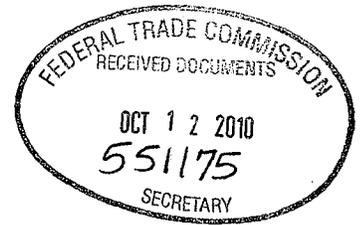


ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	PUBLIC
THE NORTH CAROLINA [STATE] BOARD)	
OF DENTAL EXAMINERS,)	DOCKET NO. 9343
)	
Respondent.)	

**RESPONDENT'S FIRST SET OF REQUESTS FOR ADMISSION
TO COMPLAINANT FEDERAL TRADE COMMISSION**

Pursuant to Rule 3.32 of the Federal Trade Commission's Rules of Practice, Respondent hereby requests that Complainant Federal Trade Commission ("FTC") admit the truth of the following statements or opinions of fact within 10 days from the date of service thereof.

1. Admit that the U.S. Supreme Court has never held that a state agency enforcing a clear articulated state statute regarding non-price restraints must prove active state supervision in order to qualify for state action immunity.
2. Admit that the market restrictions allegedly at issue in this case do not involve direct restrictions on commercial speech.
3. Admit that the market restrictions allegedly at issue in this case do not involve direct restrictions on pricing.
4. Admit that the restriction the North Carolina State Board of Dental Examiners ("Dental Board") is enforcing is a non-price restriction.
5. Admit that the FTC does not have express Congressional authority to regulate teeth whitening products or services.
6. Admit that a competitive alternative for consumers is to self administer over the counter teeth whitening products.
7. Admit that the Dental Board has not restricted the mere sale of over the counter teeth whitening products.

8. Admit that over the counter teeth whitening products are generally lower in price than the prices at which non-licensed teeth whitening service providers offer their products.
9. Admit that the FTC misnamed the Respondent in its Complaint.
10. Admit that the investigation which preceded the Complaint in this matter did not produce any direct evidence that the Dental Board had conspired to restrain trade.
11. Admit that efforts by a private trade association to influence Dental Board rules or policies constitute constitutionally protected speech under the Noerr-Pennington doctrine.
12. Admit that members of a state agency are presumed to be acting in good faith.
13. Admit that the North Carolina State Ethics Commission has ruled that the mere fact that a Board member is a licensee of the Board does not constitute a conflict of interest when participating in the enforcement decisions of the Board.
14. Admit that no current member of the Dental Board has teeth whitening business amounting to more than 5% of their business revenues.
15. Admit that teeth whitening businesses compare their services to services provided by dentists.
16. Admit that teeth whitening businesses promote their services as removing stains from teeth.
17. Admit that teeth whitening businesses promote their services as being more effective than self-administered over the counter teeth whitening products.
18. Admit that there are adequate public protection grounds for state regulation of the practice of dentistry.
19. Admit that the North Carolina statutes include the removal of stains from teeth as the practice of dentistry.
20. Admit that the North Carolina statutes include making impressions of teeth or gums in the definition of the practice of dentistry.
21. Admit that the North Carolina statutes include the offering as well as the rendering of dental services in the definition of the practice of dentistry.
22. Admit that the North Carolina statutes include operating a business providing dental services in the definition of the practice of dentistry.

23. Admit that the FTC's jurisdiction does not include oversight into the procedures by which a state agency enforces clearly articulated state statutes.

24. Admit that the investigation in this matter was managed, supervised or overseen by a Commissioner who had previously been recused from participation in an FTC case involving teeth whitening products or services.

INSTRUCTIONS

- A. Provide separate and complete sworn responses for each Request for Admission ("Request").
- B. The Request will be deemed admitted unless, within ten days of service of this request, the FTC serves a sworn written answer to the Request.
- C. The FTC's answer should specifically admit or deny the Request or set forth in detail the reasons why it cannot truthfully admit or deny it after exercising due diligence to secure the information necessary to make full and complete answers, including a description of all efforts the FTC made to obtain the information necessary to answer the Request fully.
- D. When good faith requires that the FTC qualify its answer or deny only a part of the matter of which an admission is requested, specify the portion that is true and qualify or deny the remainder.
- E. If the FTC considers that a matter of which an admission has been requested presents a genuine issue for trial, it may not, on that ground alone, object to the request. Instead, the FTC must deny the matter or set forth reasons why it cannot admit or deny it.
- F. Answer each Request fully and completely based on the information and knowledge currently available to the FTC, regardless of whether the FTC intends to supplement its response upon the completion of discovery.
- G. The FTC's answers to any Request herein must include all information within its possession, custody or control, including information reasonably available to the FTC and its agents, attorneys, or representatives. The FTC may not give lack of information or knowledge as a reason for failure to admit or deny unless the FTC states that it has made reasonable inquiry and that the information known or readily obtainable by the FTC is insufficient to enable it to admit or deny the matter.
- H. If in answering any of the Requests the FTC claims any ambiguity in either the Request or any applicable definition or instruction, identify in its response the language it considers ambiguous and state the interpretation the FTC is using in responding.
- I. Each Request herein is continuing and requires prompt amendment of any prior response if the FTC learns, after acquiring additional information or otherwise, that the response is in some material respect incomplete or incorrect. *See* 16 C.F.R. § 3.31(e).

