

Complaint

IN THE MATTER OF

**MUSIC TEACHERS NATIONAL ASSOCIATION,
INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4448; File No. 131 0118
Complaint, April 3, 2014 – Decision, April 3, 2014*

This consent order addresses Music Teachers National Association, Inc.’s (“MTNA”) restraining through the non-solicitation provision of its Code of Ethics the ability of its members to solicit the clients of competing music teachers. The complaint alleges that MTNA, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act by adopting and maintaining a provision in its Code of Ethics that restrains solicitation of teaching work. The consent order requires MTNA to cease and desist from restricting solicitation among its members, and is required to disaffiliate any music teachers association that adopts or maintains provisions in its code of ethics or similar documents that restrain solicitation, advertising, or price-related competition.

Participants

For the *Commission*: Armando Irizarry and Karen Mills.

For the *Respondent*: T. Scott Gilligan, Gilligan Law Offices.

COMPLAINT

The Federal Trade Commission (“Commission”), 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, having reason to believe that Music Teachers National Association, Inc. (“Respondent” or “MTNA”), a corporation, has violated and is violating the provisions 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 by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

Complaint

I. RESPONDENT

1. Respondent Music Teachers National Association, Inc. is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Ohio, with its office and principal place of business located at 441 Vine Street, Suite 3100, Cincinnati, Ohio 45202-3004.

2. Respondent is a professional association of music teachers with over 20,000 members. Many of Respondent's members provide music-teaching services for a fee, or are employed at schools, universities and music studios as music teachers. Except to the extent that competition has been restrained as alleged herein, many of Respondent's members have been and are now in competition among themselves and with other music teachers.

3. Respondent has over 500 state and local music teachers associations as affiliates ("MTNA Affiliates"), including one affiliate for each state. Members of MTNA Affiliates are also members of Respondent.

II. JURISDICTION

4. Respondent conducts business for the pecuniary benefit of its members and is therefore a "corporation," as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

5. The acts and practices of Respondent, including the acts and practices alleged herein, are in or affecting "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. NATURE OF THE CASE

6. Respondent maintains a Code of Ethics applicable to the commercial activities of its members, and encourages its members to follow its Code of Ethics. Some MTNA Affiliates have the same Code of Ethics that MTNA has, and some have adopted different codes of ethics.

Complaint

7. Respondent has acted as a combination of its members, and in agreement with at least some of those members, to restrain competition by restricting through its Code of Ethics the ability of its members to solicit the customers of competing music teachers. Specifically, in 2004 MTNA added the following provision to the section of its Code of Ethics titled "Commitment to Colleagues":

The teacher shall respect the integrity of other teachers' studios and shall not actively recruit students from another studio.

8. In furtherance of the combination alleged in Paragraph 7, Respondent established a process for resolving alleged violations of the Code of Ethics, including by encouraging its members to resolve privately disputes arising out of the Code of Ethics, and also by establishing a mechanism by which Respondent may sanction violations of the Code of Ethics.

IV. VIOLATION CHARGED

9. The purpose, effects, tendency, or capacity of the combination, agreement, acts and practices alleged in Paragraphs 7 and 8 has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among music teachers, and by depriving consumers and others of the benefits of free and open competition among music teachers.

10. The combination, agreement, acts and practices alleged in Paragraphs 7 and 8 constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested herein.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this third day of April, 2014, issues its Complaint against Respondent.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Music Teachers National Association, Inc. (“Respondent” or “MTNA”) and 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 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 a consent order, an admission by 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 Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order (“Order”):

1. Respondent Music Teachers National Association, Inc., is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Ohio, with its office and principal place of business located at 441 Vine Street, Suite 3100, Cincinnati, Ohio 45202.

Decision and Order

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 HEREBY ORDERED that, as used in this Order, the following definitions, shall apply:

- A. “Respondent” or “MTNA” means Music Teachers National Association, Inc., its directors, boards, officers, employees, agents, representatives, councils, committees, foundations, divisions, successors, and assigns.
- B. “Affiliate” means any state or local music teachers association that is affiliated with MTNA.
- C. “Antitrust Compliance Officer” means a person appointed under Paragraph IV.A. of this Order.
- D. “Antitrust Counsel” means a lawyer admitted to practice law in one or more of the judicial districts of the courts of the United States.
- E. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, the Sherman Act, 15 U.S.C. § 1 *et seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*
- F. “Certification” means the document attached to this Order as Appendix A.
- G. “Code of Ethics” means a statement setting forth the principles, values, standards, or rules of behavior that guide the conduct of an organization and its members.

