

Interlocutory Orders, Etc.

IN THE MATTER OF

**BENCO DENTAL SUPPLY CO.,
HENRY SCHEIN, INC.,
AND
PATTERSON COMPANIES, INC.**

Docket No. 9379. Order, November 26, 2018

Order identifying facts, which are deemed established for purposes of this proceeding.

ORDER SPECIFYING FACTS WITHOUT SUBSTANTIAL CONTROVERSY

Pursuant to Rule 3.24(a)(5) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.24(a)(5), the Commission hereby specifies the following statement of facts that appear without substantial controversy. Accordingly,

IT IS ORDERED that the following facts shall be deemed established for purposes of this proceeding:

1. Patterson has been distributing dental equipment (e.g., X-Ray and CAD/CAM machines, digital radiography sensors, and integrated operatory treatment centers), and consumable supplies (gloves, cotton rolls, rinse cups, disposable syringes) for over 140 years. See <https://www.pattersoncompanies.com/who-we-are/default.aspx#section=history>.
2. Patterson has more than 70 local branches. See <https://www.pattersoncompanies.com/who-we-serve/default.aspx#section=animal>.
3. [REDACTED]
Patterson Exhibit 5 (PDCO 00023794, slide 21).
4. [REDACTED]
CX0317 (Rogan IH Tr. 140:14-141:16).
5. Corporate dental practices, known as "dental service organizations" ("DSOs"), [REDACTED]
[REDACTED] Patterson Exhibit 5 (PDCO 00023794, slide 39).
6. In some cases, corporate DSOs buy local practices and employ the dentists. See http://www.oralhealthworkforce.org/wp-content/uploads/2017/09/OHWRC_Trends_in_Dental_Service_Organization_Model_2017.pdf.
7. In recent years, [REDACTED]
Patterson Exhibit 5 (PDCO 00023794, slide 49).

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8. [REDACTED] Patterson Exhibit 4 (McFadden 6-21-2018 FTC Dep. 97:6–25; 138:5–22); Patterson Exhibit 2 (Rogan 7-13-2018 FTC Dep. 220:10–221:8).

9. Patterson launched its Special Markets division in [REDACTED] 2013 to manage large accounts. Patterson Exhibit 47 (PattersonDental 00024687); Patterson Exhibit 48 (PattersonDental 00024688).

10. [REDACTED]

[REDACTED]

[REDACTED]

CX0158-001, 002 (PDCO 00031277-78).

11. Neal McFadden testified at his deposition that [REDACTED] Patterson Exhibit 4 (McFadden 6-21-2018 FTC Dep. 76:25-77:3).

12. [REDACTED]

[REDACTED]

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[REDACTED]

CX0056-004-005 (BDS-FTC00009445-6).

13. On February 8, 2013, Benco's Charles Cohen sent Patterson's Paul Guggenheim a message forwarding an email chain including the email from [REDACTED]. Cohen's message read, in part: "Just wanted to let you know about some noise I've picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy." CX0056-001 (BDS-FTC00009442).
14. A few hours later, Guggenheim replied to Cohen, in part: "Thanks for the heads up. I'll investigate the situation. We feel the same way about these." CX0090-001 (PDCO 00010912).
15. In early 2013, Patterson's Chesapeake branch manager was approached by Atlantic Dental Cooperative ("ADC"). CX0093-001 (PDCO 00051886).
16. [REDACTED] *Id.*; Patterson Exhibit 1 (Fruehauf 7-10-2018 FTC Dep. 114:7–115:6).
17. [REDACTED] David Misiak sent Patterson's [REDACTED] an email message [REDACTED]. That message read, in part:

These co op situations can be very challenging so stay connected. You may have to help him at the meeting communicate our position verbally to the reps. It's in their best interest long term as well not to take our business in that direction. When I get these calls directly I politely say that I appreciate the opportunity, but currently we [don't] participate with group purchasing organizations. Be cautious so that reps don't miss communicate our position.

Continue to help Devon stay out of this with grace. [REDACTED]

[REDACTED]

[REDACTED]

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CX0093-001 (PDCO 00051886) (emphasis in original); *see also* Patterson Exhibit 14 (Misiak 7-25-2018 FTC Dep. 128:1– 128:10).

18. On June [REDACTED] 2013, Patterson's Paul Guggenheim, [REDACTED] [REDACTED] sent an email to Benco's Chuck Cohen. The email read, in part:

Reflecting back on our conversation earlier this year, could you shed some light on your business agreement with Atlantic Dental Care? [REDACTED]

[REDACTED] I'm wondering if your position on buying groups is still as you articulated back in February?

Let me know your thoughtsSometimes these things grow legs without our awareness!

CX0095-001 (PDCO 00010955).

19. [REDACTED] Chuck Cohen sent an email to Paul Guggenheim. That email read, in part:

As we've discussed, we don't recognize buying groups. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CX3412-001 (PDCO 00010959).

20. [REDACTED] Paul Guggenheim sent an email to Chuck Cohen. That email read, in part: "[REDACTED] Just wanted to clarify where you guys stand." CX3301-001 (PATTERSON0001594).

