

APR 19 2018

At 1:41 P.M.  
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-18-001916

THE STATE OF TEXAS

Plaintiff,

v.

PATTERSON COMPANIES, INC.,

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126<sup>th</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT AND STIPULATED INJUNCTION BETWEEN  
THE STATE OF TEXAS AND PATTERSON COMPANIES, INC.**

The State of Texas (the "State"), through its Attorney General Ken Paxton ("Attorney General") has filed suit against Patterson Companies, Inc. alleging violation of state antitrust statutes. Specifically, the State has alleged that Patterson, 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. Patterson 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 Patterson 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.
- B. Patterson Companies, Inc. is a for-profit corporation, organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its principal address at 1031 Mendota Heights Road, St. Paul, Minnesota, 55120. Patterson, among other things, sells dental supplies to dentists throughout Texas and nationwide.



## II. JURISDICTION & VENUE

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

## III. DEFINITIONS

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

- A. "Patterson" means Patterson Dental Supply, Inc., the dental division of Patterson Companies, Inc., its predecessors, and successors.
- B. "Distribution channel" means any method or platform by which dental supplies are sold by a manufacturer or distributor to another distributor, dentist, buying group, corporate dental practice, or group purchasing organization, whether in-person, by mail, by brick and mortar retail establishment, through online sales platform, or otherwise.
- C. "Confidential" means information that has not been distributed or communicated to anyone other than Patterson employees.

## IV. TERMS

IT IS ORDERED that Patterson, 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 enjoined from the following within the State of Texas unless broader geographic applicability is specifically noted, except where otherwise legally permitted:

- A. Continuing, maintaining, or entering into any agreement or understanding with any distributor: (1) to limit supply of or refuse to sell dental supplies to any third party, or through or by means of any distribution channel; or (2) to limit supply of or refuse to sell the dental supplies of any manufacturer;
- B. Causing any distributor: (1) to limit supply of or refuse to sell dental supplies to any

third party, or through or by means of any distribution channel; or (2) to limit supply of or refuse to sell the dental supplies of any manufacturer;

- C. Requiring, soliciting, requesting, or encouraging any distributor to furnish information to Patterson (other than in an aggregated form of general market information through a third party) relating to the distributor's sales to any third party;
- D. Having understandings or agreements between or among distributors 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 Confidential or proprietary business plans or strategy;
- E. Advising in writing, declaring, announcing, providing notice, or otherwise intentionally communicating a Confidential message to any dental supply distributor that Patterson 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
  - 3. Not participate in any trade association meeting or exhibition; and/or
- F. Pursuant to any agreement with another distributor, 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 discounter.

PROVIDED, HOWEVER, THAT nothing in this Order shall prohibit Patterson 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 its

contractual relationship with a manufacturer of dental products or equipment, except as prohibited above, (3) acquiring a distributor of dental products doing business in the State of Texas, or (4) communicating its concerns with a manufacturer about grey market or counterfeit distribution of that manufacturer's product or products or pursuing Patterson's Supply Chain Integrity Initiative under that initiative's stated goals, as described in the white paper found at [www.dentalsupplyintegrity.com](http://www.dentalsupplyintegrity.com).

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

IT IS FURTHER ORDERED that Patterson shall:

- G. Institute an antitrust training program for current Patterson 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 Patterson 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 of individuals who work in, or have some responsibility for Patterson's dealings, in the state of Texas. Patterson 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;

- H. Within ninety (90) days after the date this Order becomes final, provide a copy of this Order to each Patterson director or officer, and to any Patterson 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 Patterson to penalties for violation of the Order; and
- I. For a period of one (1) year, 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) the Patterson employees with the following titles as of the date of this Order and their successors or functional equivalents: CEO, President (currently Dave Misiak), Vice President and General Manager, (currently Tim Rogan), Vice President of Marketing, (currently Josh Killian), Paul Guggenheim, Clint Edens, and Chad Bushman; 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, 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. With respect to any communications by or to any Patterson employee with or from any person employed by or associated with another dental supply distributor concerning grey market products, Patterson's Dental Supply Chain Integrity Initiative, or any other

communication on subjects covered by subpart 4 on page 3-4 of this stipulated injunction, all of the individuals listed in this paragraph and additionally all Region Presidents will include in this log all such communications of which they have knowledge. The following communications between Patterson 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 Patterson, including communications between in-house or outside counsel of Patterson 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 Patterson or another dental supply distributor, or related businesses;

6. Purely social, non-business and family related communications among or between former colleagues and business acquaintances; and

J. 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 Patterson'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. Patterson shall promptly notify the State of any change in Patterson'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. Patterson shall pay the Attorney General \$200,000 for reimbursement of the reasonable and necessary costs and fees associated with the State's investigation of Patterson's business practices and in lieu of civil penalties.

**VI. MISCELLANEOUS**

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:

David Ashton  
Assistant Attorney General, Antitrust Section  
Office of the Attorney General  
P.O. Box 12548 Austin,  
TX 78711

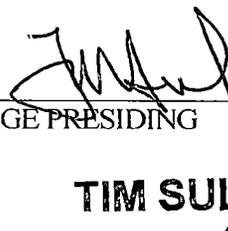
As to Patterson:

Les Korsh  
Vice President, General Counsel & Secretary  
Patterson Companies, Inc.  
1031 Mendota Heights Road  
St. Paul, MN 55120

- C. *Governing Law.* This Order shall be governed by and interpreted according to the laws of the State of Texas, excluding its conflicts of law provisions.
- D. *Modification.* If the State or Patterson 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.* Patterson has denied and continues to deny these allegations as well as any liability or wrongdoing. Patterson's agreement to entry of this Order is not an admission of liability. This Order does not constitute a finding or conclusion that Patterson 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 Patterson's agreements, the State has released Patterson 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 19<sup>th</sup> day of April, 2018,

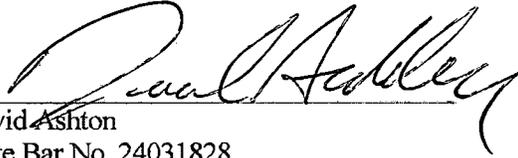
  
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JUDGE PRESIDING

**TIM SULAK**

APPROVED AND ENTRY REQUESTED:

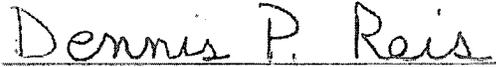
OFFICE OF THE ATTORNEY GENERAL

BRIGGS and MORGAN P.A.



David Ashton  
State Bar No. 24031828  
Margaret Sharp  
State Bar No. 24080147  
Nicholas G. Grimmer  
State Bar No. 24065331  
Assistant Attorneys General  
Antitrust Division  
P.O. Box 12548  
Austin, TX 78711-2548  
(512) 936-1781

Attorneys for the State of Texas



Dennis P. Reis  
State Bar No. 16757950  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
(612) 977-8400

James J Long  
MN State Bar No. 190858 – not admitted in Texas  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
(612) 977-8582

Attorneys for Patterson Companies, Inc.