Decision and Order

- H. “Extension of Time” means the document attached to this Order as Appendix B.
- I. “FTC Settlement Statement” means the statement attached to this Order as Appendix C.
- J. “Leaders” means MTNA’s board of directors, officers, committee chairs, council chairs, and state presidents.
- K. “Member” means a member of MTNA, including active, state, local, collegiate, international, corporate, institutional, international, patron, retired, and six-month members.
- L. “Notification Date” means the date on which Respondent makes the notification required by Paragraph III.A.3. of this Order.
- M. “Organization Documents” means any documents relating to the governance, management, or direction of the relevant organization, including, but not limited to, bylaws, rules, regulations, Codes of Ethics, policy statements, interpretations, commentaries, or guidelines.
- N. “Prohibited Practice” means Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against any of the activities described in Paragraph II.B.1, II.B.2., and II.B.3.
- O. “Regulating” means (1) adopting, maintaining, recommending, or encouraging that Members follow 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.

Decision and Order

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:

- A. Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against solicitation of teaching work, through any means, by any Member or any organization with which Members are affiliated; and
- B. Accepting as an Affiliate, or maintaining a relationship with any Affiliate, that MTNA knows engages in conduct Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against:
 - 1. Solicitation of teaching work, through any means, by any Member or any organization with which Members are affiliated;
 - 2. Advertising or publishing the prices, terms or conditions of sale of teaching services, or information about teaching services that are offered for sale or made available by Members or by any organization with which Members are affiliated; and
 - 3. Price-related competition by its Members, including, but not limited to, restricting the provision of free or discounted services, restricting terms of payment, or restricting Members from offering their services unless they conform to rules established by MTNA;

Provided, however, that nothing in this Paragraph II shall prohibit Respondent from adopting and enforcing, or

Decision and Order

accepting as an Affiliate or maintaining an affiliate relationship with any Affiliate that adopts and enforces, reasonable principles, rules, guidelines, or policies governing: (i) the conduct of its Members with respect to representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act or (ii) the conduct of judges during music competitions sponsored or held by Respondent or any Affiliate.

III.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall:
 - 1. Post and maintain for five years on the Code of Ethics page of MTNA's website, together with a link from Respondent's home or menu page that is entitled "Antitrust Compliance," the following items:
 - a. An announcement that states "MTNA agreed to change its Code of Ethics and will not adopt, encourage its members to follow, or enforce any Code of Ethics provision relating to solicitation of teaching work that does not comply with the FTC Consent Order,"
 - b. The FTC Settlement Statement; and
 - c. A link to the Federal Trade Commission's website that contains the press release issued by the Commission in this matter; and
 - 2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its Leaders, employees, and Affiliates; and

Decision and Order

3. Notify each Affiliate that, as a condition of continued affiliation with MTNA, such Affiliate must execute and return a Certification to Respondent no later than one hundred twenty (120) days from the date Respondent notifies such Affiliate.
- B. No later than sixty (60) days from the date this Order is issued Respondent shall:
1. Remove from MTNA's Organization Documents and MTNA's website any statement that is inconsistent with Paragraph II. of this Order, and
 2. Publish on MTNA's website any revisions of MTNA's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement.
- C. Respondent shall publish, in the font that is customarily used for feature articles:
1. Any revisions of MTNA's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement in the next available edition of the "American Music Teacher" magazine; and
 2. The FTC Settlement Statement in the edition of the "American Music Teacher" magazine, or any successor publication, on or as close as possible to the first and second anniversary dates of first publication of the FTC Settlement Statement.
- D. For a period of five (5) years after this Order is issued, distribute electronically or by other means, a copy of the FTC Settlement Statement to each:
1. New Affiliate no later than thirty (30) days after the date the organization becomes an Affiliate;

Decision and Order

2. New Member no later than thirty (30) days after the date of commencement of the membership; and
3. Member who receives a membership renewal notice at the time the Member receives such notice.

