IN THE MATTER OF

NISSAN MOTOR CORPORATION IN U.S.A.

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

Docket C-3502. Complaint, June 29, 1994--Decision, June 29, 1994

This consent order requires, among other things, a California-based corporation to disclose clearly and prominently in each advertisement either any significant restrictions that apply to obtaining a promotional benefit in connection with a test-drive offer, or that there are significant restrictions that apply to obtaining the benefit, and prohibits the respondent from misrepresenting the existence, nature or any conditions, restrictions or limitations on any promotional benefit it offers consumers in the future.

Appearances

For the Commission: *Phillip L. Broyles, Michael Milgrom* and *Melissa R. Sternlicht.*

For the respondent: *William C. MacLeod, Collier, Shannon, Rill & Scott, Washington,* D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Nissan Motor Corporation in U.S.A., a corporation ("respondent"), has violated the provisions 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, alleges:

PARAGRAPH 1. Respondent is a California corporation, with its office or principal place of business located at 18501 South Figueroa Street, Carson, California.

PAR. 2. Respondent has advertised, distributed, offered for sale and sold (through dealers) new automobiles including the Nissan Stanza, a four door sedan.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for the Nissan Stanza Challenge Program, including but not necessarily limited to the attached Exhibit A. These advertisements contain the following statements:

(A) Man: Okay, so I'm thinking about a new car. I'm reading the papers, I'm looking around. I finally decide on a Camry. Or maybe an Accord. That's nice, too. Okay, so either one. But then I hear about this thing that Nissan's doing. The Nissan Stanza Challenge, they call it. What is that? I don't know, but I like a challenge, so I go to a Nissan Dealer to check it out. Now get this. They tell me that if I buy the Camry or the Accord, they're gonna give me a hundred dollars. Did you understand what I said just then? Nissan will give you a hundred dollars to buy a Toyota or a Honda! So what's the catch, I ask myself, because there has to be a catch. There's no catch! Just test-drive a Nissan Stanza first. No sweat, easiest hundred I ever made, right? Wrong. See, Nissan knows once you drive a Stanza, with its powerful engine, roomy interior, great handling --you're not gonna want a Camry. Or an Accord. That's the catch.

Anncr: See the 1990 Stanza at your nearest Nissan Dealer now, where satisfaction is standard equipment.

Legal Anncr: Offer open to licensed drivers 18 years of age or older. Proof of purchase of 1990 Camry or Accord required. See your participating Nissan Dealer for details.

(Exhibit A, transcript of radio advertisement.)

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that consumers who test drove a Nissan Stanza and subsequently purchased a Honda Accord or Toyota Camry during the period of the Nissan Stanza Challenge could readily obtain the $100 payment specified in the advertisement.

PAR. 6. In truth and in fact, many consumers who test drove a Nissan Stanza and subsequently purchased a Honda Accord or Toyota Camry during the period of the Nissan Stanza Challenge could not readily obtain the $100 payment specified in the advertisement. In order to receive the $100, the consumer could not purchase the Honda Accord or Toyota Camry on the same day as the test drive, but had to purchase, take delivery, and submit documentary proof of the purchase within seven days after test driving the Nissan Stanza. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. In its advertising of the Nissan Stanza Challenge Program, respondent represented, directly or by implication, that respondent would pay $100 to consumers who test drove a Nissan Stanza but purchased a Honda Accord or a Toyota Camry. These advertisements failed to disclose that in order to receive the $100, the consumer could not purchase the Honda Accord or Toyota Camry on the same day as the test drive, and that the consumer had to purchase, take delivery, and submit documentary proof of the purchase within seven days after test driving the Nissan Stanza. These restrictions would be material to consumers in deciding whether to test drive a Stanza or otherwise take part in the Program. The failure to disclose that there were significant restrictions, in light of the representation made, was, and is, a deceptive act or practice.

PAR. 8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Chairman Steiger and Commissioner Yao dissenting.

