

Filed in The District Court
of Travis County, Texas

APR 09 2015 Myr

D-1-GN 15-001386

At 2:00 P. M.
Velva L. Price, District Clerk

CAUSE NO. 15-1386

THE STATE OF TEXAS

Plaintiff,

v.

BENCO DENTAL SUPPLY COMPANY,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353rd JUDICIAL DISTRICT

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**PROPOSED AGREED FINAL JUDGMENT AND STIPULATED INJUNCTION
BETWEEN THE STATE OF TEXAS AND BENCO DENTAL SUPPLY**

The State of Texas (the "State"), through its Attorney General Ken Paxton ("Attorney General") has filed suit against Benco Dental Supply Company ("Benco") alleging violation of state antitrust statutes. Specifically, the State has alleged that Benco, among others, has participated in a group boycott by dental supply distributors to suppress the entry of a new market participant in the dental supply distribution market. The State has alleged that these practices unlawfully restrain competition for dental supply distribution in Texas. Benco has denied and continues to deny these allegations as well as any liability or wrongdoing. Nevertheless, to avoid the time, uncertainty, and expense of protracted litigation, the State and Benco have agreed to entry of this Agreed Final Judgment and Stipulated Injunction.

I. PARTIES

A. The Attorney General is the chief legal officer of the State of Texas. The Attorney General is authorized to bring this action for violations of state antitrust laws.

I, VELVA L. PRICE, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 4/9/2015

VELVA L. PRICE

DISTRICT CLERK

By Deputy:



Billy Powell



B. Benco is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal address at 295 Centerpoint Boulevard, Pittston, PA, 18640. Benco, among other things, sells dental supplies to dentists throughout Texas and nationwide.

II. JURISDICTION & VENUE

Pursuant to Tex. Bus. & Comm. Code § 15.20(b), this Court has subject matter jurisdiction and may exercise personal jurisdiction over Benco. Venue in this Court is proper.

III. DEFINITIONS

As used herein, and for purposes of this Order only:

- A. "Benco" means Benco Dental Supply Company, its domestic and foreign parents, predecessors, successors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial or total ownership or control between Benco and any other person.
- B. "Distribution channel" means any method or platform by which dental supplies are sold by a manufacturer or distributor to another distributor, dentist, or other end user, whether in-person, by mail, by brick and mortar retail establishment, through online sales platform, or otherwise.



IV. TERMS

IT IS ORDERED that Benco, directly or indirectly, through any corporation, subsidiary, division, or other device in connection with the actual or potential purchase or distribution of dental supplies and related products, is permanently enjoined from:

- A. Continuing, maintaining, entering into, or attempting to enter into any agreement or understanding with any manufacturer or distributor to limit supply of or refuse to sell dental supplies to any third party, or through or by means of any distribution channel;
- B. Urging, inducing, coercing, or pressuring, or attempting to urge, induce, coerce, or pressure, any manufacturer or distributor to limit supply of or refuse to sell dental supplies to any third party, or through or by means of any distribution channel;
- C. Requiring, soliciting, requesting, or encouraging any manufacturer or distributor to furnish information to Benco relating to the manufacturer's or distributor's sales to any third party;
- D. Facilitating or attempting to facilitate understandings or agreements between or among distributors and/or manufacturers relating to limiting or refusing the sale of dental supplies and related products to any third party, or through or by means of any distribution channel, including by transmitting or communicating any other distributor's or manufacturer's business plans or strategy;
- E. Advising in writing, declaring, announcing, providing notice, or otherwise intentionally communicating a message to any dental supply distributor that Benco will or may
 - 1. Contract with or terminate a contract with any dental supply manufacturer;
 - 2. Contract with or terminate a contract with any other dental supply distributor or discounter; or

3. Not participate in any charity or marketing event, such as a trade association exhibition; and/or
- F. Terminating or giving notice of termination of a then-existing contract with a dental supply manufacturer because of that manufacturer's decision to contract or not to contract with any other dental supply distributor or discountor;

PROVIDED, HOWEVER, THAT nothing in this Order shall prohibit Benco from (1) seeking or entering into a lawful contract with a manufacturer to become the authorized exclusive distributor of a manufacturer's dental products or equipment, (2) terminating or modifying in good faith its contractual relationship with a manufacturer of dental products or equipment, except as prohibited above, or (3) acquiring a distributor of dental products doing business in the State of Texas.

PROVIDED FURTHER THAT nothing in this Order shall prohibit Benco from communicating with its customers in the normal course of business, including but not limited to emailing advertisements or alerts to customers, distributing brochures to customers, and advertising on Benco's website, catalogs or newsletters, about the dental supplies and products it offers or may no longer offer.

IT IS FURTHER ORDERED that Benco shall:

- G. Until the date upon which the State's investigation or any related litigation is concluded, provide full, complete, and prompt cooperation, upon good faith reasonable notice and reasonable request by the State, with the State's investigation and related proceedings and actions against any other person, corporation, or entity. Benco shall use its best efforts to secure the full and truthful cooperation of its current officers, directors, employees, and agents with the State's investigation or any related litigation. Such cooperation shall



include, but not be limited to, producing information or documents reasonably requested by the State, subject to the right to withhold information on grounds of attorney-client privilege, attorney work product, or other applicable privileges or protections, and making its current officers, directors, employees, or agents available for sworn testimony by declaration, sworn statement, or in-court testimony. The State and Benco shall work cooperatively and in good faith to schedule the timing and, if necessary, the location of any requested testimony or declaration. Further, the State and Benco shall work together with respect to any requested un-sworn statements or interviews to reach a mutually agreeable time and place, including telephonic interviews.

