

Complaint

121 F.T.C.

IN THE MATTER OF

CALIFORNIA DENTAL ASSOCIATION

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9259. Complaint, July 9, 1993--Final Order, March 25, 1996*

This final order prohibits the 19,000 member professional association from restricting, regulating, impeding, declaring unethical, or interfering with the advertising or publishing of the prices, terms or conditions of sale of dentists' services and the solicitation of patients, patronage or contracts to supply dentists' services. In addition, the final order requires, among other things, the respondent to update its Code of Ethics to comply with the provisions of the Commission's order and to publish the Commission's order and complaint, as well as an announcement describing the order's effect, in the California Dental Association Journal.

Appearances

For the Commission: *Sally L. Maxwell, Markus Meier, Gary H. Schorr, Linda B. Blumenreich, George R. Bellack, Elizabeth R. Hilder, David R. Pender* and *Robert Leibenluft*.

For the respondent: *Peter Sfikas* and *Tamra S. Kempf, Bell, Boyd & Lloyd*, Chicago, IL.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the California Dental Association, a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent California Dental Association ("CDA" or "respondent") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its principal office and place of business is located at 818 "K" Street Mall (Post Office Box 13749), Sacramento, California.

PAR. 2. CDA is a professional association organized in substantial part to represent the interests of its dentist members. CDA has approximately 15,000 dentist members, constituting approximately 75% of the practicing dentists in California. CDA is engaged in substantial activities that further its members' pecuniary interests. By virtue of its purposes and activities, CDA is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 3. CDA has 32 local component dental societies. Dentists are required to be members of the CDA component within whose jurisdiction they practice in order to be eligible for membership in CDA. CDA's activities, including those complained of, are directed by its House of Delegates, which is composed of delegates from CDA's component societies. CDA is a constituent society of the American Dental Association ("ADA"). To be eligible for membership in ADA, a dentist practicing in California must be a member of CDA.

PAR. 4. Most CDA members are engaged in the business of providing dental services for a fee. Except to the extent that competition has been restrained as herein alleged, and depending upon their specialties and geographic location, CDA's members have been and are now in competition among themselves and with other dentists.

PAR. 5. The acts and practices of CDA, including the acts and practices alleged herein, have been, or are, in or affecting commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 6. In selecting a dentist, consumers generally consider factors of price and quality of service, including the dentist's training and experience, modes of treatment, areas of concentration or special interest, and the efficiency and convenience of the dental office. Truthful, nondeceptive advertising enables dentists to inform consumers about the price and quality factors of their services and about how their practices differ from other dentists, and thereby benefits consumers and promotes competition among dentists. For example, through advertising dentists can inform consumers of the location and nature of their practices and that they offer special discounts, such as for senior citizens. Such advertising can provide an incentive for dentists to offer services and prices desirable to consumers.

PAR. 7. CDA has restrained competition among dentists in California by acting as a combination of its members, or by conspiring with at least some of this members and its component societies to restrict unreasonably the dissemination of information to consumers. In particular, CDA has combined or conspired to restrict the ability of dentists to engage in a wide variety of forms of advertising without regard to whether the advertising is truthful and nondeceptive, including:

- A. Advertising price information such as discounted fees;
- B. Advertising relating to the quality of dentists' services, including statements that inform consumers that the dentist takes special steps to address consumers' fears about dental treatment; offers treatments not available from other dentists in the area; or has a practice that in some other respects is different from the practices of other dentists in the community; and
- C. Advertising that uses methods that may be particularly effective in conveying information to consumers.

PAR. 8. CDA has engaged in various acts and practices in furtherance of this combination or conspiracy, including, among other things:

- A. Adopting, publishing, and maintaining rules that require dentists to refrain from a variety of forms of advertising without regard to whether the advertising is truthful and nondeceptive;
- B. Coercing members who violate its advertising rules into ceasing such advertising;
- C. Expelling members who refuse to refrain from engaging in such advertising;
- D. Refusing to grant membership to any dentist who engages in such advertising; and
- E. Attempting to coerce non-members to comply with its rules, by, among other things, denying membership to, or cancelling the membership of, dentists whose non-CDA member employers advertise in a manner not acceptable to CDA.

PAR. 9. CDA's acts and practices have harmed consumers by restricting or preventing dentists from truthfully and nondeceptively informing the public of the price, quality and availability of their

services and how their practices differ from those of other dentists. Among other things:

A. CDA restricts certain categories of price advertising without regard to whether such advertising is truthful and nondeceptive. For example,

1. CDA prohibits all announcements of across-the-board discount offers, such as "SENIOR CITIZEN DISCOUNT" and \$25-off coupons for new patients.

2. CDA prohibits statements relating to low prices, such as "CARE AT REASONABLE PRICES," that can serve to signal a dentist's sensitivity to consumers' concerns about prices.

B. CDA restricts representations that relate to the quality of dental services without regard to whether the representations are truthful and nondeceptive. For example,

1. CDA bans a wide variety of advertising that it deems to constitute claims of "quality" or "superiority" without regard to whether such advertising is truthful and nondeceptive. CDA also prohibits quality claims through its bans on the use in advertising of adjectives, superlatives and subjective representations.

2. CDA has stopped dentist from using phrases in advertising such as "SPECIAL TREATMENT FOR NERVOUS PATIENTS," and "SPECIAL CARE FOR COWARDS," and thus has restricted claims that can inform the public that the dentist pays particular attention to consumers' fears and anxieties regarding dental procedures, and that the dentist takes special care to relieve those fears and anxieties.

C. CDA restricts certain methods of advertising without regard to whether the advertising claims are truthful and nondeceptive. For example,

1. CDA in effect discourages free dental screenings of schoolchildren by preventing dentists who provide such screenings from using their professional forms, which are imprinted with their names and addresses, in reporting the results of the screening.

2. CDA restricts the ability of dentists to attract patients and convey information to them about the dentists' practices by, for example, prohibiting dentists from hiring an agent to pass out coupons in front of the building in which a dentist practices, and from distributing business cards or other materials promoting the dentist's practice.

3. CDA prohibits dentists from advertising in any manner other than that which "contributes to the esteem of the public." Such a prohibition restricts dentists from using advertising techniques that may be particularly effective at gaining attention and conveying information to consumers.

4. CDA bans the advertising of 'guarantees' of dental services without regard to whether the advertisement is truthful and nondeceptive.

PAR. 10. In some of its activities that restrict truthful, nondeceptive advertising for dental services, CDA purports to "enforce" state statutes and regulations pertaining to advertising and solicitation. CDA, however, imposes on the market its own restrictive position on advertising regulation in situations where the state's policy is either unclear or is contrary to CDA's position. CDA is not an agent of the State and has not been authorized to interpret or enforce state laws on behalf of the State.

PAR. 11. CDA's actions described in paragraphs seven, eight and nine have had, or have, the tendency and capacity to restrain competition unreasonably and to injure consumers in the following ways, among others:

A. Consumers of dental services have been deprived of the benefits of price and quality competition;

B. Consumers of dental services have been deprived of truthful, nondeceptive information for use in their selection of a dentist;

C. The costs to consumers of finding dental services at their desired cost and quality have been raised; and

D. Innovation in the delivery of dental services has been, or likely has been, hindered or restrained.

PAR. 12. The combination or conspiracy and the acts and practices described in paragraphs seven, eight, and nine constitute unfair methods of competition in violation of Section 5 of the Federal

Trade Commission Act, as amended, 15 U.S.C. 45. CDA's combination or conspiracy, or the effects thereof, is continuing and will continue or recur in the absence of the relief herein requested.