EXHIBIT A

Chiat/Day/Mojo Copy

Man: Okay, so I'm thinking about a new car. I'm reading the papers, I'm looking around. I finally decide on a Camry. Or maybe an Accord. That's nice, too. Okay, so either one. But then I hear about this thing that Nissan's doing. The Nissan Stanza Challenge, they call it. What is that? I don't know, but I like a challenge, so I go to a Nissan Dealer to check it out. Now get this. They tell me that if I buy the Camry or the Accord, they're gonna give me a hundred dollars. Did you understand what I said just then? Nissan will give you a hundred dollars to buy a Toyota or a Honda! So what's the catch, I ask myself, because there has to be a catch. There's no catch! Just test-drive a Nissan Stanza first. No sweat, easiest hundred I ever made, right? Wrong. See, Nissan knows once you drive a Stanza, with its powerful engine, roomy interior, great handling -- you're not gonna want a Camry. Or an Accord. That's the catch.

Anncr: See the 1990 Stanza at your nearest Nissan Dealer now, where satisfaction is standard equipment.

Legal Anncr: Offer open to licensed drivers 18 years of age or older. Proof of purchase of 1990 Camry or Accord required. See your participating Nissan Dealer for details.

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 Consumer Protection 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 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 the respondent had violated the said Act, and that a 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 Nissan Motor Corporation in U.S.A. is a corporation organized, existing and doing business under and by virtue of the laws of the state of California with its offices and principal place of business at 18501 South Figueroa Street, Carson, California.

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

DEFINITIONS

1. "*Promotional benefit*" as used herein shall mean any prize award or consideration, including, but not limited to, money, favorable credit terms and optional equipment packages having a *bona fide* retail value over $25.

2. "*Clearly and prominently*" as used herein shall mean as follows:

(a) In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer, to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.

I.

It is ordered, That respondent Nissan Motor Corporation in U.S.A., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any motor vehicle in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that persons who test drive a Nissan motor vehicle can readily obtain a promotional benefit when significant restrictions prevent consumers from readily obtaining that promotional benefit without disclosing clearly and prominently in each advertisement in which the representation is

made either the significant restrictions or that there are significant restrictions that apply to obtaining the promotional benefit.

II.

It is further ordered, That respondent Nissan Motor Corporation in U.S.A., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any motor vehicle in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, nature or extent of any condition, restriction or limitation on any promotional benefit offered to consumers.

III.

It is further ordered, That, for three (3) years from the date that the advertisements are last disseminated, respondent shall maintain and, upon request, make available to the Commission for inspection and copying:

(A) Copies of all advertisements subject to paragraphs I or II of this order;

(B) Copies of all communications to affiliated dealers and all information and other materials supplied by respondent to the dealer in connection with any representation subject to paragraphs I or II of this order; and

(C) All correspondence received from consumers, whether received by respondent or by an agent of respondent, related to any promotional benefit program advertised in a manner subject to paragraphs I or II of this order.

IV.

It is further ordered, That respondent shall, within sixty (60) days of service of this order, distribute a copy of this order to each of its operating divisions and to each officer and other person responsible for the preparation or review of advertising material including outside

advertising agencies, and to a representative of each of its affiliated dealers and shall secure from each such person a signed statement acknowledging receipt of a copy of this order.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation 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 corporation which may affect compliance obligations arising out of this order.

VI.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this order.

JOINT DISSENTING STATEMENT OF
CHAIRMAN JANET D. STEIGER AND COMMISSIONER DENNIS A. YAO

We dissent from issuance of the consent order with Nissan Motor Corp. Because the order does not sufficiently remedy one of the alleged law violations, it may give implicit approval to the use of seemingly attractive promotional offers that many consumers simply cannot utilize because of limitations such as severe time restrictions or extremely difficult documentation requirements.

Through advertisements for the Nissan Stanza "Challenge Program," Nissan ran a promotional program inviting consumers to come to a Nissan dealership, test drive the Nissan Stanza and receive $100 if, after driving the Stanza, they bought either a Toyota Camry or a Honda Accord. The advertising expressly stated that there was "no catch" to this offer. What consumers were not told was that, in order to obtain the $100, it was necessary to purchase and take delivery of the Camry or Accord and submit detailed proof of purchase (including documents not usually retained by consumers after purchase) to Nissan, all within seven days (but not on the same day as the test drive). The complaint alleges that the failure to

disclose that the program had such significant restrictions was deceptive, and that Nissan's explicit advertising claim that the offer had "no catch" falsely represented that consumers could readily obtain the $100 payment.

