

Complaint

IN THE MATTER OF

STEP N GRIP, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT.*Docket C-4561; File No. 151 0181**Complaint, December 7, 2015 – Decision, December 7, 2015*

This consent order addresses Step N Grip, LLC's market manipulation. The complaint alleges that Step N Grip violated Section 5 of the Federal Trade Commission Act, by inviting a competitor in the sale of certain rug devices to set and raise prices. Step N Grip markets and sells a device called NeverCurl that is intended to keep the corners of a rug from curling. Step N Grip's closest competitor in the sale of such rug devices is Competitor A. For several months prior to June 1, 2015, Step N Grip generally priced NeverCurl at \$13.95 per package, while Competitor A priced its product at \$16.99 per package. As Competitor A lowered their prices, Step N Grip did the same. This went on and on for weeks and at one point Step N Grip sent an e-mail message to Competitor A. The communication, in its entirety, read: "We both sell at \$12.95? Or, \$11.95?" The consent order requires Step N Grip to cease and desist from communicating with its competitors about prices. It is also barred from entering into, participating in, inviting, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

Participants

For the *Commission*: Michael Turner.

For the *Respondent*: Allan Wendling, CEO, *pro se*.

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 ("Commission"), having reason to believe that Step N Grip, LLC, has violated the provisions of Section 5 of the Federal Trade Commission Act, 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:

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NATURE OF THE CASE

1. Step N Grip, LLC (“Step N Grip”) markets and sells over the internet a rug device. Step N Grip invited its closest rival to fix and raise prices for the two companies’ competing rug devices. By inviting collusion, Step N Grip endangered competition and violated Section 5 of the FTC Act.

RESPONDENT

2. Step N Grip is a limited liability corporation organized, existing, and doing business under and by virtue of the laws of Michigan with its principal place of business in New Lothrop, Michigan 48460.

3. Step N Grip markets and sells a device called NeverCurl that is intended to prevent the corner of a rug from curling. Step N Grip sells its rug device over the internet on Amazon.com. Step N Grip also sells from its own website.

JURISDICTION

4. At all times relevant herein, Step N Grip has been, and is now, a corporation as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

5. The business practices of Step N Grip, including the acts and practices alleged herein, are in commerce or affect commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

INVITATION TO COLLUDE

6. The closest competitor to Step N Grip is Competitor A, a company that markets and sells a rug device similar to NeverCurl. For several months prior to June 1, 2015, Step N Grip generally sold NeverCurl on Amazon.com for \$13.95 per package, and Competitor A sold its competing device on Amazon.com for \$16.99 per package.

7. On June 1, 2015, Competitor A lowered its price on Amazon.com to \$13.49 in order to compete more aggressively

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with Step N Grip. Step N Grip responded by lowering its price on Amazon.com to \$12.95.

8. On June 7, 2015, Competitor A lowered its price on Amazon.com to \$11.95 in response to Step N Grip. That same day, Step N Grip lowered its price on Amazon.com to \$11.95. Also on June 7, 2015, Step N Grip sent an email message to Competitor A. The communication, in its entirety, read: “We both sell at \$12.95? Or, \$11.95?” Step N Grip subsequently raised the price of NeverCurl to \$12.95.

9. Competitor A reported the invitation to collude to the Federal Trade Commission.

VIOLATION CHARGED

10. As set forth in Paragraphs 6 through 9 above, Step N Grip invited its competitor to agree to fix and raise the price of rug devices in violation of Section 5 of the Federal Trade Commission Act, as amended.

11. The acts and practices of Step N Grip, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. Such acts and practices of Step N Grip will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventh day of December, 2015, issues its complaint against Step N Grip.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Step N Grip, LLC (“Step N Grip”), a limited liability corporation, and Step N Grip having been furnished thereafter with a copy of the draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Step N Grip with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Step N Grip and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Step N Grip of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Step N Grip 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 Step N Grip 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, 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 Order:

1. Step N Grip, LLC, is a limited liability corporation organized, existing, and doing business under and by virtue of the laws of Michigan with its principal place of business in New Lothrop, Michigan.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Step N Grip, and this proceeding is in the public interest.

