IN THE MATTER OF

T&N PLC

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3312. Consent Order, Nov. 8, 1990—Modifying Order, Nov. 13, 1991

This order reopens the proceeding and modifies the Commission's 1990 order [113 FTC 1016], regarding the divestiture of certain thinwall engine bearing assets. The Commission has determined that the potential harm to respondent's ability to compete outweighs any further need to require a divestiture of the remaining VanAm inventory.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER

On September 24, 1991, respondent T&N plc ("T&N") filed a "Request for Confirmation that T&N has Discharged its Obligation to Divest the Thinwall Engine Bearing Assets or, in the Alternative, to Reopen the Proceeding and Modify the Consent Order" ("Request") pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. T&N seeks acknowledgement that it has fully complied with its obligations under paragraph III of the consent order in Docket No. C-3312 ("order") to divest the thinwall engine bearing assets or, in the alternative, a modification of paragraph I.10(a) of the order to relieve it of any further divestiture obligations under paragraph III.

Paragraph III of the order requires T&N to divest the "thinwall engine bearing assets" by November 21, 1991. Paragraph I.10(a) defines the term "thinwall engine bearing assets" to include, among other things:

All assets relating to the sale, marketing and distribution of bearings for U.S. gasoline engine applications manufactured by Vandervell directed to the U.S. aftermarket that are based at VanAm's facility in Tucker, Georgia, including, but not limited to, all customer lists, inventory (to be repackaged in plain boxes), and assignment of the building lease and all agreements with sales agencies and fee warehouses, excluding any trademarks or trade names[.]

To date T&N has received Commission approval for a divestiture to

Automotive Components Limited ("ACL") of all the thinwall engine bearing assets required to be divested, with the exception of part of the VanAm inventory.

T&N asserts that the language and purpose of the order do not require it to divest all the VanAm inventory. T&N asserts that where the order requires the divestiture of "all" of a particular asset, it uses the word "all." Paragraph I.10(a) does not call for the divestiture of "all inventory." In addition, T&N urges that requiring the divestiture of the remaining VanAm inventory would be inconsistent with the Commission's unconditional approval of the divestiture to ACL. The Commission notified T&N by letter dated January 30, 1991, that it had approved the divestiture to ACL. That letter did not explicitly require T&N to take any further action to satisfy its obligation under paragraph III. Furthermore, T&N notes that at the time the Commission approved the divestiture to ACL, the Commission was aware of the fact that ACL did not intend to acquire all of the VanAm inventory. In light of the above, T&N asserts that it has complied fully with its obligation under paragraph III to divest the thinwall engine bearing assets.

T&N's arguments are not persuasive. The language of paragraph I.10(a) clearly requires T&N to divest all of the VanAm inventory. T&N's argument ignores the fact that the definition at paragraph I.10(a) begins with the language "all assets relating to the sale, marketing and distribution of bearings for U.S. gasoline engine applications manufactured by Vandervell directed to the U.S. after-market that are based at VanAm's facility in Tucker, Georgia, ..." (emphasis added). By T&N's own reasoning, because the order expressly uses the word "all" it requires the divestiture of "all assets." The definition identifies a number of assets, such as customer lists and inventory, required to be divested. In enumerating those particular assets the definition uses the language: "including, but not limited to, ..." (emphasis added). The particular assets enumerated in paragraph I.10(a), such as "all customer lists," operate not as words of limitation, but rather as words to describe some of the assets included within the universe of "all assets." The inventory falls within this universe, and T&N is required to divest all of it.

Furthermore, assuming *arguendo* that its construction of paragraph I.10(a) is correct, T&N fails to explain what part of the inventory it is required to divest. The Commission has explicitly stated in some orders, for example, that the assets in question be divested at the

election of the acquirer. *See e.g.*, Flowers Industries, Inc., Docket No. 9148, 102 FTC 1700 (1983). The Commission has not done so in this case.

