

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

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In the Matter of)
)
BOSLEY, INC.)
a corporation, and)
)
ADERANS AMERICA HOLDINGS, INC.)
a corporation, and)
)
ADERANS CO., LTD.)
a corporation.)
_____)

DOCKET NO. C-4404

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Bosley, Inc., (“Bosley”) a subsidiary of Aderans America Holdings, Inc. (“Aderans America”) and Aderans Co., Ltd. (“Aderans”) (collectively, “Respondents”), and Respondents having been furnished thereafter with a copy of a 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 Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

1. Respondent Bosley is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware. Its corporate headquarters are located at 9100 Wilshire Blvd., East Penthouse, Beverly Hills, California 90212. Bosley is a wholly owned subsidiary of Aderans America Holdings, Inc.
2. Respondent Aderans America Holdings, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York. Its corporate headquarters are located at 9100 Wilshire Boulevard, East Penthouse, Beverly Hills, California 90212. Aderans America is a wholly owned subsidiary of Aderans Co., Ltd.
3. Respondent Aderans Co., Ltd. is a corporation organized, existing, and doing business under and by virtue of the laws of Japan. Its corporate headquarters are located at 13-4 Araki-cho, Shinjyuku-ku, Tokyo 160-0007, Japan.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

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

- A. “Bosley” means Bosley, Inc., its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Bosley; and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each; provided, however, that Bosley shall not include the physicians, individually or through his/her professional corporations, under independent contractor agreements with the various Bosley Medical Groups, or the various Bosley Medical Groups operating under management contracts with Bosley.
- B. “Aderans America” means Aderans America Holdings, Inc., its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Aderans America; and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- C. “Aderans” means Aderans Co., Ltd., its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Aderans America; and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each. After the acquisition of HC (USA), Inc. (“Hair Club”), Aderans includes Hair Club.
- D. “Respondents” means Respondent Bosley, Respondent Aderans America and Respondent Aderans, individually and collectively.
- E. “Commission” means the Federal Trade Commission.
- F. “Antitrust Compliance Program” means the program to ensure compliance with this Order and with the Antitrust Laws, as required by Paragraph III of this Order.
- G. “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.*
- H. “Communicate,” “Communicating,” and “Communication” means any transfer or dissemination of information, whether directly or indirectly, and regardless of the means by which it is accomplished, including without limitation orally or by printed or electronic materials.
- I. “Competitor” means any Person engaged in the business of managing or offering for sale medical/surgical hair transplantation services in the United States; *provided, however,* that Competitor does not include the physicians, individually or through his/her professional corporations, under independent contractor agreements with the various Bosley Medical Groups, or the various Bosley Medical Groups operating under management contracts with Bosley.
- J. “Competitively Sensitive, Non-Public Information” means any competitively sensitive, non-public business information of Respondents or any of their Competitors relating to medical/surgical hair transplantation services in the United States, including without limitation non-public information relating to pricing or pricing strategies, costs, revenues, profits, margins, output, business or strategic plans, marketing, advertising, promotion, or research and development;

Provided, however, that “Competitively Sensitive, Non-Public Information” does not include:

1. Information that has been Communicated publicly to current or prospective customers or investors through widely accessible methods, including websites, analyst conference calls, press releases, and other methods of advertising, such as print, television, signage, direct mail or online media;

2. Information that has been Communicated publicly as required by the Federal Securities Laws.
- K. “Federal Securities Laws” means the securities laws as that term is defined in §3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. §78c(a)(47), and any regulation or order of the Securities and Exchange Commission issued under such laws.
- L. “Person” 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 business of managing medical/surgical hair transplantation services in or affecting commerce, as “commerce” is defined by the Federal Trade Commission Act, Respondents shall cease and desist from, either directly or indirectly, or through any corporate or other device:

Communicating any Competitively Sensitive, Non-Public Information to any Competitor;
or

Requesting, encouraging, or facilitating the Communication of Competitively Sensitive, Non-Public Information from any Competitor.

