

November 7, 2017

VIA FEDERAL EXPRESS

Robert Connor, President
Aspen Dental Management, Inc.
281 Sanders Creek Parkway
East Syracuse, NY 13057

Re: Advertisement Campaign

Dear Mr. Connor:

My client, the Massachusetts Dental Society (“MDS”), has serious statutory, regulatory, and ethical concerns with Aspen Dental’s recent “We’re a Different Kind of Dentist” advertising campaign (the “Campaign”). This Campaign includes three television advertisements: 1) the “Elevator” commercial, 2) the “Pool” commercial, and 3) the “Bank” commercial, advertising Aspen’s “low prices every day,” and portraying non-Aspen dentists as criminals. The Campaign presents Aspen as a “Different Kind of Dentist” and contrasts all other dentists as overpriced at best, unethical at worst.

Massachusetts law regulates advertising relating to the practice of dentistry. The Campaign runs afoul of Massachusetts law in several significant respects.

Massachusetts General Laws Chapter 112, § 52A prohibits a registered dentist or person practicing dentistry to include, permit, or cause to be included in any advertisement “any written or spoken words or statements of a character tending to deceive or mislead the public,” and specifically prohibits, among other things, the inclusion of “any written or spoken words or statements of a character that . . . (5) offers a discount for dental services without disclosing the total fee from which the discount will apply. . . .” The Elevator commercial, which offers a 20% discount on dentures, violates this statutory prohibition, as it fails to identify the total fee to which the discount will apply. Similarly, the Elevator commercial runs afoul of the Massachusetts Board of Registration in Dentistry (“BORID”) regulations requiring that any advertisement promoting a special rate identify the period of time during which the advertised fees will be in effect. 234 CMR § 5.18(2)(c).

The Campaign further violates Mass. Gen. Law c. 112, § 52C, which prohibits any person engaged in the business of “supplying, constructing, reproducing, relining, repairing, adding or directing the application of any substance of a permanent nature to dentures. . .” from advertising “his services, technique or materials to the general public . . . nor shall any person so engaged in any way directly solicit the patronage of the general public for any dental services, dental materials or dental appliances.” In clear violation of this prohibition, the Campaign advertises permanent dentures in the Pool advertisement.

In addition, the Campaign, as a whole, fails to comply with BORID regulations requiring any advertisement for dental services to include the name of at least one owner of the practice who is currently licensed to practice dentistry in Massachusetts. 234 CMR § 5.18(3).

The Campaign also runs afoul of the American Dental Association (“ADA”) Principles of Ethics & Code of Professional Conduct (the “Code”), which are expressly incorporated into the BORID regulations. *See* 234 CMR § 5.19. Under the Code, those in the dental profession are obligated to represent themselves in a manner that contributes to the esteem of the profession. ADA Code (2004), § 5E. Moreover, the Code requires “[d]entists issuing a public statement with respect to the profession shall have a reasonable basis to believe that the comments made are true.” ADA Code, § 4.C (Justifiable Criticism). Far from contributing to the esteem of the dental profession, the Campaign publicly assails Aspen’s professional colleagues and criticizes the dental profession with sweeping and defamatory characterizations that necessarily lack a reasonable basis.

For example, in the Pool advertisement, a person in need of help refuses it from a dentist saying “no thanks, dentist, you’ll just leave me out in the wind when I need you most.” In the Elevator advertisement, those trapped in an elevator respond to a dentist appearing to provide assistance by picking up an emergency phone and stating “come quick, or a dentist will overcharge us.” Similarly, in the Bank advertisement, a dentist who comes to the aid of those being robbed is treated like a criminal. In each instance, the Aspen dentist responds by saying “I get it, but Aspen Dental is making things easier. . .” In the Campaign, while the Aspen dentist “gets” why all other dentists are viewed as crooks and thieves, he wants the world to know that Aspen employs a “Different Kind of Dentist.” While the Campaign is meant to be humorous, the humor employed relies on besmirching the reputation of the entire profession, except, of course, Aspen dentists.

Massachusetts law and the ADA Code are designed to protect both members of the dental profession as well as consumers of dental services. Massachusetts and federal law prohibit the exercise of unfair or deceptive acts in trade or commerce. This includes unfair or deceptive practices in advertising, including making any representations which have the capacity or tendency or effect of deceiving consumers as to the value or usual price or particular services or making statements and representations in violation of other statutes and regulations. The BORID regulations state explicitly that “[u]nfair, misleading, deceptive and fraudulent advertising is prohibited. *See* 234 CMR § 5.18(1). The Campaign, aired in blatant disregard for both the law

and principles of ethics, has the capacity to deceive consumers in a manner in which the law is designed to prevent.

The MDS demands that Aspen cease and desist from airing the Campaign or any other advertisement that violates Massachusetts law. Not only does the Campaign disregard multiple statutory and regulatory requirements, this disregard puts Aspen dentists in unfair competition with those dentists who take these requirements seriously. The MDS reserves all rights to enforce these requirements if necessary, including relief from the Attorney General and/or BORID, and reserves all other available legal claims and remedies as well. It would prefer, however, to resolve this dispute amicably.

Very truly yours,



Jack A. Eiferman

JAE/jlm

cc: Dr. David Lustbader
Dr. Robert Boose