Finally, T&N's assertion that the Commission should have attached some condition to its approval of the divestiture to ACL is unfounded. Nothing in the order required the Commission to take such action in the event T&N chose to divest something less than all the thinwall engine bearing assets. The order does not require T&N to divest the assets to a single acquirer. The language of paragraph III(A) states that the divestiture of the thinwall assets "shall be only to an acquirer (or acquirers) that receive the prior approval of the Commission," (emphasis added), clearly recognizing the fact that the divestiture of the thinwall engine bearing assets might require T&N to enter into one or more transactions. Similarly, the Commission did not condition its approval of the divestiture to ACL upon T&N's divestiture of the tri-metal heavywall engine bearing assets required by paragraph IV of the order. The Commission obviously did not thereby relieve T&N of its obligation to divest those assets.

Accordingly, the Commission believes that T&N has not fulfilled its obligation to divest the thinwall engine bearing assets and will treat T&N's Request as a petition to reopen and modify the order.

T&N asserts that it would be in the public interest to reopen and modify the order to relieve it of the obligation to divest the remaining thinwall engine bearing assets. T&N has not requested, and the Commission has not considered, reopening and modification of the order on the basis of changed conditions of fact or law. Pursuant to Rule 2.51, the Request was placed on the public record for ten days. No comments were received.

After reviewing respondent's Request, the Commission has concluded that the public interest warrants reopening the order and modifying the language of paragraph I.10(a) to relieve T&N of any further obligation to divest thinwall engine bearing assets.

Reopening and Modification of a Commission Order.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission "shall reopen" an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside in whole or in part."[1] The language

[1] Section 5(b) provides,

[T]he Commission shall reopen any such order to consider whether such order (including any affirmative

(footnote cont'd)

of Section 5(b) plainly anticipates that the burden is on the petitioner to make the satisfactory showing of changed conditions to obtain a reopening. T&N has not requested relief on these grounds.

The Commission may also modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. Respondents are invited in requests to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51(b). In the case of a request for modification based on this ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. *See Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1983) (unpublished) ("Damon Letter"), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 FTC 692 (1983). Once this showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. *See* Damon Letter at 2; *see, e.g., Chevron Corp.*, Docket No. C-3147, 105 FTC 228 (1985) (public interest warrants modification where potential harm to respondent's ability to compete outweighs any further need for the order). The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The Order Should Be Reopened and Modified

T&N has demonstrated an affirmative need to modify the order. *Damon Corp., supra.* T&N has demonstrated that the goals of the divestiture have been achieved and that requiring T&N to divest the remaining VanAm inventory could create an impediment to ACL's, as well as T&N's, ability to compete effectively.

ACL neither wants nor needs any additional VanAm inventory. ACL acquired from T&N the exclusive right to use the VanAm trademark until February, 1992, and the non-exclusive right to use the trademark until March, 1993. ACL acquired the rights to the VanAm

relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part.

The 1980 amendment to Section 5(b) did not change the standard for order reopening and modification, but "codified[d] existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

trademark to allow it to enter the market in an orderly fashion and to establish its presence in the market before developing its own trademark. Accordingly, it acquired sufficient quantities of the VanAm inventory to service its needs for that period of time. The order as currently written, however, requires T&N to divest all of the VanAm inventory, whether or not ACL wants or needs that additional inventory. If ACL, nonetheless, acquired the additional inventory, it would incur costs it did not anticipate in acquiring the rest of the thinwall engine bearing assets, which could undermine its ability to compete.

T&N is also being harmed by the continued operation of the Asset Maintenance and Improvement Agreement ("Asset Agreement"). The Asset Agreement prohibits T&N from integrating the McConnelsville facility it obtained from JP Industries into its other operations until it has accomplished the divestitures required by the order.[2] T&N has demonstrated that the Asset Agreement imposes considerable costs on its operations and limits its ability to respond to changes in the market, thereby reducing its ability to compete effectively.

The reasons favoring modification outweigh any reasons for retaining the order as written. Requiring T&N to divest the remaining inventory would not provide any competitive benefit, since there is no reason to believe that such a divestiture would facilitate entry of a new competitor.