PROVIDED, HOWEVER, that it shall not, of itself, constitute a violation of Paragraph II of this Order for Respondents: (1) to Communicate or request Competitively Sensitive, Non-Public Information to or with a Competitor where such conduct is reasonably related to a lawful joint venture or as part of legally supervised due diligence for a potential transaction, and reasonably necessary to achieve the procompetitive benefits of such a relationship; (2) to Communicate to any Person who Respondents reasonably believe is an actual or prospective customer Respondents’ rates or other terms of service and/or that Respondents are willing to lower their rates in response to a Competitor’s rate; (3) to Communicate to any Person who Respondents reasonably believe is affiliated with a market research firm Respondents’ rates; (4) to Communicate, provide, or request information as part of the ordinary and customary participation in trade associations or medical societies; (5) to Communicate with Respondents’ vendors and independent contractors in an ordinary and customary manner; or (6) without knowingly disclosing his/her affiliation with Respondents, and while taking steps reasonably calculated to conceal his/her affiliation with Respondents, and for the purpose of legitimate market research (such as secret shopping), to request or receive from a Competitor information, including but not limited to, its pricing terms.

III.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days after the date on which this Order becomes final, Respondents shall design, maintain and operate for the duration of this Order an Antitrust Compliance Program to assure ongoing compliance with this Order and with the Antitrust Laws. This Antitrust Compliance Program shall include, but not be limited to:
1. Respondents' designation of an officer or director to supervise the design, maintenance, and operation of the Antitrust Compliance Program;
 2. Antitrust compliance training for (a) all officers of Respondents, and (b) all other executives, managers, employees and agents of Respondents whose positions entail contacts with Competitors or who have sales, marketing, or pricing responsibilities with respect to the business of managing medical/surgical hair transplantation services in the United States;
 3. Distributing Respondents' Antitrust Compliance Program (including any updates thereof, as applicable) to all those Persons identified in Paragraph III.A.2 above;
 4. Making available ongoing legal support to respond to any questions on the Antitrust Compliance Program or the Antitrust Laws in a timely manner; and
 5. Annual training on the requirements of this Order and the Antitrust Laws for all the Persons identified in Paragraph III.A.2 above.
- B. Within thirty (30) days after the date on which this Order becomes final, Respondents shall provide to each of Respondents' officers and directors a copy of this Order and the Complaint. For a period of four (4) years from the date this Order becomes final, Respondents shall provide a copy of this Order and the Complaint to any Person who becomes an officer or director of any Respondent, and shall provide such copies within thirty (30) days of the commencement of such Person's term as an officer or director;
- C. Respondents shall require each person to whom a copy of this Order is furnished pursuant to Paragraph III.B above to sign and submit to Respondents 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 Respondents to penalties for violation of the Order; and

- D. Respondents shall retain documents and records sufficient to record Respondents' compliance with their obligations under Paragraph III of this Order.

IV.

IT IS FURTHER ORDERED that Respondents shall file verified written reports 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 detailed description of the manner and form in which Respondents have complied and are complying with this Order;
- B. The name, title, business address, email address, and business phone number of the officer or director designated by Respondents to supervise Respondents' Antitrust Compliance Program;
- C. The name, title, business address, email address and business phone number of each Person who received training on the requirements of this Order and the Antitrust Laws pursuant to Paragraph III of this Order, and information sufficient to show the date, location, and manner in which each Person was trained;
- D. A description of the Antitrust Compliance Program; and
- E. A copy of the acknowledgements required by Paragraph III.C of this Order.

V.

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

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

VI.

IT IS FURTHER ORDERED that, for purposes 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 the applicable Respondent made to its principal United States offices, registered office of its United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent and in the presence of counsel, to all United States 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 such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on May 30, 2033.

By the Commission, Commissioner Wright recused.

Donald S. Clark
Secretary

ISSUED: May 30, 2013