E. Respondent shall:

1. Immediately terminate any Affiliate that fails to provide an executed Certification no later than one hundred twenty (120) days from the Notification Date and shall not permit the terminated Affiliate to use the phrase “Affiliated with Music Teachers National Association” until such time as the Affiliate provides an executed Certification;

Provided, however, that Respondent may allow an Affiliate to file an Extension of Time to provide Respondent an executed Certification no later than than two hundred fifty (250) days from the Notification Date (“Extended Time Period”);

Provided further that if such Affiliate does not provide Respondent the executed Certification within the Extended Time Period, Respondent shall proceed against the Affiliate pursuant to Paragraph III.E.2. of this Order; and

2. Terminate for a period of one (1) year, no later than one hundred twenty (120) days after Respondent learns or obtains information that would lead a reasonable person to conclude that the Affiliate has, following the date this Order is issued, engaged in any Prohibited Practice; unless, prior to the expiration of the one hundred twenty (120) day period, said Affiliate informs Respondent in a verified written statement of an officer that the Affiliate has eliminated and will not reengage in such Prohibited Practice, and Respondent has no reasonable grounds to believe otherwise.

Decision and Order

- F. Respondent shall include with the 2014-2015 dues statement sent to each Member a copy of the FTC Settlement Statement.
- G. Respondent shall maintain and make available to Commission staff for inspection and copying upon reasonable notice records adequate to describe in detail any:
 - 1. Action against any Member or Affiliate taken in connection with the activities covered by Paragraph II. of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and
 - 2. Complaint received from any person relating to Respondent's compliance with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint and retain an Antitrust Compliance Officer for the duration of this Order to supervise Respondent's antitrust compliance program.
- B. For a period of three (3) years from the date this Order is issued, the Antitrust Compliance Officer shall be the Chief Executive Officer of Respondent after which a new Antitrust Compliance Officer may be appointed who shall be Antitrust Counsel, a member of the Board of Directors, or employee of Respondent.
- C. For a period of five (5) years from the date this Order is issued, Respondent shall provide in-person annual training to its Leaders and employees concerning Respondent's obligations under this Order and an

Decision and Order

overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct.

- D. Respondent shall implement policies and procedures to:
1. Enable persons (including, but not limited to, its Leaders, employees, Members, and agents) to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and
 2. Discipline Leaders, employees, and agents for failure to comply fully with this Order.
- E. For a period of five (5) years from the date this Order is issued, Respondent shall:
1. Conduct a presentation at each annual meeting of (i) MTNA, and (ii) the State Presidents Advisory Council, that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws; and
 2. Provide an antitrust compliance guide to Affiliates to use at each annual meeting of such Affiliates that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

- A. No later than (i) ninety (90) days after the date this Order is issued, (ii) one hundred eighty (180) days after the date this Order is issued; and

Decision and Order

- B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

- A. Dissolution of Respondent;
- B. Acquisition, merger, or consolidation of Respondent; or
- C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and

Decision and Order

- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on April 3, 2034.

By the Commission.

APPENDIX A

CERTIFICATION

Name of Music Teacher Association

As a condition of being affiliated with the Music Teachers National Association, Inc. (“MTNA”), the music teacher association named above (the “Association”) makes the following representations to MTNA:

1. **NO RESTRICTIONS ON STUDENT OR JOB SOLICITATIONS:** As of the date this Certification is executed, the Association does not maintain in its bylaws, rules, regulations, code of ethics, policies, or website any type of rule, interpretation, ethical ruling, guideline or recommendation which would restrict, restrain, impede, declare unethical or unprofessional, or interfere with or advise against a member of the Association from soliciting teaching work. Examples of the type of provisions that restrict solicitation include any of the following:

Decision and Order

- Restricting a member from soliciting a pupil of another teacher.
- Restricting a member from enrolling a pupil of another teacher unless the pupil's financial obligations to the former teacher have been satisfied and the relationship with the teacher has been severed.
- Restricting a member from seeking a job opening unless notice has been given of impending vacancy.
- Restricting a member from writing or publishing reviews or criticisms of the performance or skills of other teachers or their students.
- Restricting a member from writing or publishing for public media.