In our view, the consent order may do little to remedy the failure to disclose allegation. Part I of the order prohibits Nissan from representing, directly or by implication, that persons who test drive a Nissan can "readily obtain" a promotional benefit -- when significant restrictions prevent consumers from readily obtaining that benefit -- unless Nissan also discloses either those restrictions or that significant restrictions apply. Since paragraph 5 of the complaint uses the same term, "readily obtain," to characterize the express "no catch" claim in Nissan's ad, and paragraph 4 of the complaint only references the advertisement with an express "no catch" claim, the order could be interpreted to require disclosure only when language similar to "no catch" or "no catches" is used.

To suggest otherwise -- namely that the order requires disclosure any time Nissan offers a promotion and uses very general language such as "Come on in and get a [benefit]" -- would read out of the order the "readily obtain" limiting language. Consequently, although we understand that some would read the order differently, the order might be interpreted as standing for the proposition that advertisements need not contain any disclosure of the nature or even existence of limiting conditions, no matter how onerous, unusual, or unexpected, unless the advertiser uses language similar to a "no catches" claim.

Moreover, even when an affirmative expression such as "no catches" is used in making an offer, the order would allow an advertiser to disclose only that significant restrictions apply to the offer, not what those restrictions are or where the consumer can obtain additional information about them. Although reasonable minds can differ on whether a disclosure that "significant restrictions" apply would adequately inform consumers when ready availability is implied in an advertisement, such a disclosure for an express "no catches" claim is manifestly contradictory. This order would seem to allow advertisers to claim to consumers that there are no catches in connection with the offer, so long as the ad elsewhere discloses that there are significant restrictions. The use of such contradictory statements in the same advertisement conflicts with

Commission precedent. *See* Commission Statement on Deception, 103 FTC 110, 180-81.

Finally, the order does not contain a point of sale disclosure requirement. Consequently, even if consumers understand the disclosure of "significant restrictions" as overriding the express "no catches" claim, there is no sure way of learning about the restrictions.

We do not suggest advertisers must disclose every limitation on their offers in advertising. Consumers generally expect that offers have reasonable time limits and other conditions. This order may suggest, however, that even severe restrictions -- *i.e.*, those that make the offer impractical or impossible for many consumers to redeem -- need not be disclosed in an adequate fashion. Such an approach is not without cost to consumers -- especially in cases, such as this one, where consumers usually shop for the product by visiting sales locations and, consequently, where such offers could induce them to make a special visit.

SEPARATE STATEMENT OF COMMISSIONERS MARY L. AZCUENAGA, DEBORAH K. OWEN, AND ROSCOE B. STAREK, III

We write to respond to the concerns expressed in our colleagues' joint dissenting statement about how the consent order in this matter might be interpreted and what it would seem to allow in connection with other promotional advertisements. Like other consent orders, this order was negotiated in response to particular facts and circumstances. Although the order identifies conduct the Commission will not allow, no legal inference properly can be drawn that conduct not mentioned in the complaint and order has been approved. The legal standards by which promotional advertisements are measured are well established in sources having precedential value. As always, advertisers would be well-advised to consult these sources to determine the legal standards to which they must conform.

IN THE MATTER OF

MANZELLA PRODUCTIONS, INC., ET AL.

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

Docket C-3503. Complaint, June 30, 1994--Decision, June 30, 1994

This consent order prohibits, among other things, a New York wholesaler of gloves, and its owner, from misrepresenting the extent to which any gloves or other items of wearing apparel are made in the United States or any other country, and from violating any provision of the Wool Products Labeling Act, and requires them to pay $7,500 in disgorgement in lieu of consumer redress.

Appearances

For the Commission: *Brinley H. Williams.*

For the respondents: *Gary L. Mucci, Saperston & Day, P.C.,* Buffalo, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Manzella Productions, Inc., a corporation, and Anthony L. Manzella, Jr., individually and as an officer of said corporation (hereinafter sometimes referred to as respondents), have violated the provisions of the Wool Products Labeling Act and 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, alleges:

PARAGRAPH 1. Respondent Manzella Productions, Inc., is a New York corporation which manufactures and sells gloves. Its principal office or place of business is located at 5684 Main Street, Post Office Box 1243, Buffalo, New York.

Respondent Anthony L. Manzella, Jr., is an officer and director of said corporation. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices herein set forth. His address is the same as that of the corporation.

