

Statement of Chairman Robert Pitofsky and Commissioners ~~St~~ F. Anthony and Mozelle W. Thompson Respecting the Commission's Decision Not to Petition for Certiorari in California Dental Association v. F.T.C.

On July 9, 1993, the Federal Trade Commission issued an administrative complaint against the Respondent California Dental Association ("CDA"), alleging that the Respondent had restrained competition among dentists in California in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (1995), by placing unreasonable restrictions on its members' truthful and nondeceptive advertising of the price, quality, and availability of their services.<sup>(1)</sup> After extensive proceedings, the Administrative Law Judge, Lewis F. Parker, concluded that CDA had violated Section 5 of the FTC Act, and issued an Initial Decision finding liability and issuing an order.<sup>(2)</sup> CDA appealed, and the Commission affirmed the Initial

The Commission has unanimously decided to seek further review by the United States Supreme Court, but instead to return the matter to adjudication and dismiss the complaint. We believe that it is appropriate to provide a brief explanation of our reasons for voting for this action.

While various conclusions of the Court of Appeals could well form the basis for seeking further review in the Supreme Court, we also recognize certain practical difficulties in proceeding in this manner. The Commission's decision was made on the basis of a ~~fact~~ that closed in 1995. CDA has been subject to the Commission's Order (except for limited provisions that were stayed pending appeal) since 1996 and, as far as we are aware, has complied with that order by refraining from enforcing the advertising restrictions that were the focus of the Commission's proceedings. Consequently, any further proceedings before the Commission would have to be based on stale evidence.

Our decision to support bringing an end to this case should not be taken as an indication of lessening of our keen interest in the activities of trade or professional associations that harm competition. Where, for example, an association enforces advertising restrictions in a manner that systematically deprives consumers of valuable price~~quality~~ information, and that yields no corresponding benefits to competition or consumers, we continue to believe that grave antitrust concerns are raised. We do not read either the Supreme Court majority opinion, or the Ninth Circuit's opinion on remand, as holding to the contrary. Accordingly, we will continue to monitor such activities and, where it can be proven that an association is enforcing restrictions that are likely to cause anticompetitive effects, we will take appropriate enforcement~~action~~. the meantime, we encourage trade and professional associations to continue to work informally with Commission staff to develop self-regulatory programs that will achieve the substantial benefits of such regulation while avoiding restrictions that ~~may~~ ~~impede~~ the vigor of competition.

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1. In re California Dental Ass'n, 121 F.T.C. 190, 284 (1996).

2. Id. at 284~~85~~.

3. Id. at 284.

4. 526 U.S. 756 (1999).

5. 224 F.3d 942 (9<sup>th</sup> Cir. 2000).

6. Id. at 950~~58~~.

7. Id. at 957.

8. 128 F.3d at 728.

9. 224 F.3d at 95~~59~~.