- J. If the FTC objects to any Request or any portion of any Request on the ground that it requests information that is privileged (including the attorney-client privilege) or falls within the attorney work product doctrine, state the nature of the privilege or doctrine You claim and provide all other information as required by 16 C.F.R. § 3.38A.
- K. For each natural person the FTC refers to in its answers, state (a) that person's full name; (b) the person's last known business address and business phone number, or where that person's business address and phone number is unavailable, that person's home address and home phone number; (c) the person's business affiliation and title during the time period of the matter at issue; and (d) the person's current business affiliation and title.

DEFINITIONS

- A. "Dental Board" shall mean the North Carolina State Board of Dental Examiners, including without limitation all of its locations, and all its predecessors, divisions, committees, subcommittees, councils, working groups, advisory groups, members, officers, employees, consultants, agents, representatives, and other acting on its behalf.
- B. "Dental Board's Response" shall mean the Response to the Complaint filed by the North Carolina State Board of Dental Examiners on July 7, 2010.
- C. "Concerning" means relating to, alluding to, referring to, constituting, describing, discussing, evidencing, or regarding.
- D. "Each" means and includes "each and every," "all" means and includes "any and all," and "any" means and includes "any and all."
- E. "North Carolina Dental Society" means the North Carolina Dental Society, its officers, directors, trustees, employees, attorneys, agents, consultants, members, representatives, committees, subcommittees, chapters, affiliates, subdivisions, councils, or other organizational units.
- F. "North Carolina State Ethics Commission" including without limitation all of its locations, and all its predecessors, divisions, committees, subcommittees, councils, working groups, advisory groups, members, officers, employees, consultants, agents, representatives, and others acting on its behalf.
- G. "Person" means and includes any natural person or any business, legal or governmental entity or association and the officers, directors, employees, agents, consultants and attorneys thereof.
- H. "Regarding" means and includes affecting, concerning, constituting, dealing with, describing, embodying, evidencing, identifying, involving, providing a basis for, reflecting, relating to, respecting, stating, or in any manner whatsoever pertaining to that subject.

CERTIFICATION

Pursuant to 28 U.S.C § 1736, I hereby certify under penalty of perjury that this response to the Requests for Admission has been prepared by me or under my personal supervision from records of the Federal Trade Commission, and is complete and correct to the best of my knowledge and belief.

Signature of Official

Title/Office Telephone Number

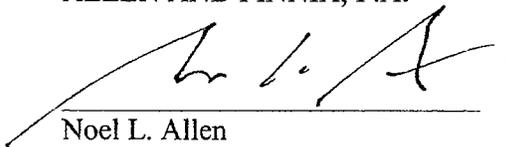
Printed Name of Official

Dated

This the 12th day of October, 2010.

Respectfully submitted,

ALLEN AND PINNIX, P.A.

A handwritten signature in black ink, appearing to read "Noel L. Allen", is written over a horizontal line.

Noel L. Allen
M. Jackson Nichols
Alfred P. Carlton, Jr.
Attorneys for Respondent
Post Office Drawer 1270
Raleigh, North Carolina 27602
Telephone: 919-755-0505
Facsimile: 919-829-8098
Email: nallen@allen-pinnix.com

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2010, I electronically filed the foregoing with the Federal Trade Commission using the FTC E-file system, which will send notification of such filing to the following:

Richard C. Donohue, Acting Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-159
Washington, D.C. 20580

I hereby certify that the undersigned has this date served copies of the foregoing upon all parties to this cause by electronic mail as follows:

William L. Lanning
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room NJ-6264
Washington, D.C. 20580
wlanning@ftc.gov

Steven L. Osnowitz
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room NJ-6264
Washington, D.C. 20580
sosnowitz@ftc.gov

Melissa Westman-Cherry
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room NJ-6264
Washington, D.C. 20580
westman@ftc.gov

Tejasvi Srimushnam
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room NJ-6264
Washington, D.C. 20580
tsrimushnam@ftc.gov

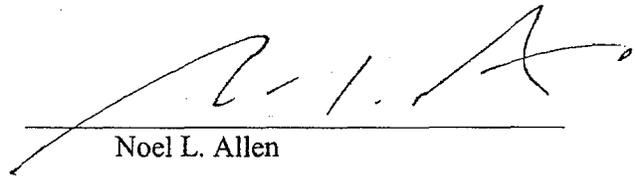
Michael J. Bloom
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-374
Washington, D.C. 20580
mjbloom@ftc.gov

Richard B. Dagen
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-374
Washington, D.C. 20580
rdagen@ftc.gov

I also certify that I have sent courtesy copies of the document via Federal Express and electronic mail to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue N.W.
Room H-113
Washington, D.C. 20580
oa1j@ftc.gov

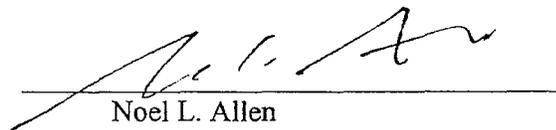
This the 12th day of October, 2010.



Noel L. Allen

CERTIFICATION FOR ELECTRONIC FILING

I further certify that the electronic copy sent to the Acting Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and by the adjudicator.



Noel L. Allen