Decision and Order

ORDER**I.**

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

- A. “Step N Grip” means Step N Grip, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and any joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Step N Grip, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Rug device” refers to any device that is used with or in conjunction with a rug, and includes any device used for the purpose of preventing the corner of a rug from curling.
- C. “Commission” means the Federal Trade Commission.
- D. The term “communicating” means any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, and email.
- E. The term “Competitor” means any Person actually or potentially engaged in the manufacture or sale of any rug device and includes its employees, agents, and representatives.
- F. “Person” includes Step N Grip and means both natural persons and artificial persons, including, but not limited to, corporations, partnerships, and unincorporated entities.

II.

IT IS FURTHER ORDERED that in connection with the sale of any rug device in or affecting commerce, as “commerce”

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is defined by the Federal Trade Commission Act, Step N Grip shall cease and desist from, either directly or indirectly, or through any corporate or other device:

- A. Communicating with any Competitor regarding prices or rates, or prospective prices or rates, of Step N Grip or any Competitor; *provided, however*, that for purposes of this Paragraph II.A, Communicating does not include the transfer or dissemination of information to the public through websites or other widely accessible methods of advertising such as newspapers, television, signage, direct mail or online and social media.
- B. Entering into, attempting to enter into, adhering to, participating in, maintaining, organizing, implementing, enforcing, inviting, encouraging, offering or soliciting any agreement or understanding, express or implied, between or among Step N Grip and any Competitor:
 - 1. To raise, fix, maintain, or stabilize prices or price levels, rates or rate levels, or payment terms, or to engage in any other pricing action;
 - 2. To allocate or divide markets, customers, contracts, transactions, business opportunities, lines of commerce, or territories; or
 - 3. To set, change, limit or reduce service terms or service levels.
- C. Exhorting, requesting, suggesting, urging, advocating, encouraging, advising, or recommending to any Competitor, either publicly or privately, that such Competitor:
 - 1. Set, change, raise, fix, stabilize or maintain its prices or price levels, rates or rate levels, or payment terms, or engage in any other pricing action; or

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2. Set, change, reduce, limit, maintain, or reduce its service terms or service levels.
- D. Instructing or otherwise encouraging any dealer, distributor, or seller of rug devices to engage in conduct that Respondents are prohibited from engaging in under Paragraphs II.A, II.B, and II.C. of this Order.

III.

IT IS FURTHER ORDERED that Step N Grip shall:

- A. Within thirty (30) days after the date on which this Order becomes final, provide to each of Step N Grip's officers, directors and employees a copy of this Order and the Complaint.
- B. For a period of four (4) years from the date this Order becomes final, provide a copy of this Order and the Complaint to any person who becomes a director, officer, or employee of Step N Grip, and provide such copies within thirty (30) days of the commencement of such Person's employment or term as an officer or director.
- C. Require each person to whom a copy of this Order is furnished pursuant to Paragraph III.A. and III.B. above to sign and submit to Step N Grip within thirty (30) days of the receipt thereof a statement that (1) represents that the undersigned has read and understands the Order, and (2) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject Step N Grip to penalties for violation of the Order.
- D. Retain documents and records sufficient to record Step N Grip's compliance with its obligations under Paragraph III of this Order.

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IV.

IT IS FURTHER ORDERED that Step N Grip shall file a verified written report within sixty (60) days from the date this Order becomes final, annually thereafter for four (4) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

- A. A copy of the acknowledgement(s) required by III.C. of the Order; and
- B. A detailed description of the manner and form in which Step N Grip has complied and is complying with this Order.

V.

IT IS FURTHER ORDERED that Step N Grip shall notify the Commission:

- A. Of any change in its principal address or place of business within twenty (20) days of such change in address; and
- B. At least thirty (30) days prior to:
 - 1. Any proposed dissolution of Step N Grip;
 - 2. Any proposed acquisition, merger, or consolidation of Step N Grip; or
 - 3. Any other change in Step N Grip 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.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written

Analysis to Aid Public Comment

request and upon five (5) days notice, Step N Grip shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and obtain copies of relevant books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Step N Grip relating to compliance with this Order, which copying services shall be provided at the request of the authorized representative(s) of the Commission and at the expense of Step N Grip; and
- B. The opportunity to interview officers, directors, or employees of Step N Grip, who may have counsel present, related to compliance with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on December 7, 2035.

By the Commission.

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 Step N Grip, LLC (“Step N Grip”). The Commission’s Complaint alleges that Step N Grip violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by inviting a competitor in the sale of certain rug devices to set and raise prices.

Analysis to Aid Public Comment

Under the terms of the proposed Consent Agreement, Step N Grip is required to cease and desist from communicating with its competitors about prices. It is also barred from entering into, participating in, inviting, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

The 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 (“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.

I. The Complaints

The allegations of the Complaint are summarized below:

Step N Grip markets and sells a device called NeverCurl that is intended to keep the corners of a rug from curling. Step N Grip sells NeverCurl primarily through Amazon.com; Step N Grip also sells NeverCurl through its own website.

Step N Grip’s closest competitor in the sale of such rug devices is Competitor A, a company that also sells its product on Amazon.com. For several months prior to June 1, 2015, Step N Grip generally priced NeverCurl at \$13.95 per package, while Competitor A priced its product at \$16.99 per package.

On June 1, 2015, Competitor A lowered its price on Amazon.com to \$13.49 in an effort to compete more aggressively with Step N Grip. In response, Step N Grip lowered its price on Amazon.com to \$12.95.

Analysis to Aid Public Comment

On June 7, 2015, Competitor A lowered its price on Amazon.com to \$11.95 in response to Step N Grip. That same day, Step N Grip lowered its price to \$11.95 on Amazon.com and sent an e-mail message to Competitor A. The communication, in its entirety, read: “We both sell at \$12.95? Or, \$11.95?”

Competitor A reported the communication to the FTC.

II. Analysis

Step N Grip’s June 7 message to Competitor A is plainly an attempt to arrange an agreement between the two companies setting and increasing the price of their competing products. It is an invitation to collude. The Commission has long held that invitations to collude violate Section 5 of the FTC Act, and this is unaltered by the Commission’s recent Statement on Section 5.

In a recent statement, the Commission explained that unfair methods of competition under Section 5 “must cause, or be likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications.”¹ Potential violations are evaluated under a “framework similar to the rule of reason.”² Competitive effects analysis under the rule of reason depends upon the nature of the conduct that is under review.³

¹ Fed. Trade Comm’n, Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (Aug. 13, 2015) (Section 5 Unfair Methods of Competition Policy Statement), *available at* https://www.ftc.gov/system/files/documents/public_statements/735201/150813_section5enforcement.pdf. Commissioner Ohlhausen dissented from the issuance of the Section 5 Unfair Methods of Competition Policy Statement. See <https://www.ftc.gov/public-statements/2015/08/dissenting-statement-commissioner-ohlhausen-ftc-act-section-5-policy>.

² Section 5 Unfair Methods of Competition Policy Statement.

³ See, e.g., *California Dental Ass’n v. FTC*, 526 U.S. 756, 781 (1999) (“What is required . . . is an inquiry meet for the case, looking to the circumstances, details, and logic of a restraint.”).

Analysis to Aid Public Comment

An invitation to collude is “potentially harmful and . . . serves no legitimate business purpose.”⁴ For this reason, the Commission treats such conduct as “inherently suspect” (that is, presumptively anticompetitive).⁵ This means that an invitation to collude can be condemned under Section 5 without a showing that the respondent possesses market power.⁶

The Commission has long held that an invitation to collude violates Section 5 of the FTC Act even where there is no proof that the competitor accepted the invitation.⁷ There are various reasons for this. First, unaccepted solicitations may facilitate coordination between competitors because they reveal information about the solicitor’s intentions or preferences.

⁴ *In re Valassis Commc’ns, Inc.*, 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment); see also Address by FTC Chairwoman Edith Ramirez, Section 5 Enforcement Principles, George Washington University Law School at 5 (Aug. 13, 2015), available at https://www.ftc.gov/system/files/documents/public_statements/735411/150813section5speech.pdf.

⁵ See, e.g., *In re North Carolina Bd. of Dental Examiners*, 152 F.T.C. 640, 668 (2011) (noting that inherently suspect conduct is such that be “reasonably characterized as ‘giv[ing] rise to an intuitively obviously inference of anticompetitive effect.’” (citation omitted)).

⁶ See, e.g., *In re Realcomp II, Ltd.*, 148 F.T.C. ___, No. 9320, 2009 FTC LEXIS 250 at *51 (Oct. 30, 2009) (Comm’n Op.) (explaining that if conduct is “inherently suspect” in nature, and there are no cognizable procompetitive justifications, the Commission can condemn it “without proof of market power or actual effects”).

