

## **Associations and Antitrust (A Sampling of Cases)**

11/94

### **Association of Retail Travel Agents (ARTA)**

Justice Department charged ARTA with attempting to organize a boycott of members against airlines, hotels, and car rental companies that refused to adhere to ARTA's recommended minimum travel agent commission levels. ARTA members account for \$90 billion in sales handled by travel agents in the US. ARTA adopted an income preservation manifesto that included a minimum 10% commission. Settled by consent decree.

10/93

### **American Bar Association (ABA)**

An ABA Committee which accredited law schools was dominated by law professors. It was charged by the Justice Department with using its power to coerce inflated faculty salaries and benefits. The Committee required comparable salaries to other accredited schools and pressured schools to comply by requiring detailed salary information. Schools were put on probation if salaries were not up to standards. Other schools were then forbidden to accept transfer credits from other the schools that were not in compliance. Settled by consent decree.

9/93

### **National Automobile Dealers Association**

NADA was charged with engaging in a conspiracy to create boycotts against auto manufacturers and discount auto brokers who gave fleet discounts directly to volume purchasers. The policy was sent out on official association stationery under the President's signature. The letter was then used in ads. Settled by consent decree.

3/94

### **Scuba Retailers Association, Inc. (SRA)**

SRA was charged with coercing manufacturers and distributors of scuba equipment to stop selling to consumers directly through the mail. The association told a popular diving magazine that members would not carry the magazine in their stores if the magazine published mail order ads. SRA also threatened to publish a negative article about a snorkel manufacturer and blackball the manufacturer if it continued to advertise for mail orders. Suit still pending?

3/90

### **Baby Furniture Plus Association (BFPA)**

The Federal Trade Commission charged BFPA with using unfair methods of competition and unfair acts and practices by threatening to refuse to deal with manufacturers that distribute their products through a mail order catalog. BFPA sent letters to manufacturers threatening a boycott. Settled by consent decree.

3/90

### **Alvord-Polk, et. al. v F. Schumacher & Co., et. al. (1995)**

A group of Wallpaper retailers sued the wallpaper retail trade association alleging unreasonable restraint of trade in violation of section 1 of the Sherman Antitrust Act in connection with the trade association's threat to boycott wallpaper manufacturers who sold to "1-800" retailers. Case is pending.

4/96

The FTC upheld antitrust charges against the **California Dental Association (CDA)** issuing an order that will prohibit the association from imposing restrictions on advertising and solicitation practices of its members. The charge alleged that the CDA restrained advertising of price, quality, and availability of dental services. The FTC order requires CDA to refrain from interfering with solicitation of patients; update its code of ethics; establish an anti-trust compliance program; and a number of other restrictions.

3/96

A federal court recently ruled in a case regarding the **National Dairy Herd Association's (NDA)** milk testing program denying summary judgment. the association relied on several Noerr-Pennington Arguments. Two private companies sued saying the milk testing program is anti-competitive. The case is pending.

1994

The **New England Juvenile Retailers Association** agreed to dissolve as a result of an action by the FTC. The association sent letters to furniture manufacturers who advertised in mail order catalogs. The letters complained that the discount operations hurt individual businesses that were members of the association. The FTC stated that this constituted an illegal conspiracy.

Recently, the Department of Justice and Federal Trade Commission jointly issued guidelines for the **health care industry** that would provide a "safety zone" for certain activities. The two agencies declared that they would not challenge participation in wage and salary surveys, except in certain cases, if the following 3 conditions were met: 1) managed by a third party (such as a trade association); 2) based on data more than 3 months old; and 3) at least five participants.

**Allied Tube & Conduit Corp. v. Indian Head, Inc. (US Supreme Court, 1988)**

A manufacturer of plastic flexible conduit sought to have it approved by the **National Fire Protection Association (NFPA)** for use in buildings. Allied Tube, a manufacturer of steel conduit, sought to prevent the plastic tube from being approved. Allied held meetings with other manufacturers and targeted the process, packing the NFPA committee meetings with representatives in support of their position. Allied tube lost the case.

In 1982 the **American Society of Mechanical Contractors** was found liable for its failure to apply safeguards sufficient to avoid anti-competitive activity in the standard setting process. The court found that the association must use objective criteria; give notice and opportunity to be heard to interested parties; use neutral decision makers and/or base decisions on expert opinions; and avoid decisions by those having potentially adverse economic interests or those unfamiliar with the standards to be set.

7/96

The Department of Justice approved a proposal by a **Independent Automotive Damage Appraisers Association (IADAA)** to establish a program to market and sell the services of its members on a national basis, allowing the members to compete with large appraisal companies. The Department stated that the proposal would create a "more robust competitive environment" in the industry. The proposal was subject to specific limitations.

5/96

The **Association of Family Practice Residency Directors (AFRD)** reached agreement with the Justice Department over the association's enforcement of its code of ethics. The association had used its ethics rules to bar residency programs from offering individual economic incentives to attract prospective family practice medical residents. The consent decree eliminates this practice.

1978

The code of ethics of the **National Society of Professional Engineers** contained provisions that prohibited competitive bidding by its members. The court held that a ban on competitive bidding cannot be justified in that it did not promote competition.

1986

The Supreme Court upheld a Federal Trade Commission charge that a **dentists association's** agreement not to provide patients x-rays to insurance companies violated the FTC Act.

1985

In **Northwest Stationers**, a major opinion on anti competitive intent and procedural safeguards, the Supreme Court restated the law shifting the focus away from the existence of anti competitive intent to an assessment of economic impact. Essentially, the court found that exclusions may be justified based on good rationale, efficiency, or legitimate business purpose. The lesson is that membership restrictions must be narrowly drawn, nondiscriminatory, objective, and rationally related to some pro competitive purpose of the association.