PAR. 2. Respondents have manufactured, assembled, labeled and offered for sale, sold and distributed gloves under the Manzella name, which are sold through retailers to consumers. Such gloves include wool products, as "wool product" is defined in the Wool Products Labeling Act, 15 U.S.C. 68.

PAR. 3. The acts and practices of respondents alleged in this Complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondents have sold and distributed, or have caused to be sold and distributed certain models of gloves manufactured in China. In some cases, respondent removed the foreign country of origin labels from these gloves and affixed labels containing the statement, "Manufactured in the USA exclusively by Manzella." Some of the gloves so labeled were of 85 percent wool and 15 percent nylon and some were made of leather. An example of the labels affixed by respondents is attached as Exhibit A.

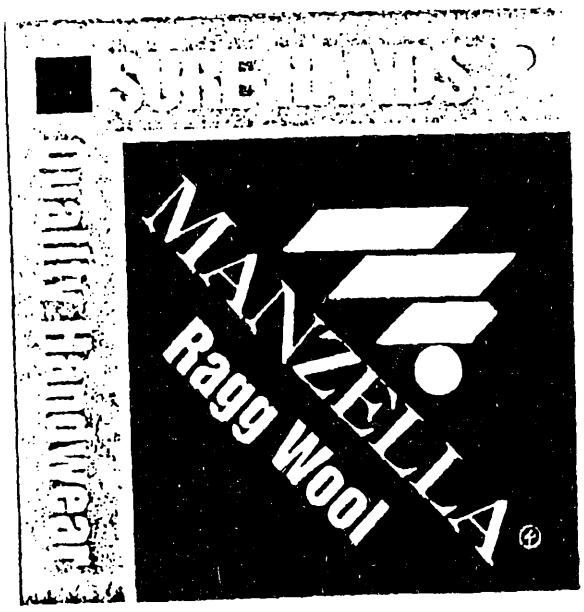
PAR. 5. Through the use of the statement contained on the labels affixed to the gloves by respondents referred to in paragraph four, including, but not necessarily limited to, the label attached as Exhibit A, respondents have represented, directly or by implication, that such gloves are made in the United States.

PAR. 6. In truth and in fact, the gloves referred to in paragraph five, were manufactured in a foreign country with foreign component parts. Therefore, the representation set forth in paragraph five was and is false and misleading.

PAR. 7. The acts and practices of respondents as alleged in this complaint in misrepresenting foreign-manufactured gloves made of 85 percent wool as made in the United States constitute a violation of the Wool Products Labeling Act and the Commission's Rules and Regulations promulgated thereunder, and constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

PAR. 8. The acts and practices of respondents as alleged in this complaint in misrepresenting foreign-manufactured leather gloves as made in the United States constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A


Manufactured in the USA exclusively by
MANZELLA'
PO Box 1243 Buffalo, N.Y. 14231
WASHING INSTRUCTIONS
Hand wash in Cool water. Dry flat.
85% Wool. 15% Nylon
MANZELLA
Ragg Wool

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act, and the Commission's Rules adopted thereunder; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 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 the respondents have violated the said Act, 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, 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 Manzella Productions, Inc., is a corporation with its office or principal place of business located at 5684 Main Street, Post Office Box 1243, Buffalo, New York.

Respondent Anthony L. Manzella, Jr., is an officer of said corporation. In his capacity as an officer, he formulates, directs and controls the acts and practices of said corporation, and his business address is the same as that of the corporation.

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

ORDER

I.

It is ordered, That respondents Manzella Productions, Inc., a corporation, and Anthony L. Manzella, Jr., individually and as an officer of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any gloves or other items of wearing apparel in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from violating any provision of the Wool Products Labeling Act (15 U.S.C. 68) and the Commission's Rules adopted thereunder (16 CFR Part 300), and from misrepresenting, in any manner, directly or by implication, the extent to which any such gloves or other item of wearing apparel are made in the United States, or any other country.

II.

It is further ordered, That respondents, their successors and assigns, shall pay Seven Thousand, Five Hundred Dollars ($7,500) as disgorgement in lieu of consumer redress. Such payment shall be by cashier's check or certified check made payable to the Federal Trade Commission. Such check shall be held by counsel for the respondents until this order becomes final and then delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C., within ten (10) days of this order becoming final. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, respondents shall pay interest as computed under 28 U.S.C. 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

III.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents or their successors and assigns shall maintain and, upon

request, make available to the Federal Trade Commission for inspection and copying:

(A) All materials that were relied upon in disseminating such representations; and

(B) All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

V.

It is further ordered, That the respondent corporation shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation, 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 corporation which may affect compliance obligations under this order.

VI.

It is further ordered, That respondent Anthony L. Manzella, Jr., shall, for a period of seven (7) years from the date of entry of this order, notify the Federal Trade Commission, within thirty (30) days, of the discontinuance of his present business and of his affiliation with any new business or employment. Each notice of affiliation with any new business shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment, and his duties and responsibilities.

VII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Re: A program proposed by the American Medical Association and the Chicago Medical Society involving peer review of physician fees is not likely to violate federal antitrust laws. [*American Medical Association, P923506*]

February 14, 1994

Dear Messrs. Johnson and Peterson:

This letter responds to the request of the American Medical Association ("AMA") and the Chicago Medical Society ("CMS") for an advisory opinion on the permissibility under the antitrust laws of a system of professional society peer review of physicians' fees. The proposed program has two facets: a system for rendering advisory opinions on patients' complaints about fees and other matters, and a disciplinary process aimed at "egregious" practices by physicians. The Commission is of the opinion that the proposed program would not be likely to violate any law enforced by the Commission if the disciplinary process is limited to certain abusive physician practices as described in this letter. However, to the extent that the proposed program contemplates authorizing a group of physicians to discipline a competing physician on the basis of fee levels alone, without regard to abusive conduct, there is a substantial danger that the implementation of the program may injure consumers and violate the antitrust laws. Antitrust law does not preclude AMA and CMS from addressing in other ways information disparities in the market that may result in what AMA considers to be excessive medical fees. As is discussed below, AMA and CMS could adopt a fee disclosure requirement to address this issue.

The Commission has often observed that the antitrust laws do not impede legitimate professional self-regulation that benefits consumers. For example, in the American Medical Association case, in which the Commission found that medical associations had violated the antitrust laws by suppressing the dissemination of truthful information about physicians' services and fees, the Commission nonetheless emphasized that the AMA had "a valuable and unique role" to play with respect to policing deceptive advertising and oppressive forms of solicitation by physicians. *American Medical Association*, 94 FTC 701, 1029 (1979), *aff'd as modified*, 638 F.2d 443 (2d Cir. 1980), *aff'd by an equally divided Court*, 455 U.S. 676 (1982).

The Commission has never challenged a medical society's fee peer review program. Peer review was not an issue in the AMA case, and the order entered in that case, and orders in subsequent cases, made it clear that peer review of individual physicians' fees was not categorically prohibited. On the contrary, as AMA notes in its petition, the Commission has recognized the procompetitive benefits of properly managed peer review systems. More than a decade ago, the Commission formally approved a professional association's proposal for a fee peer review program that has many features in common with the system now proposed by AMA and CMS. *Iowa Dental Association*, 99 FTC 648 (1982).

Iowa Dental established a safe harbor for a certain kind of peer review system. In addition, members of the staff have publicly invited professional groups desiring to use other models to submit them for the Commission's consideration. And at least as early as 1985, the Commission's Bureau of Competition informally invited AMA to provide information on fee review so that the staff could evaluate AMA's concerns about the adequacy of the Iowa Dental approach. Although AMA never accepted that invitation, it did provide such information in connection with the present petition.

AMA and CMS ask the Commission's opinion on three changes from the type of program approved in Iowa Dental: (1) members of the medical society would be required to participate in the peer review process; (2) physicians charging unusually high fees would be subject to discipline in certain circumstances; and (3) the fact of a disciplinary action against a physician would be made public.

On the basis of information provided by AMA and CMS, the Commission is of the opinion that a program along the lines of that presented by the petition can benefit consumers and operate without violating any law enforced by the Commission. Requiring medical societies' members to provide information needed by advisory fee review committees in the course of their deliberations can promote the important information-generating value of such peer review. AMA's proposal to discipline doctors raises issues requiring careful analysis, but the Commission is of the opinion that the antitrust laws do not stand in the way of discipline for abusive practices as discussed in this letter or discipline for violations of certain information disclosure requirements. If the disciplinary action itself is legitimate, disclosing to the public the names of doctors who have been disciplined is not likely to injure competition, and may promote competition and bene-