Benco's obligation to cooperate is limited to current officers, directors, employees, or agents at the time of any given request. Benco's obligation to cooperate excludes those officers, directors, employees or agents who are not associated with or employed by Benco at the time such cooperation is sought, and over whom Benco exercises no control, as of the time of the request.

The State and Benco agree to work together to establish the admissibility of documents where possible, including providing a written declaration regarding the authenticity and/or admissibility of Benco's documents as business records, admissions, or otherwise;

H. Institute an antitrust training program for current Benco officers, directors, and employees with responsibility for sales or pricing of dental supplies or responsibility for communications with manufacturers or distributors of dental supplies within ninety (90) days after the date on which this Order becomes final, and conduct antitrust compliance training at least annually for its officers, directors, and any Benco employee with responsibility for sales or pricing of dental supplies or responsibility for communications

- with manufacturers or distributors of dental supplies, and provide the State with a description of the training and copies of any training materials associated with the program for each such training. Benco is permitted to conduct tiered training or otherwise structure the training such that it provides relevant, necessary information regarding antitrust laws appropriate to the level of the particular employee with more intensive training for managerial-level employees;
- I. Within thirty (30) days after the date this Order becomes final, provide a copy of this Order to each Benco director or officer, and to any Benco employee with responsibility for sales or pricing of dental supplies or responsibility for communications with dental supply distributors or manufacturers, and require each such person to sign a statement acknowledging receipt of the Order, representing that the person has read and understands the Order, and acknowledging that non-compliance with this Order may subject Benco to penalties for violation of the Order;
- J. For a period of three (3) years, maintain and furnish to the State on a twice yearly basis, a log of all oral and written communications, relating in whole or in part to the distribution or sale of dental supplies in the United States, between or among (1) any of Benco's officers, directors, or sales employees, and (2) any person employed by or associated with another dental supply distributor. The log shall include an identification (by name, employer, and job title) of the author and recipients of and all participants in the communication, the date, time, and a good faith estimate of the duration of the communication, the medium of the communication, and a description of the subject matter of the communication. The following communications between Benco and an employee of another dental supply distributor may be excluded from the log:



1. **Privileged communications;**
 2. **Public communications, including but not limited to speaking engagements or publications sponsored by trade associations, public interest groups or charity groups;**
 3. **Purely administrative communications in lawful furtherance of a trade association, public interest group, or charity group event made by an actual or potential participant in that trade association, public interest group, or charity group event or meeting;**
 4. **Communications regarding employment of individuals at or from Benco, including communications between in-house or outside counsel of Benco and in-house or outside counsel of another dental supply distributor or manufacturer relating to disputes or the resolution of disputes over the hiring of employees, unless those communications involve the establishment or modification of a policy or company-wide agreement among or between dental supply distributors or manufacturers about the hiring and employment of individuals in the dental supply distributor industry;**
 5. **Communications related to the potential sale or acquisition of Benco or another dental supply distribution, or related businesses;**
 6. **Purely social and family related communications among or between former colleagues and business acquaintances; and**
- K. **Provide to the State annually, on or before the anniversary of the entry of this Order, a written statement as to the fact and manner of Benco's compliance with this Order.**

V. FURTHER TERMS

- A. **Except where otherwise noted, this Order shall remain in force for a period of five (5) years after the date on which this Order becomes final.**



- B. Benco shall notify the State at least thirty (30) days prior to any change in Benco's status, such as an acquisition, merger, consolidation, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.
- C. Benco shall pay the Attorney General \$300,000 for reimbursement of the reasonable and necessary costs and fees associated with the State's investigation of Benco's business practices and in lieu of civil penalties.

VII. MISCELLENEOUS

- A. *Legal Exposure and Effect.* This Order is not intended to and does not give any legal rights or remedies of any nature to any third party.
- B. *Notices.* All notices required by this Order shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand delivery to:

As to the State:

Kayna Stavast-Piper
Assistant Attorney General, Antitrust Section
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711

As to Benco:

Steven Bizar
Buchanan Ingersoll & Rooney PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555

- C. ***Governing Law.*** This Order shall be governed by and interpreted according to the laws of the State of Texas, excluding its conflict of laws provisions.
- D. ***Modification.*** If the State or Benco believes that modification of this Order would be in the public interest, that party shall give notice to the other and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall jointly petition the Court to modify the Order, and such modification shall be granted unless the Court determines that the modification is contrary to the public interest. Nothing herein prohibits a party from petitioning this Court for a modification in the absence of agreement of the other party. Likewise, nothing herein prohibits a party from opposing such a petition for modification.
- E. ***Retention of Jurisdiction.*** The Court retains jurisdiction for five (5) years following the date this Order becomes final to enable any party to apply to the Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification, and enforcement of this order.
- F. ***No Admission or Finding of Liability.*** Benco has denied and continues to deny these allegations as well as any liability or wrongdoing. Benco's agreement to entry of this Order is not an admission of liability. This Order does not constitute a finding or conclusion that Benco has violated any law. This Order may not be offered or received into evidence in any action as evidence or admission of liability, whether such action arises before or after the entry of this Order.
- G. ***Release of Claims.*** In exchange for Benco's agreements, the State has released Benco from all claims of the State in its sovereign capacity on account of all matters related



to its Petition. The release includes all claims the State brought or could have brought in its enforcement capacity based on the allegations in its Petition, as well as the ability of the State to sue on behalf of any party for the allegations contained in its Petition.

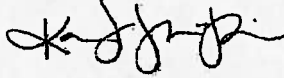
IT IS SO ORDERED, this 9 day of April, 2015,


JUDGE PRESIDING



APPROVED AND ENTRY REQUESTED:

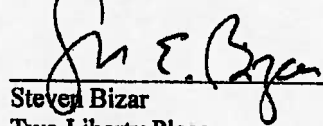
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