

Complaint

IN THE MATTER OF

PROFESSIONAL SKATERS ASSOCIATION

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT, REGULATION M
OF THE CONSUMER LEASING ACT, AND REGULATION Z OF THE
TRUTH IN LENDING ACT

Docket No. C-4509; File No. 131 0168

Complaint, February 13, 2015 – Decision, February 13, 2015

This consent order addresses the provisions in the Professional Skaters Association (“PSA”) code of ethics that limit competition among its members. PSA is a non-profit trade association whose members include approximately 6,400 ice skating coaches who teach, train, and coach skaters at all levels – from beginners to elite skaters. Many of PSA’s members teach and coach skaters for a fee. The Complaint alleges that PSA violated Section 5 of the FTC Act by restraining competition among coaches of ice skating through adoption and enforcement of the no-solicitation provision of PSA’s Code of Ethics. This is in effect an agreement among competitors not to compete. The consent order requires PSA to stop restraining its members from soliciting work and competing on the basis of price. It also requires the group to change its code of ethics, publicize its settlement with the FTC, and implement an antitrust compliance program.

Participants

For the *Commission*: *Karen A. Mills.*

For the *Respondent*: *Jennifer Burt and David Shulman, Davis Law Office; and Gregory Merz, Gray Plant Mooty.*

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 the Professional Skaters Association (“Respondent” or “PSA”), 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 Professional Skaters Association is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Minnesota, with its office and principal place of business located at 3006 Allegro Park SW, Rochester, MN 55902.

2. Respondent is a professional association for coaches of ice skating. Respondent's members teach, train, and coach skaters from beginning skill levels to elite levels of competition. Respondent's membership includes approximately 6400 coaches worldwide, as well as judges, skaters, families, patrons, and fans of the sport.

3. Many of Respondent's members provide ice skating teaching, training, and coaching services for a fee. 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 coaches of ice skating.

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. Respondent confers pecuniary benefits on its members, including:

- a. PSA membership is required by the U.S. Figure Skating Association ("USFSA") for coaches of skaters participating in: (i) USFSA qualifying competitions, and (ii) international ice skating competitions as part of Team USA. Because of this requirement, PSA membership is required in order to coach competitive skaters.

Complaint

- b. Coaches require access to ice skating rink facilities in order to engage in teaching. Some ice skating rink facilities require that coaches have PSA membership.
- c. PSA offers insurance to its members, including general liability coverage and participant accident coverage.
- d. PSA provides to members in good standing certain accreditations, ratings, and rankings that enable such members to charge fees for, and that affects the amount that can be charged for, coaching services.

6. 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. PSA’S CONDUCT IN RESTRAINT OF TRADE

A. PSA RESTRICTIONS ON SOLICITATION

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 the ability of its members to solicit the customers of competing teachers and coaches of skating. Specifically, Respondent’s Code of Ethics contains a provision that reads:

“No member shall in any case solicit pupils of another member, directly or indirectly, or through third parties.”

Further, Respondent’s Code of Ethics requires that, “Prior to acting as a coach, the member shall determine the nature and extent of any earlier teaching relationship with that skater and other members.”

8. Respondent requires its members to agree to abide by the Code of Ethics, educates members about the Code of Ethics, exhorts its members to follow the Code of Ethics, and enforces the Code of Ethics through a grievance process (described below).

Complaint

B. PSA EXHORTS ITS MEMBERS TO FORGO SOLICITATION

9. Respondent has adopted and publicized a broad definition of solicitation that restricts many types of competition among members.

10. Respondent created an Ethics Committee to develop educational materials and programs in the area of ethics, and to educate its members about the types of conduct that it considers prohibited solicitation. Education occurs through required continuing education programs, publications, web postings, and the fielding of questions by Respondent's staff, including Respondent's Executive Director and General Counsel.

11. Respondent disseminates publicly and to its members a variety of documents that interpret and apply the Code of Ethics, including Proper Procedures for Changing Coaches, Ethics Issues When Changing Coaches, and Tenets of Professionalism.