2. NO RESTRICTIONS ON ADVERTISING PRICES OR TERMS OF TEACHING SERVICES: As of the date this Certification is executed, the Association does not maintain in its bylaws, rules, regulations, code of ethics, policies, or website any type of rule, interpretation, ethical ruling, guideline or recommendation which would restrict, impede, declare unethical or unprofessional, or interfere with or advise against a member of the Association from advertising prices or other terms of teaching services. Examples of the type of provisions that restrict advertising include any of the following:

- Restricting a member from advertising free scholarships or tuition.
- Restricting a member from offering opportunities for study to gifted but underprivileged students in the form of free lessons or scholarships as inducements to study with a particular teacher.

3. NO RESTRICTIONS ON COMPETING ON PRICE-RELATED TERMS: As of the date this Certification is executed, the Association does not maintain in its bylaws, rules, regulations, code of ethics, policies, or website any type of rule, interpretation,

Decision and Order

ethical ruling, guideline or recommendation which would restrict, restrain, impede, declare unethical or unprofessional, or interfere with or advise against a member of the Association from competing on price-related terms. Examples of the type of provisions that restrict competing on price-related terms include any of the following:

- Restricting a member from charging fees that are lower than the average fees being charged in the community.
- Restricting a member from allowing a student to pay tuition in terms other than in advance by the month or term.
- Restricting a member from offering make-up lessons for lessons missed unless the student provides sufficient notice or reasonable excuse.

On behalf of the Association named above, the undersigned officer certifies that all of the foregoing representations are accurate as of the date listed below:

Officer's Signature _____

Officer's Name _____

Officer's Title _____

Date: _____

EXTENSION OF TIME. Due to scheduling of annual membership meetings and various constitution and bylaw requirements, some state and local music teacher associations may not be able to take the necessary action to eliminate the prohibited provisions described in the above Certification from their organizational documents or policies by the deadline set forth for the return of the Certification. If the Association faces such obstacles, but is taking all necessary steps to eliminate the prohibited provisions as soon as practical under the Association's organizational documents, it may execute the Extension of Time set forth on the next page and return it by the deadline.

Decision and Order

APPENDIX B

EXTENSION OF TIME

Name of Music Teacher Association

The Association certifies that (i) before it can make the required Certification, it has to eliminate certain prohibited provisions from its organizational documents, (ii) it is precluded from doing so by the deadline imposed for the return of the Certification because of time constraints set by the Association's organizational documents, (ii) it shall not enforce any prohibited provision, and (iv) it is taking all necessary steps to eliminate the prohibited provisions as set forth below:

(a) Description of the prohibited provision(s) (attach a copy):

(b) Description of the Association action required to eliminate prohibited provision (attach copy of the rules or bylaws that contain the procedure the Association must follow):

(c) Schedule for the required action and the date by which action to eliminate the prohibited provision(s) will be completed:

The Association understands that it must provide the Certification within fifteen (15) days of the date listed in Section (c) above that the prohibited provision(s) has been eliminated.

Decision and Order

On behalf of the Association named above, the undersigned officer certifies that all of the foregoing representations are accurate as of the date listed below:

Officer's Signature: _____ Date: _____
Officer's Name: _____
Officer's Title: _____

APPENDIX C

(Letterhead of MTNA)

Dear Member:

As you may know, the Federal Trade Commission conducted an investigation concerning the provision in MTNA's Code of Ethics that stated:

The teacher shall respect the integrity of other teachers' studios and shall not actively recruit students from another studio.

The Federal Trade Commission alleges that this provision violates the Federal Trade Commission Act because it unnecessarily restricts members of MTNA from competing for students, thereby depriving students from the benefits of competition among music teachers.

To end the investigation expeditiously and to avoid disruption to its core functions, MTNA voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement and a Decision and Order by the Federal Trade Commission. As a result, MTNA has removed, and will not enforce, the above provision from its Code of Ethics.

Decision and Order

In general, the Federal Trade Commission has prohibited MTNA from engaging in certain activities that restrict members from soliciting students or other teaching work, including activities that restrict members from offering services directly to students who may be receiving similar services from other music teachers.