The purpose of the thinwall engine bearing assets divestiture is "to remedy the lessening of competition resulting from the acquisition of [JP Industries] by T&N," order at ¶ III, by establishing an acquirer, in this case ACL, as a viable competitor in the market. The order does not seek to reduce competition by depriving T&N of the assets it needs to compete. Here, T&N has divested most of the thinwall engine bearing assets as required by the order and in doing so has satisfied the purpose of the order by establishing ACL as a competitor in the market.[3] Having determined that ACL would be a viable competitor

[2] On September 10, 1991, the Commission approved T&N's application to divest the tri-metal heavywall engine bearing assets to Babbitt Bearings, Inc. T&N and Babbitt Bearings closed that transaction on September 18, 1991.

[3] In *Batus, Inc.*, Docket No. C-3099, 104 FTC 632 (1984), the Commission modified the order to eliminate the respondent's remaining obligation to divest assets where the respondent had demonstrated a good faith effort to comply fully with the divestiture requirements of the order and had divested most of those assets. The Commission modified the order in *Chevron, supra,* to eliminate a hold separate agreement where the respondent had submitted divestiture applications for all the assets required to be divested and the Commission had approved the divestitures with the exception of one application. The final divestiture application was awaiting Commission action. The Commission held that the potential harm resulting from the costs of continuing the hold separate agreement outweighed any need to keep it in effect. The hold separate had "accomplished its primary objectives" and was therefore eliminated.

without obtaining all the VanAm inventory, the Commission sees no need to require T&N to divest the remaining VanAm inventory. In addition, modification of the order to relieve T&N of its remaining divestiture obligation will also result in the termination of T&N's continuing obligations under the Asset Agreement.

Having balanced the reasons favoring the requested modification against those opposing the modification, the Commission has determined that the potential harm to respondent's ability to compete outweighs any further need to require a divestiture of the remaining VanAm inventory. *Chevron Corp., supra.* In addition, T&N has shown that the modification it seeks would eliminate that impediment.

Accordingly, *it is ordered,* that the proceeding be, and it hereby is, reopened for the purpose of modifying the order entered therein;

It is further ordered, That Paragraph I.10(a) be, and hereby is, amended to read:

All assets relating to the sale, marketing and distribution of bearings for U.S. gasoline engine applications manufactured by Vandervell directed to the U.S. aftermarket that are based at VanAm's facility in Tucker, Georgia, including, but not limited to, all customer lists, at the option of the acquirer all or part of VanAm's inventory (to be repackaged in plain boxes), and assignment of the building lease and all agreements with sales agencies and fee warehouses, excluding any trademarks or trade names;

IN THE MATTER OF

NINTENDO OF AMERICA INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3350. Complaint, Nov. 14, 1991—Decision, Nov. 14, 1991

This consent order prohibits, among other things, a Redmond, Wa., based corporation from fixing the prices at which its dealers advertise and sell Nintendo home video-game hardware to consumers. In addition, the consent order requires the respondent to mail a letter to all of its dealers advising them of the order and that they can advertise and sell the products at any price without adverse action by Nintendo.

Appearances

For the Commission: *L. Barry Costilo, Kevin J. Arquit,* and *Michael E. Antalics.*

For the respondent: *Robert A. Longman, Mudge, Rose, Guthrie, Alexander & Ferdon,* New York, N.Y.

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 Nintendo of America Inc. (hereinafter "Nintendo" or "respondent") has violated 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 this complaint stating its charges as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business at 4820-150th Ave., N.E., Redmond, Washington. Respondent is a wholly-owned subsidiary of Nintendo Co. Ltd., with its principal place of business in Kyoto, Japan.

PAR. 2. Respondent is now, and for some time has been, engaged in the offering for sale, sale and distribution of home video game

hardware, software and accessories to retail dealers located throughout the United States, including many of the nation's largest retail chains. Respondent's Nintendo Entertainment System is the number one selling toy in America. In 1989, Nintendo products, and products licensed by Nintendo, accounted for $2.7 billion in retail sales. In 1989, Nintendo home video game hardware accounted for over 80% of all home video game hardware sales, and Nintendo software, together with Nintendo licensed software, accounted for over 80% of all home video game software sales.