12. Respondent defines the following statements as solicitation prohibited by the Code of Ethics:

- "I am a much more qualified coach than _____ is."
- "Join our program. That other program isn't very good."
- "We'll give your child free lessons, ice time, equipment, etc."

13. Respondent published in its magazine, Professional Skater, articles stating that handing to a student a business card that reads, "one free lesson" is prohibited solicitation.

14. Respondent created and disseminated supplemental guidelines to the Code of Ethics that discourage solicitation of ice skating teaching work in situations specific to team teaching (primary coaches, secondary coaches, specialty coaches), pairs and dance, synchronized skating, and social media. In these guidelines, Respondent gives the following instructions regarding the Code of Ethics no-solicitation provision:

Complaint

- “Targeting a skater already established with a coach and suggesting they change to you is SOLICITATION.”
- “Telling a skater already involved in a coaching relationship they will have better results with you is SOLICITATION.”
- “(Solicitation) A coach approaches a skater (or skater’s parent) who is already taking lessons and has a primary coach.”
- “(Solicitation) A team travels to an established training center for a seminar with a nationally/internationally recognized coach. After the seminar, the program director/coach/presenter suggests they stay for a few days of training to work with them or someone else.”
- “(Solicitation) Contacting, either directly or through another means, a skater or parent by sending recruiting material (resume, etc.) directly to a skater or parent is ‘targeting’ a skater.”
- “A coach or team manager should not approach (target) a skater who is a member of another team or taking private lessons.”
- “Sending recruiting material directly to a skater on another team is ‘targeting’ a skater.”

15. Respondent published Ethics Guidelines for Social Media instructing:

- “Social media solicitation remains solicitation and is unethical.”
- “[I]t is solicitous to recruit skaters using any form of social media.”
- “It is a violation of the PSA Code of Ethics for any coach, U.S. Figure Skating official, or U.S. Figure Skating official who is also a coach, to use any form of communication or engage in any acts which reasonably could give the appearance of the intent to solicit a business or personal relationship with any skater or a parent (or legal guardian) of a skater, who is not the current student of that coach or with a skater who is competing in a competition in which the U.S. Figure Skating official is officiating.”

Complaint

C. PSA'S ENFORCEMENT REGIME

16. In furtherance of the combination alleged above, Respondent has established and administered a grievance and enforcement regime for receiving complaints about and resolving alleged violations of the PSA Code of Ethics, including the no-solicitation provision.

17. Respondent's Bylaws provide that any complaint concerning a breach of the Code of Ethics shall be resolved by the PSA Committee on Professional Standards ("COPS"). The PSA COPS may discipline a member who it deems to have breached the Code of Ethics.

18. Respondent's members have filed grievances for alleged violation of the PSA Code of Ethics no-solicitation provision to restrain other PSA members from soliciting skaters who study with the complaining member.

19. Since 2006, PSA has sanctioned at least eight coaches for soliciting pupils of other members in violation of the Code of Ethics no-solicitation provision. PSA sanctions have included public admonition, private admonition, probation, suspension, and termination of membership.

20. Since 2006, Respondent has suspended at least one coach for violation of the Code of Ethics no-solicitation provision. The suspension was for six months. The suspension rendered the coach ineligible to attend or accompany skaters to USFSA qualifying competitions, or to work with skaters on Team USA. The suspension also resulted in the coach's losing insurance coverage. Respondent publicized notice of the suspension in Respondent's magazine, Professional Skater.

21. Since 2006, Respondent has publicly admonished at least one coach for violation of the Code of Ethics no-solicitation provision.

22. Since 2006, Respondent has privately admonished at least six additional coaches for violation of the Code of Ethics no-solicitation provision. COPS panel members have voted for private admonitions even in situations where they believed a

Complaint

coach's alleged solicitation was "mild," was via a third party, was probably inadvertent, was not intentional, was not premeditated, and was probably harmless.