Some state and local music teacher associations that are affiliated with MTNA have codes of ethics or similar documents that contain provisions that restrict its members from: (a) advertising prices or other terms of teaching services, (b) competing on price-related terms, or (c) soliciting students or other teaching work. The Federal Trade Commission has prohibited MTNA from accepting or maintaining as an affiliate any association that has such a code of ethics or similar document that contains these prohibited restrictions.

In order to maintain their affiliation with MTNA, each state and local music teacher association must review its constitution and bylaws, code of ethics, operational policies, and membership requirements to determine if they contain any of these prohibited restrictions on members. Examples of these prohibited restrictions would include the following:

- An association restricting a member from offering opportunities for study to gifted students in the form of free lessons or scholarships as inducements to study with a particular member.
- An association restricting a member from engaging in advertising free scholarships or tuition.
- An association restricting a member from soliciting the pupil of another music teacher by inducements or other acts.
- An association restricting a member from enrolling a pupil of another teacher unless the pupil's financial obligations to the former teacher have been satisfied and relations with that teacher have been severed.
- An association restricting a member from charging fees that are lower than the average in the community.
- An association restricting how members accept tuition payments from pupils.

Decision and Order

- An association imposing restrictions or requirements on members regarding make-up lessons or missed lessons.
- An association restricting a member from writing or publishing for public media or from reviewing or criticizing colleagues or colleagues' students for any purpose whatsoever.
- An association restricting a member from seeking a job opportunity unless notice has been given of an impending vacancy.

State and local music teacher associations that are affiliated with MTNA and which have any of these prohibited restrictions in their constitution and bylaws, codes of ethics, operational policies, membership requirements, or elsewhere will have the opportunity to remove them. If they do not certify to MTNA that they do not have any such restrictions prior to the deadline set forth in the Decision and Order, MTNA will have to disaffiliate from them until such time as they comply with the Decision and Order.

The Decision and Order does not prohibit MTNA or its affiliates from adopting and enforcing codes of ethics or similar documents that govern the conduct of its members with respect to representations that MTNA or its affiliates reasonably believe would be false or deceptive within the meaning of the Federal Trade Commission Act, or the conduct of judges during music competitions sponsored or held by MTNA or any affiliate.

The Decision and Order also requires that MTNA implement an antitrust compliance program.

A copy of the Decision and Order is enclosed. It is also available on the Federal Trade Commission website at www.FTC.gov, and through the MTNA web site.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the Music Teachers National Association, Inc. (hereinafter “MTNA”). The Commission’s complaint (“Complaint”) alleges that MTNA, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by adopting and maintaining a provision in its Code of Ethics that restrains solicitation of teaching work.

Under the terms of the proposed Consent Agreement, MTNA is required to cease and desist from restricting solicitation among its members, and is required to disaffiliate any music teachers association that adopts or maintains provisions in its code of ethics or similar documents that restrain solicitation, advertising, or price-related competition.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (“the Proposed Order”).

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

Analysis to Aid Public Comment

The Consent Agreement is for settlement purposes only and does not constitute an admission by MTNA that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

MTNA is a non-profit professional association of more than 20,000 music teachers. Many of MTNA's members provide music-teaching services for a fee, or are employed at schools, universities and music studios as music teachers. Respondent has over 500 state and local music teachers associations as affiliates, including one affiliate for each state. Members of MTNA affiliates are also members of MTNA.

MTNA maintains a Code of Ethics applicable to the commercial activities of its members, and encourages its members to follow its Code of Ethics. In 2004, MTNA added the following non-solicitation provision to the section of its Code of Ethics titled "Commitment to Colleagues":

The teacher shall respect the integrity of other teachers' studios and shall not actively recruit students from another studio.

Some MTNA affiliates have the same Code of Ethics that MTNA has, and some have adopted different codes of ethics. Leaders of several state affiliates have exhorted MTNA members to comply with the non-solicitation restraints.

B. The Anticompetitive Conduct

The Complaint alleges that MTNA has violated Section 5 of the Federal Trade Commission Act by restraining through the non-solicitation provision of its Code of Ethics the ability of its members to solicit the clients of competing music teachers. MTNA also established a process for resolving alleged violations

Analysis to Aid Public Comment

of the Code of Ethics, including by encouraging its members to resolve privately disputes arising out of the Code of Ethics, and by establishing a mechanism by which MTNA may sanction violations of the Code of Ethics.