PAR. 3. Nintendo maintains, and has maintained, a substantial course of business, including the acts or practices alleged in the complaint, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In connection with the sale and distribution of Nintendo products, respondent, in combination, agreement and understanding with certain of its dealers, has engaged in a course of conduct to maintain the resale prices at which certain of its dealers advertise, offer for sale, and sell its home video game hardware.

PAR. 5. The purpose, effects, tendency, or capacity of the acts and practices described in paragraph 4 are and have been to restrain trade unreasonably and hinder competition in the provision of home video game products in the United States, and to deprive consumers of the benefits of competition in the following ways, among others:

(a) Prices to consumers of Nintendo home video game hardware have been increased; and

(b) Price competition for Nintendo home video game hardware among retail dealers has been restricted.

PAR. 6. The aforesaid acts and practices constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. These acts and practices are continuing and will continue in the absence of the relief requested.

Commissioner Yao not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and

which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Nintendo of America Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4820-150th Ave., N.E., Redmond, Washington. Respondent is a wholly-owned subsidiary of Nintendo Co. Ltd., with its principal place of business in Kyoto, Japan.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

For the purpose of this order, the following definitions shall apply:

(1) *"Product"* means any home video game hardware, software, accessories, or items related thereto which are manufactured, offered for sale or sold by respondent to dealers.

(2) *"Dealer"* means any person, corporation, or firm not owned by Nintendo that in the course of its business sells any product. The term "dealer" does not include licensees of Nintendo which do not act as agents, representatives, or distributors of Nintendo.

(3) *"Resale Price"* means any price, price floor, price ceiling, price range, or any mark-up formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any suggested, established, or customary resale price as well as the retail price advertised, promoted or offered for sale by any dealer.

II.

It is ordered, That respondent Nintendo of America Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of any product in or affecting "commerce," as defined by the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Fixing, controlling, or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product.

(2) Requiring, coercing, or otherwise pressuring any dealer, directly or indirectly, to maintain, adopt, or adhere to any resale price.

(3) Securing or attempting to secure, directly or indirectly, any commitment or assurance from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale or sell any product.

(4) Reducing the supply of products to any dealer or imposing different credit terms in whole or in part due to the dealer's resale price of any product.

(5) Requesting dealers, directly or indirectly, to report the identity of other dealers who advertise, promote, or offer for sale or sell any product below any resale price.

(6) For a period of five (5) years from the date on which this order becomes final, terminating any dealer due in whole or in part to the dealer's resale price of any product. *Provided, however,* that the respondent retains the right to terminate unilaterally any dealer for lawful business reasons, unrelated to resale prices, that are not inconsistent with this paragraph or any other paragraph of this order.

III.

It is further ordered, That, for a period of five (5) years from the date on which this order becomes final, respondent shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where respondent has suggested any resale price to any dealer:

ALTHOUGH NINTENDO OF AMERICA INC. MAY SUGGEST RESALE PRICES FOR PRODUCTS, DEALER IS FREE TO DETERMINE ON ITS OWN THE PRICES AT WHICH IT WILL SELL THE PRODUCTS.

IV.

It is further ordered, That within thirty (30) days after the date on which this order becomes final, respondent mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to all of respondent's present dealers, personnel, distributors, agents, or representatives having sales or policy responsibilities with respect to respondent's products.

V.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respective corporation which may affect compliance obligations arising out of the order.

VI.

It is further ordered, That respondent, within sixty (60) days after this order becomes final, and at such other times as the Commission or its staff shall request, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order.

Commissioner Yao not participating.

EXHIBIT A

Dear Retailer:

Nintendo of America Inc. has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain practices relating to resale prices. A copy of the Order is enclosed. Nintendo has also agreed to a similar order with New York, Maryland and other states. This letter and the accompanying Order have been sent to all of our dealers, sales personnel and representatives.

