

On December 23, 2014, the Federal Trade Commission (FTC) settled two cases against trade associations, which agreed to amend their organizational documents that the FTC claimed limited competition among the association members. These cases demonstrate a deliberate enforcement agenda by the FTC and other law enforcement agencies to target trade association rules, membership criteria, ethical codes and governing documents in order to set antitrust compliance standards and avoid potential threats to competition.

Trade associations should review their bylaws, ethics codes and membership documents to make sure that they do not include language that could restrict competition. Trade associations should also ensure that they eliminate any committee oversight meant to enforce anticompetitive restrictions. In addition to FTC actions under Section 5 of the FTC Act, trade association governance materials and actions are subject to challenge under the Sherman Act and other antitrust laws.

In one case, the FTC challenged the bylaws of the Professional Lighting and Sign Management Companies of America, Inc. (PLASMA), an association of professional electricians. The FTC alleged that the PLASMA bylaws violated Section 5 of the FTC Act, which prohibits "unfair methods of competition . . . and unfair or deceptive acts or practices." The FTC asserted that the PLASMA bylaws unfairly restricted competition: (i) by prohibiting members from providing commercial lighting or sign services to a customer located in the designated territory of another member, unless the member had first declined to perform the work; (ii) by maintaining a price schedule governing the price of work performed in the designated territory of another member; and (iii) by barring any member from soliciting or competing for the customers (or prospective customers) of another member, for one year following termination of membership. Moreover, a PLASMA grievance committee enforced these bylaws. The FTC alleged that these provisions impaired competition among the members of the association.

The proposed consent order settling the FTC's charges requires PLASMA to revise its bylaws to remove restrictions on the ability of members to compete, solicit customers or set prices, publicize its settlement with the FTC and implement an antitrust compliance program.

In the second case, the FTC charged that the Professional Skaters Association's (PSA) code of ethics similarly violated Section 5 of the FTC Act by restricting members' ability to compete freely with each other. The FTC cited the ethics code provisions that (i) prohibited members from soliciting pupils of other members and (ii) required each member, "[p]rior to acting as a coach," to first "determine the nature and extent of any earlier teaching relationship with that skater and other members." Moreover, the PSA enforced its code of ethics through a grievance committee. The FTC alleged that these provisions restrained competition by restricting the ability of its members to solicit the customers of competing teachers and coaches of skating.

The proposed consent order settling the FTC's charges requires the PSA to stop restraining its members from soliciting work and from competing on the basis of price. It also requires the group to change its code of ethics, publicize its settlement with the FTC and implement an antitrust compliance program.

Both consent agreement packages are open for public comment through January 22, 2015, after which the Commission will decide whether to make the proposed consent orders final.

These two cases, both approved by a 5-0 vote, evidence the FTC's continuing interest in trade association governance for organizations of all sizes where anticompetitive bylaws or ethics codes may restrain trade. PLASMA has only 25 member firms, while PSA has 6,400 members (and PSA membership is required to coach competitive skaters), yet they both allegedly violated the FTC Act. Indeed, the FTC's actions focused on traditional per se illegal areas of antitrust concern: geographical division of markets, price-fixing and agreements not to compete.

Please contact any of the lawyers listed in this publication for more information about trade association governance and antitrust compliance programs for trade associations.

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