The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of MTNA has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among music teachers.

II. The Proposed Order

The Proposed Order has the following substantive provisions. Paragraph II requires MTNA to cease and desist from restraining or declaring unethical the solicitation of teaching work by its members. It also requires MTNA to cease and desist from maintaining a relationship with an affiliate that MTNA knows engages in conduct that restrains solicitation, advertising, or price-related competition by its members.

The Proposed Order does not prohibit MTNA from adopting and enforcing, or maintaining an affiliate relationship with an affiliate that adopts and enforces, reasonable principles (i) to prevent false or deceptive representations, or (ii) to govern the conduct of judges during music competitions sponsored or held by MTNA or its affiliates. The conduct of judges is exempt from the Proposed Order because MTNA has a valid justification for prohibiting solicitation in competitions. MTNA is concerned that if judges could solicit the students they are judging, it could give judges an unfair advantage over other MTNA members, and could adversely affect the integrity of competitions. This exemption is limited to the duration of a competition; prohibitions on pre or post-competition solicitation would violate the Proposed Order.

Paragraph III of the Proposed Order requires MTNA to remove from its organization documents and website any statement inconsistent with the Proposed Order. MTNA also must publicize to MTNA's members, new members, affiliates, new affiliates, leaders, employees, and the public the changes that

Analysis to Aid Public Comment

MTNA must make to the Code of Ethics and a statement describing the Consent Agreement.

Paragraph III also requires MTNA to notify each of its affiliates that, as a condition of continued affiliation with MTNA, each affiliate must execute and return to MTNA a Certification that the affiliate does not have restrictions on student or job solicitations, advertising, or price-related competition. For example, the Certification, which is Appendix A to the Proposed Order, specifies that an affiliate does not restrict its members from publishing criticisms of other teachers, advertising free scholarships or tuition, or charging fees that are lower than the average fees in their community.

MTNA must disaffiliate any affiliate that does not provide an executed Certification within one hundred and twenty days of when MTNA gave notice to the affiliate. However, MTNA may allow an affiliate to execute an Extension of Time to avoid disaffiliation if the affiliate is not able to execute the Certification within the time allowed due to scheduling of its annual membership meetings or constitution or bylaw requirements. Thereafter, the Proposed Order requires MTNA to terminate an affiliate for one year after learning that the affiliate has restrained or declared unethical solicitation, advertising, or price-related competition, unless the affiliate informs MTNA that the affiliate has eliminated and will not reengage in such practices.

Paragraph IV of the Proposed Order requires MTNA to design, maintain, and operate an antitrust compliance program. MTNA will have to appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, MTNA will have to provide in-person annual training to its leaders and employees, conduct a presentation at its annual meeting and to the presidents of the state affiliates, and provide an antitrust compliance guide to affiliates to use at their annual meeting concerning the antitrust laws and MTNA's obligations under the Proposed Order. MTNA must also implement policies and procedures to enable persons to ask questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its

Statement of the Commission

leaders, employees and agents for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed Order impose certain standard reporting and compliance requirements on MTNA.

The Proposed Order will expire in 20 years.

* * *

Statement of the Federal Trade Commission

The Federal Trade Commission is today issuing for public comment proposed consent orders with two professional associations, the Music Teachers National Association, Inc. (“MTNA”) and California Association of Legal Support Professionals (“CALSPro”).¹ We take this step because we have reason to believe that these professional associations and their respective members have violated the antitrust laws by agreeing not to engage in fundamental forms of competitive activity.

MTNA, the umbrella organization for about 500 state and local music teacher associations across the country, is a professional association of over 20,000 private music teachers. Collectively, MTNA members generate an estimated \$500 million in annual revenues. In 2004, MTNA revised its code of ethics and imposed a ban on solicitations, prohibiting teachers from actively recruiting students from one another. A number of MTNA affiliates have adopted even more aggressive competitive restrictions, including prohibitions on certain advertising, charging less than the community average, and offering

¹ Both MTNA and CALSPro are non-profits but it is well established that the Commission has jurisdiction over non-profit organizations that confer, or are organized for the purpose of conferring, economic benefits to their for-profit members. See *Cal. Dental Ass’n v. FTC*, 526 U.S. 756, 767 n.6 (1999).