The Order spells out our obligations in greater detail, but we want you to know and understand the following:

1. You can advertise and sell our products at any price you choose.
2. We will not take any adverse action against you because of the price at which you advertise or sell our products.
3. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

Sincerely yours,

_____

President
Nintendo of America Inc.

IN THE MATTER OF

CONNECTICUT CHIROPRACTIC ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3351. Complaint, Nov. 19, 1991—Decision, Nov. 19, 1991

This consent order requires, among other things, an association of approximately 350 chiropractors to cease and desist from prohibiting, regulating, or interfering with its members offering free services or services at discounted fees and from prohibiting, regulating, or interfering with its members' advertising.

Appearances

For the Commission: *Andrew D. Caverly* and *Phoebe D. Morse.*

For the respondent: *Robert L. Hirtle, Jr., Rogin, Nassau, Kaplan, Lassman & Hirtle,* Hartford, CT.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Connecticut Chiropractic Association, a corporation, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Federal Trade Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Connecticut Chiropractic Association ("respondent" or "CCA") is a corporation formed and doing business pursuant to the laws of the State of Connecticut. Respondent is a voluntary association of approximately 350 chiropractors, constituting approximately 86 percent of the chiropractors practicing in Connecticut. Its principal business office is located at 28 Main Street, East Hartford, Connecticut.

PAR. 2. Respondent is a corporation organized for the purpose, among others, of serving the interests of its members by associating them into a practical business organization and is engaged in substantial activities that further its members' pecuniary interests. By

virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 3. Respondent's members are engaged in the business of providing chiropractic services for a fee. Except to the extent that competition has been restrained as alleged herein, and depending on their geographic location, respondent's members have been and are now in competition among themselves and with other chiropractors.

PAR. 4. The acts and practices of CCA, including those herein alleged, are in commerce or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 5. Respondent has acted as a combination of its members, or conspired with at least some of its members, to restrain competition among chiropractors in the State of Connecticut by prohibiting its members from offering free services and services at discounted fees, and from disseminating truthful, nondeceptive information through advertising and other means.

PAR. 6. In furtherance of the combination or conspiracy alleged in paragraph five, CCA has engaged in the following acts or practices, among others:

A. Adopted and maintained provisions in its Ethical Code that prohibit its members from:

1. Offering free services or services at discounted fees to consumers, thereby deterring price competition among members;

2. Advertising free or discounted services to consumers, including by use of coupons, thereby deterring members from offering such services and depriving consumers of truthful information;

3. Advertising that CCA considers to be "sensational," "undignified," and not in "good taste," thereby discouraging advertising that is effective because it attracts attention or is memorable; and

4. Implying that they possess "unusual expertise" without meeting additional experience and educational requirements that a recognized chiropractic accrediting agency has approved, thereby depriving consumers of truthful information regarding the quality of chiropractors in areas of practice for which no certification exists, and the quality of chiropractors who acquire expertise in areas of practice without receiving certification.

B. Coerced its members to comply with its Ethical Code by, among other things:

1. Threatening members who violate the Code with expulsion from CCA;

2. Threatening, in the CCA quarterly journal and at CCA meetings, members who advertise free or discounted services that CCA will attempt to influence health insurance companies to disallow or reduce reimbursements to their patients; and

3. Threatening, in the CCA quarterly journal and at CCA meetings, members who violate the Code that CCA will report them to chiropractic malpractice insurance carriers.

PAR. 7. Respondent's actions described in paragraphs five and six have had, or have the tendency and capacity to have, the following effects, among others:

A. Restraining competition among chiropractors with respect to price, quality, and other terms of service;

B. Depriving consumers of truthful, nondeceptive information about the availability, price, and quality of chiropractic services; and

C. Depriving consumers of the benefits of free and open competition among chiropractors.

PAR. 8. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Such combination or conspiracy, or the effects thereof, is continuing and will continue or recur absent the entry against respondent of appropriate relief.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged