

Analysis to Aid Public Comment
In the Matter of the Professional Skaters Association, Inc.
File No. 131 0168

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from the Professional Skaters Association, Inc. (hereinafter “PSA”). The Commission’s complaint (“Complaint”) alleges that PSA, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by adopting and maintaining a provision in its Code of Ethics that restrains coaches from soliciting teaching work.

Under the terms of the proposed Consent Agreement, PSA is required to cease and desist from restricting competition among its members, or working with other ice skating organizations to restrict competition, including by restricting solicitation, advertising, or price--related competition.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (“the Proposed Order”).

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by PSA that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

PSA is a non-profit trade association whose members include approximately 6400 coaches of ice skating who teach, train, and coach skaters at all levels -- from beginners to elite skaters. Many PSA members teach and coach skaters for a fee. Some PSA members are employed at schools, universities, ice skating clubs, and ice skating rinks. PSA membership provides financial benefits to its members.

PSA membership and continuing education is required by the U.S. Figure Skating Association (“USFSA”) for coaches of skaters participating in: (i) USFSA qualifying competitions, and (ii) international ice skating competitions as part of Team USA. Because of this requirement, PSA membership is required in order to coach competitive skaters.

Coaches require access to ice skating rink facilities. Some ice skating rink facilities require that coaches have PSA membership.

PSA maintains a Code of Ethics applicable to the commercial activities of its members. The PSA Code of Ethics states that, “No member shall in any case solicit pupils of another member, directly or indirectly, or through third parties.” The PSA Code of Ethics also requires that, “Prior to acting as a coach, the member shall determine the nature and extent of any earlier teaching relationship with that skater and other members.”

B. The Anticompetitive Conduct

The Complaint alleges that PSA violated Section 5 of the Federal Trade Commission Act by restraining competition among coaches of ice skating through adoption and enforcement of the no-solicitation provision of PSA’s Code of Ethics. This is in effect an agreement among competitors not to compete. PSA interprets the no-solicitation rule broadly, prohibiting direct, indirect, third-party, and social media solicitation of teaching work. PSA has instructed its members and others that the Code of Ethics no solicitation rule prohibits coaches from many types of direct or indirect communication with skaters and parents, including:

- Suggesting a skater change coaches
- Suggesting a skater would have better results by changing coaches
- Suggesting a skater who attends a seminar stay for a few days of additional training
- Sending recruiting material to a skater or parent
- Claiming one coach is a more qualified coach than another
- Claiming one ice skating program is better than another
- Offering free lessons, ice time, or equipment

PSA requires its members to agree to abide by the Code of Ethics, educates members about the Code of Ethics, exhorts its members to follow the Code of Ethics and polices members’ behavior. It also enforces the Code of Ethics through a grievance process administered by PSA’s Committee on Professional Standards (the “COPS”). PSA has enforced the Code of Ethics no-solicitation provision against at least nine member coaches since 2006, with penalties including private admonition, public admonition, suspended membership, and probation.

PSA has sanctioned member coaches for soliciting students of other members even when the students and their parents wanted to switch coaches for a variety of compelling reasons. PSA has enlisted parents and skaters in the effort to enforce the Code of Ethics no-solicitation provision. The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of PSA has been and is to restrain competition

unreasonably and to injure consumers by discouraging and restricting competition among ice skating teachers and coaches.

II. The Proposed Order

The Proposed Order has the following substantive provisions:

Paragraph I contains definitions for terms used in the Order.

Paragraph II requires PSA to cease and desist from restraining or declaring unethical, interfering with, or advising against the solicitation of teaching work. It also requires that PSA not prohibit or advise against coaches' solicitation of students. Paragraph II requires PSA to cease and desist from encouraging or assisting any other organization to adopt, maintain, or enforce any Code of Ethics or other restriction on solicitation. Finally, Paragraph II requires PSA to cease and desist from restraining price competition, including offering free lessons.

The Proposed Order does not prohibit PSA from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its Members with respect to (i) representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act; (ii) prevention of sexual and physical abuse of children; or (iii) in-person solicitation of a skater actively engaged in (a) a skating lesson, or (b) skating or preparing to skate at an arena in a test, competition, or exhibition. The Order defines skating or preparing to skate as including meetings with coaches, locker room time, practice skating, and warm-up skating.

Paragraph III of the Proposed Order requires PSA to remove from its organization documents and website any statement inconsistent with the Proposed Order. PSA must publicize to its members, new members, leaders, employees, and the public the changes PSA must make to the Code of Ethics, and a statement describing the Consent Agreement. Finally, PSA must notify the Ice Skating Institute ("ISI") and United States Figure Skating Association that PSA (i) agreed to change its Code of Ethics and (ii) will not enforce or investigate on behalf of Skating Organizations violation of any Code of Ethics or practice that does not comply with the FTC's Order against PSA. Further, the Order requires PSA to notify USFSA and ISI that the Order will prevent PSA from doing on behalf of USFSA or ISI anything that, if done by PSA, would be inconsistent with the Order against PSA. This is necessary because PSA provides various education services on ethics to both USFA and ISI coaches.

Paragraph IV of the Proposed Order requires PSA to design, maintain, and operate an antitrust compliance program. PSA must have an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, PSA must provide guidance to its staff, employees, members, and leaders concerning the antitrust laws and PSA obligations under the Proposed Order. PSA also must implement policies and procedures to enable persons to ask questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its leaders, employees and agents for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed Order require certain standard compliance reporting, cooperation, and access.

The Proposed Order will expire in the 20 years.