

- A. discouraging and restricting price competition among store planners; and
- B. depriving consumers and other users of store planners' services of the benefit of free and open competition among store planners.

PARAGRAPH NINE: The combination, agreement, and acts or practices described above constitute unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, and acts or practices, or the

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effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of May, 2003, issues its Complaint against ISP.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the Institute of Store Planners (“ISP”), hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent 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 Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Institute of Store Planners, is a corporation organized and existing under the laws of the State of New York

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with its principal office and place of business at 25 North Broadway, Tarrytown, New York 10591.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED, that for the purposes of this Order, the following definitions shall apply:

A. "Respondent" or "ISP" means the Institute of Store Planners, its officers, executive board, chapters, City Centers, committees, representatives, agents, employees, successors and assigns; and

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

II.

IT IS FURTHER ORDERED that Respondent, directly or 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: Regulating, restricting, impeding, declaring unethical or unprofessional, interfering with or advising against price competition by its members, including, but not limited to, the provision of free or discounted services or restricting members from offering their services in a competition unless they conform to rules or regulations established by ISP.

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III.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within ninety (90) days after the date on which this Order becomes final, remove from *ISP's Code of Ethics*, from the ISP's constitution and bylaws and any other existing ISP policy statement, commentary or guideline, including, but not limited to, those appearing on the ISP website, any provision, interpretation, policy statement, commentary or guideline which is inconsistent with Paragraph II of this Order and publish in the *ISP International News* or in any successor publications, and on ISP's website, the revised versions of such documents.
- B. Within one hundred twenty (120) days after the date on which this Order becomes final, publish a copy of this Order and the Complaint in the *ISP International News* with such prominence as feature articles that are regularly published in the *ISP International News*.
- C. Within sixty (60) days after the date on which this Order becomes final, publish and retain for at least one (1) year a copy of this Order and Complaint on the ISP website. The Order and Complaint, and the revised versions of the documents described in Paragraph III (A) of this Order, should be accessible with a link placed in a prominent position on the website's homepage, which should read "ISP changes its *Code of Ethics*."

IV.

IT IS FURTHER ORDERED that Respondent shall file written reports within sixty (60) days after the date on which this Order became final, every sixty (60) days thereafter until the requirements set forth in this Order have been met, and annually thereafter for four (4) years on the anniversary of the date on which this Order became final, and at such other times as the

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Commission may by written notice require, setting forth in detail the manner and form in which it has complied and is complying with the Order. Such reports should include in detail, but not be limited to, any action taken in connection with the activities covered by Paragraph II.

V.

IT IS FURTHER ORDERED that for a period of five (5) years after the date this Order is entered, Respondent shall maintain and make available to the 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 Paragraph II of this Order.

VI.

IT IS FURTHER ORDERED that, Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries, or any other change in Respondent that may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on May 27, 2023.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Institute of Store Planners (“ISP”). ISP has its principal place of business in Tarrytown, New York.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

ISP's membership is composed of professional design practitioners who provide architectural, store design, store planning, merchandise planning, traffic flow planning fixture and lighting design, in-store graphics and visual presentation services to retail stores. Its membership is also comprised of trade members such as suppliers and fabricators of products and materials used in store design, as well as general contractors who provide labor and project management services and build the projects.

The complaint alleges that ISP engages in substantial activities for the economic benefit of its members. The complaint alleges that ISP has approximately 800 members, many of whom provide store planning services for a fee or who are employed by store planning or design firms that provide store planning services for a fee. It alleges that ISP is and has been organized in substantial part for the profit of its members.

The complaint charges that ISP has violated Section 5 of the Federal Trade Commission Act by acting as a combination of its members and in agreement with some of its members to restrain price and non-price competition among its members and others. The complaint alleges that in furtherance of the combination and

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agreement, ISP has adopted and maintained provisions in its Code of Ethics that state, among other things, “a member shall not render professional services without compensation” (*ISP Code of Ethics*, Section 2) and “a member shall not knowingly compete with another member on the basis of professional charges, or use donations as a device for obtaining professional advantage” (*ISP Code of Ethics*, Section 3). The Code also provides that “a member shall not offer his services in competition except as provided by such competition codes as the Institute may establish” (*ISP Code of Ethics*, Section 4). Applicants for membership in ISP must agree in writing to follow ISP’s By-laws, which contain its Code of Ethics.

The complaint alleges that the above acts and practices constitute unfair methods of competition which have restrained competition unreasonably and injured consumers by discouraging price competition among store planners and depriving consumers and users of store planners’ services of the benefit of free and open competition among store planners.

ISP has signed a consent agreement containing the proposed consent order. The proposed consent order would prohibit ISP from restricting, impeding, declaring unethical or unprofessional or advising against price competition among its members. That is, ISP would no longer be able to restrict members from providing free or discounted services.

To ensure and monitor compliance, the consent order provides, among other things, that within 90 days after the order becomes final ISP shall remove from *ISP’s Code of Ethics*, its constitution and bylaws and any existing ISP policy statement, commentary or guideline— including those appearing on ISP’s website—any provision, policy statement, commentary or guideline which is inconsistent with the order. The order also requires that ISP publish in *ISP International News* and on its website, the revised versions of such documents. In addition, the order requires ISP to publish a copy of the order and complaint in the *ISP International News*. It further provides that the order and complaint shall be

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published on the ISP website for at least one year, with a link placed in a prominent position on the website's home page. The proposed consent order also contains other provisions to monitor compliance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

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IN THE MATTER OF

CARLSBAD PHYSICIAN ASSOCIATION, INC. ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 4081; File No. 0310002**Complaint, June 13, 2003--Decision, June 13, 2003*

This consent order addresses practices used by nine Respondents, including the Carlsbad Physician Association (“CPA”) – whose 38 physician members represent 76 percent of all physicians and 83 percent of the primary care physicians practicing in the Carlsbad, New Mexico area – its executive director, and seven physician members of CPA’s Board of Directors and Contract Committee. The order, among other things, prohibits the respondents from entering into or facilitating agreements between or among any physicians (1) to negotiate on behalf of any physician with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term upon which any physicians deal, or are willing to deal, with any payor; and (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the respondents. The order also prohibits the respondents from facilitating exchanges of information among physicians concerning whether, or on what terms, to contract with a payor. In addition, the order prohibits the respondents from attempting to engage in – or from inducing anyone to engage in – any action prohibited by the order. In addition, the order prohibits the respondents, for three years – in connection with physician health plan contracting – from either (1) acting as an agent for any physicians, or (2) using an agent who represents any other physician with respect to such contracting. The order also requires Respondent CPA – at any payor’s request and without penalty or at the earliest termination or renewal date – to terminate its current contracts with respect to providing physician services. In addition, the order requires Respondent CPA to dissolve itself, following the expiration or termination of all payor contracts, and in the interim to cease all activities except those necessary to comply with the order and the winding down of its affairs.

Participants

For the Commission: *Steve Vieux, Rachel Hertzman, David R. Pender, Jeffrey W. Brennan, Anne R. Schenof, Roberta S. Baruch, and Louis Silvia, Jr..*

For the Respondents: *W.T. Martin, Jr., Martin & Lara, LLP.*