⁷ See, e.g., *In re Valassis Commc’ns, Inc.*, 141 F.T.C. 247 (2006); *In re Stone Container*, 125 F.T.C. 853 (1998); *In re Precision Moulding*, 122 F.T.C. 104 (1996). See also *In re McWane, Inc.*, Docket No. 9351, *Opinion of the Commission on Motions for Summary Decision* at 20-21 (F.T.C. Aug. 9, 2012) (“an invitation to collude is ‘the quintessential example of the kind of conduct that should be . . . challenged as a violation of Section 5’”) (citing the Statement of Chairman Leibowitz and Commissioners Kovacic and Rosch, *In re U-Haul Int’l, Inc.*, 150 F.T.C. 1, 53 (2010)). This conclusion has been endorsed by leading antitrust scholars. See P. Areeda & H. Hovenkamp, VI ANTITRUST LAW ¶ 1419 (2003); Stephen Calkins, *Counterpoint: The Legal Foundation of the Commission’s Use of Section 5 to Challenge Invitations to Collude is Secure*, ANTITRUST Spring 2000, at 69. In a case brought under a state’s version of Section 5, the First Circuit expressed support for the Commission’s application of Section 5 to invitations to collude. *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012).

Analysis to Aid Public Comment

Second, it can be difficult to discern whether a competitor has accepted a solicitation. Third, finding a violation may deter similar conduct—conduct that has no legitimate business purpose.⁸

III. The Proposed Consent Order

The Proposed Order contains the following substantive provisions:

Section II, Paragraph A of the Proposed Order enjoins Step N Grip from communicating with its competitors about rates or prices, with a proviso permitting public posting of rates.

Section II, Paragraph B prohibits Step N Grip from entering into, participating in, maintaining, organizing, implementing, enforcing, inviting, offering, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

Section II, Paragraph C bars Step N Grip from urging any competitor to raise, fix or maintain its price or rate levels or to limit or reduce service terms or levels.

Section II, Paragraph D forbids Step N Grip from instructing or encouraging a distributor or seller to engage in the conduct proscribed in Section II, Paragraphs A through C.

Sections III-VI of the Proposed Order impose certain standard reporting and compliance requirements on Step N Grip.

The Proposed Order will expire in 20 years.

⁸ *In re Valassis Comm’c, Inc.*, 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment).

Complaint

IN THE MATTER OF

**KEYSTONE ORTHOPAEDIC SPECIALISTS, LLC
AND
ORTHOPAEDIC ASSOCIATES OF READING,
LTD.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SECTION 7 OF THE CLAYTON ACT AND SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT.

Docket C-4562; File No. 141 0025

Complaint, December 14, 2015 – Decision, December 14, 2015

This consent order addresses the 2011 merger of six independent physician groups to form Keystone. Those practices are Respondent Orthopaedic Associates, Advanced Orthopaedics of Reading, Arthritis & Joint Replacement Center of Reading, P.C., Berkshire Orthopedic Associates, Inc., Commonwealth Orthopaedic Associates, Inc., and Reading Neck and Spine Center, P.C. (“Keystone Component Practices”). The Keystone Component Practices became divisions of Keystone after the Merger. The Merger combined 19 out of 25, or 76 percent, of the orthopedists practicing in Berks County. Thus eliminating the robust competition among orthopedists in Berks County. After the Merger, Keystone negotiated prices with health plans on behalf of all the previously competing Keystone Component Practices, and health plans could not offer a commercially marketable network that would appeal to Berks County residents without Keystone. Under the terms of the settlement, Keystone and Orthopaedic Associates are required to obtain prior approval from the Commission before acquiring any interests in each other, before acquiring another orthopedic practice in Berks County, and before hiring or offering membership to an orthopedist who has provided services in Berks County in the past year. Keystone and Orthopaedic Associates also are prohibited from anticompetitive, illegal activity such as coordinating their prices with other orthopedists in the market and jointly negotiating with or refusing to deal with payors. They also must terminate, without penalty, any existing contracts with payors for the provision of orthopedic physician services at the payors’ request.

Participants

For the *Commission*: Robert S. Canterman, Malcolm Catt, Ellen Connelly, Gary H. Schorr, and Steve Vieux.

For the *Respondents*: Jeffrey Brennan, McDermott Will & Emery LLP; Jesse Robinson, Blakinger, Byler & Thomas.