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21. On August {4,} 2013, Patterson's Tim Rogan sent an email to [REDACTED]
[REDACTED]
That message read, in part: "We don't need GPO's in the dental business. Schein, Benco, and Patterson have always said no. I believe it is our duty to uphold this and protect this great industry." CX0106-001 (PDCO 00027980).
22. On September 3, 2013, David Misiak sent an email message to [REDACTED]
[REDACTED] The
message read, in part:

[REDACTED]

My guidance has been to politely say no [to buying groups] and w[ea]ther the storm with these.

CX3074-001 (PDCO 00021091).
23. On November 20, 2013, Patterson's Tim Rogan sent an email message to Patterson employee [REDACTED]. That email read, in part: "We don't sell to buying groups. Let's talk live." CX3168-001 (PDCO 00028046).
24. On October 23, 2014, Neal McFadden sent an email message [REDACTED]
[REDACTED] The message read, in part: "As a rule we are trying our best to steer clear of all buying groups." CX3128-001 (PDCO 00026075).
25. Patterson declined to work with Kois Buyers Group. CX0321 (Kois, Jr. IH Tr. 76:15-77:7); CX3084-001 (PDCO 00029940).
26. [REDACTED]
[REDACTED] CX3045-001 (PDCO 00026110).
27. That same day, Neal McFadden sent an email to Anthony Fruehauf. That email read, in part: "does he own all these offices - - if not then he is a GPO - - we don't deal with GPO's - [REDACTED] *Id.*
28. [REDACTED]
[REDACTED]

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Patterson Exhibit 54 (PDCO 00026237).

29. Smile Source approached Patterson in late 2013. [REDACTED] Patterson declined to work with Smile Source. CX0147-001 (PDCO 00021163); CX0297-001 (PDCO 00021213).
30. [REDACTED] Patterson Exhibit 61 (Mauer 8-9-2018 FTC Dep. 54:3-56:9; 64:4-9); Patterson Exhibit 14 (Misiak 7-25-2018 FTC Dep. 154:23– 156:2); Patterson Exhibit 8 (Lepley 7-24-18 FTC Dep. 37:9–13); Patterson Exhibit 62 (Rogan IH Tr. 397:16-399:19).
31. In October 2013, the Texas Dental Association (“TDA”) created the TDAPerks buying group. Patterson Exhibit 166 (PattersonDental00033124).
32. [REDACTED]



Patterson Exhibit 186 (PATTERSON 0000941).

33. On [REDACTED] Dave Steck, identified as “Vice President & General Manager” of Henry Schein Dental, sent an email to Patterson’s David Misiak with the subject “Texas.” The message read, in part: “I’ll be calling you to let you know about our decision on the matter we recently discussed in the next couple of days.” CX0112-001 (PDCO 00013330).
34. That same day, David Misiak sent an email forwarding that message and stating: “He already told me they were out. Full blown!” Patterson’s Tim Rogan replied: “That sucks. You should call him. ‘Thought I could trust you’ type of conversation.” CX0112-001 (PDCO 00013330).

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35. [REDACTED] Patterson had chosen not to attend TDA's 2014 annual meeting. Patterson Exhibit 186 (PATTERSON 0000244, PATTERSON 0000941).
36. A few weeks before TDA's annual meeting, Cohen (Benco) emailed Sullivan (Schein) and Guggenheim (Patterson) on the same chain, forwarding an article promoting TDAPerks. CX1062-001 (BDS-FTC00001789). Guggenheim created a calendar entry to call Cohen about the article. CX0101-001 (PDCO 00011057).
37. [REDACTED] Patterson Exhibit 53 (PDCO 00026064).
38. In depositions in this matter, Patterson employees have denied participating in a conspiracy with Benco and Schein to boycott "buying groups." Patterson Exhibit 13 (Anderson 7-19-2018 FTC Dep. 161:23–162:23); Patterson Exhibit 7 (Guggenheim 7-17-2018 FTC Dep. 400:24–404:11); Patterson Exhibit 14 (Misiak 7-25-2018 FTC Dep. 314:18–316:2); Patterson Exhibit 2 (Rogan 7-13-2018 FTC Dep. 257:20–22, 261:17–19); Patterson Exhibit 8 (Lepley 30(b)(6) 7-24-2018 FTC Dep. 111:7–113:16); Patterson Exhibit 64 (Nease 6-15-2018 FTC Dep. 127:19–22; 134:24–135:10).

By the Commission.

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IN THE MATTER OF

**CHINA NATIONAL CHEMICAL CORPORATION,
ADAMA AGRICULTURAL SOLUTIONS LTD.,
AND
MAKHTESHIM AGAN OF NORTH AMERICA, INC. D/B/A ADAMA**

Docket No. C-4610. Order, November 28, 2018

Letter approving the substitute monitor and the substitute monitor agreement.

LETTER ORDER APPOINTING MONITOR

Peter Guryan, Esq.
Simpson Thacher & Bartlett LLP

Re: *In the Matter of China National Chemical Corporation et al.*, Docket No. C-4610.

Dear Mr. Guryan:

This is to notify you that, pursuant to Paragraph IV.F. of the Decision and Order issued in *In the Matter of China National Chemical Corporation et al.*, Docket No. C-4610, the Federal Trade Commission has appointed Monitoring Trustee Partners B.V. as the substitute monitor and approved the substitute monitor agreement executed by Respondents and Monitoring Trustee Partners B.V.

By the direction of the Commission.