23. Members of Respondent's COPS panels have acknowledged that even private sanctions may be sufficient to sensitize sanctioned coaches to the prohibition on solicitation, and to deter coaches from future violations of the no-solicitation provision of the Code of Ethics.

24. Member coaches being investigated for violation of the no-solicitation provision of the Code of Ethics have in some cases specifically pledged not to violate the no-solicitation provision in the future.

25. Respondent has sanctioned member coaches when skaters switched to or spent more time with a coach who was alleged to have engaged in the following practices, among others:

- a. Offering skating workshops to students of other coaches;
- b. Offering free admission or scholarships to workshops to students of other coaches;
- c. Offering housing, costumes, or other support to students of other coaches.

26. Respondent has sanctioned member coaches for soliciting students of other members even over the objection of skating students and their parents who wanted to switch coaches and submitted affidavits or letters explaining their decisions to the PSA COPS panel. Respondent has sanctioned members for soliciting students of other members even when parents presented to the PSA COPS independent reasons for wanting to switch coaches, such as geographic convenience, carpooling arrangements, time preferences, preference for a different type of coach, judgment that a skater needed a coach with different expertise or approach, concerns about a coach's availability or personal comportment or cost, or some combination of these and other factors.

Complaint

27. Sanctions for violations of the no-solicitation rule can harm the commercial prospects of PSA member coaches by damaging their reputation, jeopardizing their access to ice skating facilities, voiding their liability insurance, and terminating their eligibility to participate with their students in USFSA tests and competitions.

D. VIOLATION CHARGED

28. The purpose, effect, tendency, or capacity of the combination, agreement, acts and practices alleged in Paragraphs X through Y has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among ice skating teachers and coaches, and by depriving consumers of the benefits of free and open competition among teachers and coaches of ice skating.

29. The combination, agreement, acts and practices alleged in Paragraphs X through Y 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 thirteenth day of February, 2015, issues its Complaint against Respondent.

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 Professional Skaters Association, Inc. (“Respondent” or “PSA”) 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 Act, 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, and having duly considered the comment received from an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order (“Order”):

1. Respondent Professional Skaters Association, Inc., is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Minnesota, with its office and principal place of

Decision and Order

business located at 3006 Allegro Park SW, Rochester, Minnesota 55902.

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 “PSA” means Professional Skaters Association, Inc., its directors, boards, officers, employees, agents, representatives, councils, committees, foundations, divisions, successors, and assigns.
- B. “Antitrust Compliance Officer” means a person appointed under Paragraph IV.A. of this Order.
- C. “Antitrust Counsel” means a lawyer admitted to practice law in Federal court or in the highest court of any State or Territory of the United States.
- D. “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.*
- E. “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.
- F. “FTC Settlement Statement” means the statement attached to this Order as Appendix A.

Decision and Order

- G. “Member” means a member of PSA, including any full, associate, family, patron, basic, and intern member.
- H. “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, guidelines, or educational materials.
- I. “Performing” means skating or preparing to skate at an arena in a test, competition, or exhibition, and includes meetings with coaches, locker room time, practice skating, and warmup skating.
- J. “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.
- K. “Skating Organizations” means (1) Ice Skating Institute, 6000 Custer Rd., Bldg. 9, Plano, Texas 75023 and (2) U. S. Figure Skating Association, 20 First Street, Colorado Springs, Colorado 80906.

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:

Decision and Order

1. Solicitation of coaching work by any Member, through any legal means, directly or indirectly, including but not limited to adoption or maintenance of any Code of Ethics or practice that restricts any coach from:
 - a. Making statements about the comparative desirability of offered coaching services or claiming or implying unusual, unique, or one-of-a-kind coaching abilities;
 - b. Engaging in any solicitation of business from actual or prospective students or the parents of such students or offering coaching services to a student or parent of a student receiving services from another coach;
 - c. Providing coaching services without first determining the nature and extent of any earlier teaching relationship with the skater and other coaches or contacting the current coach; and
 - d. Contacting a student or parent of a student receiving services from another coach to offer coaching services.

Provided, however, that nothing in this Paragraph II.A. shall prohibit Respondent from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its Members with respect to (i) representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, (ii) prevention of sexual and physical abuse of children, or (iii) in-person solicitation of a skater actively engaged in a lesson or Performing.

2. Price competition by any Member, including, but not limited to, restraining any person from offering free lessons when soliciting business.

Decision and Order

- B. Adopting or maintaining any Code of Ethics or practice that restricts or attempts to restrict any non-Member from talking to, convincing, or requiring students or parents of such students to switch from one coach to another.
- C. With respect to any other organization:
 - 1. Encouraging or assisting such organization to adopt or maintain any Code of Ethics or practice that would violate Paragraph II.A. or B. of this Order if adopted by Respondent, and
 - 2. Enforcing or investigating on behalf of such organization a violation of a Code of Ethics that would violate Paragraph II.A. or B. of this Order if enforced or investigated by Respondent on its own behalf.

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 (5) years on the Ethics page of PSA's website the following items:
 - a. An announcement that states "PSA 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 coaching 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

Decision and Order

2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its board of governors, officers, employees, and Members.
 3. Notify the Skating Organizations that Respondent agreed to change its Code of Ethics and will not enforce or investigate on behalf of the Skating Organizations a violation of any Code of Ethics or practice that does not comply with the FTC Consent Order, and provide a copy of this Order to each organization.
- B. No later than sixty (60) days from the date this Order is issued Respondent shall:
1. Remove from PSA's Organization Documents and website any statement that is inconsistent with Paragraph II. of this Order, and
 2. Publish on PSA's website any revisions of PSA's Organization Documents.
- C. Respondent shall publish:
1. In the font that is customarily used for feature articles:
 - a. Any revisions of PSA's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement in the next available editions of the "Professional Skater Magazine" and "In The Loop" publications; and
 - b. The FTC Settlement Statement, on or as close as possible to the first and second anniversary dates of the first publication of the FTC Settlement Statement, in the "Professional Skater Magazine" and "In The Loop" publications, or any successor publication.

Decision and Order

2. For a period of three (3) years, a statement in all ethics related continuing education courses and materials for Members and all education materials directed toward non-Members (including parents of students) that restrictions on solicitation no longer apply.
- 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 Member no later than thirty (30) days after the date of commencement of the membership; and
 2. Member who receives a membership renewal notice, at the time the Member receives such notice.
- E. 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 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

Decision and Order

Order to supervise Respondent's antitrust compliance program.

- B. For a period of one year from the date this Order is issued, the Antitrust Compliance Officer shall be Loren Hansen, after which a new Antitrust Compliance Officer may be appointed who shall be Antitrust Counsel, a member of the board of governors, or employee of Respondent.
- C. For a period of five (5) years from the date this Order is issued, Respondent shall:
 - 1. Provide in-person annual training to its board of governors, officers, and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct; and
 - 2. Conduct a presentation at (i) each of its annual conferences and (ii) at least one meeting of the board of governors every twelve (12) months, that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.
- D. No later than sixty (60) days after the date this Order is issued, Respondent shall implement policies and procedures to:
 - 1. Enable persons (including, but not limited to, its board of governors, officers, 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 its board of governors, officers, employees, Members, and agents for failure to comply fully with this Order.

Decision and Order

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
- 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:

Decision and Order

- 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
- 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 February 13, 2035.

By the Commission.

Decision and Order

APPENDIX A

[Letterhead of PSA]

Dear Member:

As you may know, the Federal Trade Commission (“FTC”) conducted an investigation concerning the provision in PSA’s Code of Ethics that stated:

No member shall in any case solicit pupils of another member, directly or indirectly, or through third parties.

The FTC alleges that this provision in the Code of Ethics violates the Federal Trade Commission Act because it unnecessarily restricts members of PSA from competing for pupils, thereby depriving pupils of the benefits of competition among skating coaches. The FTC also alleges that PSA guidelines state it is unethical for members to give free lessons is an illegal restriction on price competition.

To end the investigation expeditiously and to avoid disruption to its core functions, PSA 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, PSA will eliminate the above provision from its Code of Ethics and other organizational documents and implement an antitrust compliance program.

In general, the FTC has prohibited PSA from maintaining bylaws, code of ethics, operational policies, or membership requirements that restrict members from soliciting students and engaging in price competition. The Decision and Order also prohibits PSA from (1) encouraging other organizations to adopt policies or practices that would violate the Decision and Order if PSA adopted such policies and (2) enforcing or investigating violations of the code of ethics of other organizations that would violate the Decision and Order if enforced or investigated by PSA on its behalf.

PSA is also prohibited from adopting policies or practices that restrict or attempts to restrict non-members from talking to,

Decision and Order

convincing, or requiring students or parents of such students to switch from one coach to another.

The Decision and Order does not prohibit PSA from adopting and enforcing Codes of Ethics or similar documents that govern the conduct of members with respect to (1) representations that PSA reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, (2) prevention of sexual and physical abuse of children, or (3) in-person solicitation of a skater actively engaged in a lesson or Performing.

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 PSA 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 Professional Skaters Association, Inc. (hereinafter “PSA”). The Commission’s complaint (“Complaint”) alleges that PSA, 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 coaches from soliciting teaching work.

Under the terms of the proposed Consent Agreement, PSA is required to cease and desist from restricting competition among its members, or working with other ice skating organizations to restrict competition, including by restricting 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.

The Consent Agreement is for settlement purposes only and does not constitute an admission by PSA that the law has been

Analysis to Aid Public Comment

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

PSA is a non-profit trade association whose members include approximately 6400 coaches of ice skating who teach, train, and coach skaters at all levels -- from beginners to elite skaters. Many PSAs members teach and coach skaters for a fee. Some PSA members are employed at schools, universities, ice skating clubs, and ice skating rinks. PSA membership provides financial benefits to its members.

PSA membership and continuing education is required by the U.S. Figure Skating Association ("USFSA") for coaches of skaters participating in: (i) USFSA qualifying competitions, and (ii) international ice skating competitions as part of Team USA. Because of this requirement, PSA membership is required in order to coach competitive skaters.

Coaches require access to ice skating rink facilities. Some ice skating rink facilities require that coaches have PSA membership.

PSA maintains a Code of Ethics applicable to the commercial activities of its members. The PSA Code of Ethics states that, "No member shall in any case solicit pupils of another member, directly or indirectly, or through third parties." The PSA Code of Ethics also requires that, "Prior to acting as a coach, the member shall determine the nature and extent of any earlier teaching relationship with that skater and other members."

B. The Anticompetitive Conduct

The Complaint alleges that PSA violated Section 5 of the Federal Trade Commission Act by restraining competition among coaches of ice skating through adoption and enforcement of the no-solicitation provision of PSA's Code of Ethics. This is in effect an agreement among competitors not to compete. PSA

Analysis to Aid Public Comment

interprets the no-solicitation rule broadly, prohibiting direct, indirect, third-party, and social media solicitation of teaching work. PSA has instructed its members and others that the Code of Ethics no solicitation rule prohibits coaches from many types of direct or indirect communication with skaters and parents, including:

- Suggesting a skater change coaches
- Suggesting a skater would have better results by changing coaches
- Suggesting a skater who attends a seminar stay for a few days of additional training
- Sending recruiting material to a skater or parent
- Claiming one coach is a more qualified coach than another
- Claiming one ice skating program is better than another
- Offering free lessons, ice time, or equipment

PSA requires its members to agree to abide by the Code of Ethics, educates members about the Code of Ethics, exhorts its members to follow the Code of Ethics and polices members' behavior. It also enforces the Code of Ethics through a grievance process administered by PSA's Committee on Professional Standards (the "COPS"). PSA has enforced the Code of Ethics no-solicitation provision against at least nine member coaches since 2006, with penalties including private admonition, public admonition, suspended membership, and probation.