Statement of the Commission

scholarships or free music lessons. CALSPro, a California association of legal support service providers, is comprised of more than 350 company and individual members. CALSPro's code of ethics prohibits its members from offering discounted rates to rivals' clients, engaging in certain comparative advertising, and recruiting employees of competitors without first notifying the competitor.

Professional associations like MTNA and CALSPro typically serve many important and procompetitive functions, including adopting rules governing the conduct of their members that benefit competition and consumers. But, because trade organizations are by their nature collaborations among competitors, the Commission and courts have long been concerned with anticompetitive restraints imposed by such organizations under the guise of codes of ethical conduct.²

Competing for customers, cutting prices, and recruiting employees are hallmarks of vigorous competition. Agreements among competitors not to engage in these activities injure consumers by increasing prices and reducing quality and choice. Absent a procompetitive justification, these types of restrictions on competition are precisely the kind of unreasonable restraints of trade that the Sherman Act was designed to combat. See, e.g., *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679 (1978) (condemning ethics restriction on competitive bidding). For a professional association to proscribe honest competition as "unethical" behavior is particularly problematic because, as the Supreme Court has recognized, association members can be "expected to comply in order to assure that they [do] not discredit themselves by departing from professional norms." *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792-93 (1975). Here, neither

² See, e.g., *Inst. of Store Planners*, 135 F.T.C. 793 (2003) (challenging restraints on price competition); *Nat'l Acad. of Arbitrators*, 135 F.T.C. 1 (2003) (restraints on solicitation and advertising); *Am. Inst. for Conservation of Historic & Artistic Works*, 134 F.T.C. 606 (2002) (restraints on price competition); *Cnty. Ass'ns Inst.*, 117 F.T.C. 787 (1994) (restraints on solicitation); *Nat'l Soc'y of Prof'l Eng'rs*, 116 F.T.C. 787 (1993) (restraints on advertising); *Nat'l Ass'n of Social Workers*, 116 F.T.C. 140 (1993) (restraints on solicitation and advertising); *Am. Psychological Ass'n*, 115 F.T.C. 993 (1992) (same).

Statement of the Commission

association advanced a legitimate business rationale for its restrictions. We therefore conclude that the principal tendency and likely effect of the challenged restraints is to harm consumers through higher prices, lower quality, and less choice.

Our proposed remedies will restore competition without imposing an undue burden on the parties or interfering with the legitimate functions of either organization. We have required MTNA and CALSPro to modify their codes of ethics and to cease any efforts to impede members of these associations from freely competing with one another. The MTNA order also requires the association to take affirmative steps to discourage anticompetitive conduct on the part of its state and local affiliates.

As with all of the Commission's enforcement activity, our goal in these cases is to stop the anticompetitive conduct at issue and remedy any anticompetitive effects associated with the challenged behavior. We also seek to provide guidance more broadly and deter other professional and trade organizations from imposing unjustified limits on competition. Maintaining a competitive marketplace requires that we monitor behavior among rivals and take action whenever we see competition being compromised to the detriment of consumers.

Complaint

IN THE MATTER OF

**CALIFORNIA ASSOCIATION OF LEGAL
SUPPORT PROFESSIONALS**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4447; File No. 131 0205
Complaint, April 3, 2014 – Decision, April 3, 2014*

This consent order addresses California Association of Legal Support Professionals' ("CALSPRO") restraining through its Code of Ethics the ability of its members to compete on price, to solicit legal support professionals for employment, and to advertise. The complaint alleges that CALSPRO restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act by adopting and maintaining provisions in its Code of Ethics that restrain its members from competing on price, advertising, and soliciting legal support professionals for employment. The consent order requires CALSPRO to cease and desist from restricting its members from competing on price, advertising, and soliciting legal support professionals for employment.

Participants

For the *Commission*: Armando Irizarry.

For the *Respondent*: Michael Belote, California Advocates, Inc.

COMPLAINT

The Federal Trade Commission ("Commission"), 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, having reason to believe that California Association of Legal Support Professionals ("Respondent" or "CALSPRO"), a corporation, has violated and is violating the provisions 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 by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows: