

The allegation that Schein entered into an agreement with Benco and Patterson—its fierce competitors—not to do business with buying groups is untenable, and contradicted by Schein’s own buying group relationships. Schein has consistently made independent decisions about whether to work with particular buying groups, as with any other customer, and has engaged with buying groups when it made economic sense to do so. Simply put, Schein has done business with, and continues to do business with, the very groups the Complaint alleges Schein conspired to boycott.

RESPONSE TO SPECIFIC ALLEGATIONS

1. Paragraph 1 of the Complaint contains conclusions of law to which Schein is not required to respond. Schein denies that it violated Section 5 of the Federal Trade Commission Act or engaged in any unlawful conduct. Schein specifically denies any conspiracy among Schein, Benco, and Patterson to refuse to offer discounted prices or otherwise negotiate with buying groups. Schein asserts that for well over a decade, Schein has done business, and continues to do business, with numerous group purchasers, including buying groups. To the extent any further response is required, Schein denies the allegations in Paragraph 1.

2. Schein lacks sufficient knowledge or information to form a belief about the truth of the allegations relating to Respondents’ collective market share, and, therefore, denies such allegations. Schein admits that it competes vigorously against numerous competitors, including, but not limited to, Benco and Patterson. Schein admits that it sells dental supplies and equipment to solo practitioners and small group dental practices, among other customers. To the extent any further response is required, Schein denies the remaining allegations in Paragraph 2.

3. Schein denies the allegations in Paragraph 3 to the extent they narrowly define the term “buying group”; purport to describe all group purchasers; and suggest that “buying groups,”

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States. Schein lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph 13; and, therefore, denies such allegations.

14. Admitted.

15. Schein admits that Patterson Companies, Inc. is a full-service, national distributor

28. Schein lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 28; and, therefore, denies such allegations.

29. Schein lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 29 of the Complaint; and, therefore, denies such allegations.

30. Paragraph 30 contains conclusions of law to which no response is required. Schein admits that it sells dental supplies, equipment, and services to dentists across the United States. Schein lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph 30; and, therefore, denies such allegations.

31. Schein denies the allegations contained in Paragraph 31, and asserts that Schein has continually competed for the business of buying groups, and provided discounts to such groups for well over a decade.

32. Schein denies the allegations contained in Paragraph 32, and asserts that Schein has competed for the business of buying groups, and provided discounts to such groups, before and after July 2012.

33. Upon information and belief, Schein understands that Benco historically had a policy of not doing business with buying groups. Schein admits that it has historically worked, and continues to work, with buying groups. Schein denies that there was any point in time when it “began pursuing an anti-buying group strategy” or stopped working with all buying groups. Schein admits that a Benco senior executive communicated with a Schein senior executive on topics unrelated to buying groups prior to July 2012. To the extent any further response is required, Schein denies the allegations in Paragraph 33.

34. Schein denies the allegations in Paragraph 34. Schein has competed, and continues to compete, for the business of buying groups, in part by providing discounts to those groups.

35. Schein notes that the Commission mischaracterizes or takes out of context the cited quotations. Schein lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 35; and, therefore, denies such allegations.

36. Schein denies the allegations in Paragraph 36 to the extent they suggest that Schein was a party to any agreement not to do business with buying groups. Schein asserts that it has competed for the business of buying groups and provided discounts to numerous buying groups for well over a decade. Schein lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph 36; and, therefore, denies such allegations.

37. Schein lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 37; and, therefore, denies such allegations. To the extent that Paragraph 37 purports to describe the contents of a document, that document is the best evidence of its contents and no response is necessary.

38. Schein lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 38; and, therefore, denies such allegations.

39. To the extent that Paragraph 39 purports to describe the contents of certain documents, those documents are the best evidence of their contents and no response is necessary. To the extent any further response is required, Schein lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 39; and, therefore, denies such allegations.

Paragraph 44 as to Schein. Schein lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations; and, therefore, denies the allegations.

45. Schein admits the first sentence of Paragraph 45. Schein admits the second sentence of Paragraph 45, except Schein denies that its executive discussed the referenced group. Schein denies the third sentence of Paragraph 45. Schein admits that a Benco senior executive sent the text message referenced in the last sentence of Paragraph 45, but specifically denies the characterization of the language as alleged. To the extent any further response is required, Schein denies the remaining allegations in Paragraph 45.

46. Schein lacks sufficient knowledge or information to form a belief about the truth of the allegations in the first two sentences of Paragraph 46; and, therefore, denies such allegations. Schein denies the allegations in the third and fourth sentences of Paragraph 46 on the basis that the quoted information, offered without context, is so incomplete as to be misleading. Schein specifically denies the characterization of the language as alleged and states that the quoted documents need to be read in their entirety for a complete and accurate description of their contents. To the extent any further response is required, Schein denies the allegations in Paragraph 46.

47. Schein admits the first sentence in Paragraph 47, except that Schein denies that the text messages and phone calls were in any way related to the referenced group or any other buying group. Schein denies the allegations in the second sentence as it relates to Schein. Schein lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph 47; and, therefore, denies such allegations.

48. Schein denies the allegations in Paragraph 48 to the extent they suggest that Schein was a party to any agreement with Benco or with Patterson. To the extent that Paragraph

48 purports to describe the contents of a document, that document is the best evidence of its contents and no response is necessary. Schein lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph 48; and, therefore, denies such allegations.

49. To the extent that Paragraph 49 purports to describe the contents of a document, that document is the best evidence of its contents and no response is necessary. Schein denies the allegations in Paragraph 49 to the extent they suggest that Schein was a party to any agreement not to do business with buying groups. Schein lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 49; and, therefore, denies such allegations.

50. Schein lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 50; and, therefore, Schein denies such allegations.

51. Schein notes that the Commission mischaracterizes or takes out of context the cited quotation from a non-Schein employee and ignores the fact that Schein has consistently done business with numerous buying groups for well over a decade. To the extent any further response is required, Schein denies the allegations in Paragraph 51.

52. Schein lacks sufficient knowledge or information to form a belief about the truth
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n denies the allegations in Paragraph 51.

55. To the extent that Paragraph 55 purports to describe the contents of a document, that document is the best evidence of its contents and no response is necessary. Schein lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 55; and, therefore, denies such allegations.

56. Schein notes that the Commission mischaracterizes or takes out of context the cited quotation from a non-Schein employee and ignores the fact that Schein has, in fact, consistently done business with numerous buying groups for well over a decade. To the extent any further response is required, Schein denies the allegations in Paragraph 56.

57. Schein admits that a Benco manager called a Schein manager prior to October 9, 2013 and told him that Benco was not going to bid on the referenced buying group. Schein denies all other allegations in Paragraph 57, and asserts that the Schein manager did not provide any Schein information to the Benco manager during the unsolicited phone call. Schein further asserts that it did, in fact, bid for the business of the referenced buying group shortly after the phone call.

58. Schein admits the allegations in Paragraph 58, except Schein notes that the cited quotation, offered without context, is misleading as framed.

59. Schein lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 59; and, therefore, denies such allegations.

60. Schein notes that the Commission mischaracterizes or takes out of context the cited quotation from a non-Schein employee and ignores the fact that Schein did, in fact, bid for the business of this very group shortly after the referenced email, and otherwise has done business with this group during the time of the alleged conspiracy. To the extent any further response is required, Schein denies the allegations in Paragraph 60.

61. Schein denies the allegations in Paragraph 61 as it relates to Schein. Schein specifically denies that it was a party to any agreement not to do business with buying groups. Schein notes that the Commission ignores the fact that Schein has consistently done business with numerous buying groups for well over a decade.

62. Schein notes that the Commission mischaracterizes or takes out of context the cited quotation from a non-Schein employee. Schein denies the allegations in Paragraph 62 to the extent they suggest that Schein was a party to any agreement not to do business with buying groups. Schein lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 62; and, therefore, denies such allegations.

63. Schein notes that the Commission mischaracterizes or takes out of context the cited quotation from a non-Schein employee and ignores the fact that Schein has, in fact, consistently done business with numerous buying groups for well over a decade. Schein lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63; and, therefore, denies such allegations.

64. Schein notes that the Commission mischaracterizes or takes out of context the cited quotation from a non-Schein employee and ignores the fact that Schein has, in fact, consistently done business with numerous buying groups for well over a decade. To the extent any further response is required, Schein denies the allegations in Paragraph 64.

65. Schein denies the allegations in Paragraph 65, and asserts that Schein has competed for the business of buying groups for well over a decade, and provided discounts to such groups.

66. Schein denies the allegations in Paragraph 66, and specifically denies that there was any such agreement.

67. Schein denies the allegations in Paragraph 67, and specifically denies that there were any such communications involving Schein.

68. Admitted.

69. Schein denies the allegations in Paragraph 69, except Schein admits that in October 2013, the Texas Dental Association launched TDA Perks Supplies, an internet sales platform operated by SourceOne Dental. Schein specifically denies the characterization of TDA Perks Supplies as a buying group.

70. Schein denies the allegations in Paragraph 70 as to Schein. Schein lacks sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 70; and, therefore, denies such allegations.

71. Schein denies the allegations in Paragraph 71, and specifically denies that any of the referenced communications in subparts a-d support any allegation of coordinated action or conduct between Schein, Benco, and Patterson related to the TDA trade show.

a. Schein admits that in October 2013, a Benco manager called a Schein manager and informed him that Benco was considering pulling out of the TDA trade show, but Schein notes that the Commission mischaracterizes or takes out of context the cited quotation regarding the communication from the non-Schein employee. Schein lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations; and, therefore, denies such allegations.

b. Schein admits that a Schein regional manager in Texas visited a Patterson branch manager, who confirmed that Patterson would not be attending the TDA trade show. To the extent that Paragraph 71b purports to describe the contents of a document, that document is the best evidence of its contents and no response is necessary. Schein

Schein employee. Schein lacks sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 73; and, therefore, denies such allegations.

74. Schein denies the allegations in Paragraph 74, and asserts that Schein made an independent decision not to attend the TDA and AZDA trade shows.

75. Schein denies the allegations in Paragraph 75, and specifically denies that its conduct had the “effect of restraining competition unreasonably and injuring customers and others.” Schein has consistently done business with numerous group purchasers, including buying groups, for well over a decade.

76. Paragraph 76 calls for legal conclusions for which no response is required. To the extent any further response is required, Schein denies the allegations in Paragraph 76.

77. Denied.

78. Denied.

79. Denied.

80. Schein hereby repeats and re-alleges its responses to Paragraphs 1 through 21 and 31 through 74 of the Complaint as if fully set forth herein.

81. Denied.

82. Denied.

83. Schein hereby repeats and re-alleges its responses to Paragraphs 1 through 79 of the Complaint as if fully set forth herein.

84. Denied.

85. Denied.

86. Schein hereby repeats and re-alleges its responses to Paragraphs 1 through 79 of the Complaint as if fully set forth herein.

87. Denied.

88. Denied.

89. Schein hereby repeats and re-alleges its responses to Paragraphs 1 through 66 and 75 through 79 of the Complaint as if fully set forth herein.

90. Schein denies that there was any “joint agreement” involving Schein. Schein lacks sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 90; and, therefore, denies such allegations.

DEFENSES

Schein asserts the following defenses, without assuming any burden of proof on such defenses that would otherwise rest with the Commission or relieving Complaint Counsel of its burden to establish each element of its alleged claims:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The contemplated relief would not be in the public interest.

THIRD AFFIRMATIVE DEFENSE

The Complaint fails to allege a plausible relevant product market.

FOURTH AFFIRMATIVE DEFENSE

The Complaint fails to allege any plausible harm to competition.

FIFTH AFFIRMATIVE DEFENSE

The Complaint fails to allege any plausible harm to consumers or consumer welfare.

SIXTH AFFIRMATIVE DEFENSE

The alleged potential harm to competition is not actionable.

SEVENTH AFFIRMATIVE DEFENSE

The Commission's claims are barred, in whole or in part, because the injuries alleged by the Commission, to the extent any exist, were caused, in whole or in part, by the conduct of third parties for whom Schein was not responsible, through forces in the marketplace over which Schein has no control.

EIGHTH AFFIRMATIVE DEFENSE

The Commission is not entitled to any equitable relief, because any alleged wrongful acts ended years ago, and the Complaint fails to allege facts to suggest that there is a likelihood that the alleged conduct will reoccur.

NINTH AFFIRMATIVE DEFENSE

The Commission's claims are barred, in whole and w

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attorneys' fees and expenses, as may be allowed by law; and (iv) award such other and further relief as the Commission may deem just and proper.

Dated: March 6, 2018

Respectfully submitted,

/s/ John P. McDonald

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/s/ John P. McDonald

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Notice of Electronic Service

I hereby certify that on March 06, 2018, I filed an electronic copy of the foregoing Henry Schein, Inc.'s Answer to Complaint, with:

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I hereby certify that on March 06, 2018, I served via E-Service an electronic copy of the foregoing Henry Schein, Inc.'s Answer to Complaint, upon:

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