PSA has sanctioned member coaches for soliciting students of other members even when the students and their parents wanted to switch coaches for a variety of compelling reasons. PSA has enlisted parents and skaters in the effort to enforce the Code of Ethics no-solicitation provision. The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of PSA has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among ice skating teachers and coaches.

Analysis to Aid Public Comment

II. The Proposed Order

The Proposed Order has the following substantive provisions:

Paragraph I contains definitions for terms used in the Order.

Paragraph II requires PSA to cease and desist from restraining or declaring unethical, interfering with, or advising against the solicitation of teaching work. It also requires that PSA not prohibit or advise against coaches' solicitation of students. Paragraph II requires PSA to cease and desist from encouraging or assisting any other organization to adopt, maintain, or enforce any Code of Ethics or other restriction on solicitation. Finally, Paragraph II requires PSA to cease and desist from restraining price competition, including offering free lessons.

The Proposed Order does not prohibit PSA from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its Members with respect to (i) representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act; (ii) prevention of sexual and physical abuse of children; or (iii) in-person solicitation of a skater actively engaged in (a) a skating lesson, or (b) skating or preparing to skate at an arena in a test, competition, or exhibition. The Order defines skating or preparing to skate as including meetings with coaches, locker room time, practice skating, and warm-up skating.

Paragraph III of the Proposed Order requires PSA to remove from its organization documents and website any statement inconsistent with the Proposed Order. PSA must publicize to its members, new members, leaders, employees, and the public the changes PSA must make to the Code of Ethics, and a statement describing the Consent Agreement. Finally, PSA must notify the Ice Skating Institute ("ISI") and United States Figure Skating Association that PSA (i) agreed to change its Code of Ethics and (ii) will not enforce or investigate on behalf of Skating Organizations violation of any Code of Ethics or practice that does not comply with the FTC's Order against PSA. Further, the Order requires PSA to notify USFSA and ISI that the Order will prevent PSA from doing on behalf of USFSA or ISI anything that, if done by PSA, would be inconsistent with the Order against

Analysis to Aid Public Comment

PSA. This is necessary because PSA provides various education services on ethics to both USFA and ISI coaches.

Paragraph IV of the Proposed Order requires PSA to design, maintain, and operate an antitrust compliance program. PSA must have an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, PSA must provide guidance to its staff, employees, members, and leaders concerning the antitrust laws and PSA obligations under the Proposed Order. PSA also must 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 leaders, employees and agents for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed Order require certain standard compliance reporting, cooperation, and access.

The Proposed Order will expire in the 20 years.

Complaint

IN THE MATTER OF

ELI LILLY AND NOVARTIS AGCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT
AND SECTION 7 OF THE CLAYTON ACT*Docket No. C-4500; File No. 141 0142**Complaint, February 20, 2015 – Decision, February 20, 2015*

This consent order addresses the \$5.4 billion acquisition by Eli Lilly and Company of Novartis' Animal Health business from Novartis AG. Both parties sell canine heartworm parasiticide products in the United States. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act, by eliminating the close competition between Eli Lilly and Novartis Animal Health and lessening competition in the U.S. market for canine heartworm parasiticides. Additionally, any other company seeking to enter the canine heartworm parasiticide market would face high barriers, because developing new animal health pharmaceutical products – including those that treat heartworm in dogs – is difficult and time-consuming. Under the terms of the order, Eli Lilly is required to divest all of the rights and assets related to its canine heartworm products, Sentinel Spectrum and Sentinel Flavor Tabs, to the French pharmaceutical company, Virbac S.A.

Participants

For the *Commission*: Michael R. Barnett, Steven C. Lavender, and David Von Nirschl.

For the *Respondents*: Andrew J. Forman and Charles F. Rule, Cadwalader, Wickersham & Taft LLP; and Mary Lehner, Craig Minerva, and Paul Yde, Freshfields Bruckhaus Deringer US LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Novartis AG ("Novartis"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire oncology assets from Respondent GlaxoSmithKline, PLC ("GSK"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as