

The Complaint indicates that the MNTA Code of Ethics provision, "The teacher shall respect the integrity of other teachers' studios and shall not actively recruit students from another studio" violates FTC regulations because it serves to "...restrain competition unreasonably and to injure consumers by discouraging and restricting competition among music teachers, and by depriving consumers and others of the benefits of free and open competition among music teachers..."

I am not a member of MTNA, but a family member of mine is. I was a public school music teacher, who is currently still in public service with a state agency, and those are the perspectives I bring to a reading of both the MTNA Code of Ethics and the Complaint. Overall, it seems to me that the standard for the violation has two main components: (1) that competition is not "unreasonably" restrained and that (2) consumers are not "deprived of benefits of free and open competition." I am ignoring the clause in the complaint that consumers are "injured by discouraging and restricting competition among teachers," because I do not see how the acts of discouraging and restricting competition directly injure any consumer on their own, unless the second half of the sentence ("benefits of competition") is demonstrated.

As a citizen and consumer, I believe there are real benefits to competition (goodness knows, I wish Comcast Cable had some competition in our area, because they raise rates constantly and seemingly unfettered - but then, their lobby and legal departments dwarf a professional association such as MTNA). I am not convinced that the practices behind the clause in the MTNA Code of Ethics represent unreasonable restriction of competition nor serve to disadvantage consumers (students or their parents). In fact, I believe the opposite. The clause in practice seems to be focused on preventing teachers from activities that target students or their parents specifically of another studio, which can be disruptive to the teaching and learning process at least and border on slander or harm to the other teacher or his studio, if false information is utilized. It seems to in no way prevent all teachers from freely advertising aspects of their studio to recruit students, regardless of whether they are currently studying with another teacher or not. Neither does this clause or anything in the Code of Ethics in any way inhibit the consumer's ability to make a free choice of teacher. Therefore, competition may be restrained by the clause, under what the membership of this professional organization defines as "respectful and professional" behavior, but it is restrained neither completely nor unreasonably.

Further, the specific restraint encouraged by this clause in the Code serves to protect the teaching/learning experience of the student, and maintain a decorum in the profession that helps to prevent the search for or engagement in the study of music from becoming an experience akin to buying a used car. This is a profession engaged in human services and enrichment, primarily in the education of children, and needs to be comprised of individuals with demonstrable ethical behavior. The second part of the Code referenced in the Complaint as a violation, which indicates that teachers who have disputes should resolve them among themselves, is a manner through which the profession polices itself. This is similar to other human service professions. For example, the AMA's Code of Ethics, Opinion 9.045, encourages medical institutions to develop by laws that deal with disruptive behavior of medical professionals as follows:

(3) In developing policies that address physicians with disruptive behavior, attention should be paid to the following elements: (a) Clearly stating principal objectives in terms that ensure high standards of patient care and promote a professional practice and work environment.

In my experience, this provision in the MTNA Code of Ethics serves the same purpose as the similar one in the medical profession. Further, the AMA's Opinion seems to clearly

signify a need to have such policies in place and clearly places the authority and responsibility for defining the behaviors associated with the profession with the medical organization or institution itself. This seems to be precisely the role that MTNA has executed in its Code of Ethics.

Finally, there are situations in this country with major services to citizens, such as the cable service in my area that I mentioned above, where an investigation into whether there is harm happening to citizens due to lack of competition could greatly affect the "benefits" I receive from competition - even if a violation is not proved. For reasons I have outlined above, I do not agree with the judgment in the Complaint. And, this case seems on face value (even if technically an allowable investigation) a waste of time and resources that could possibly have been spent on investigations whose outcomes could tangibly improve services for consumers.