



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Economics
Bureau of Competition

August 20, 2010

Ms. Loris Jones
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, TX 78701-3942

Re: Texas Board of Veterinary Medical Examiners
Rule 573.17, Regarding Animal Teeth Floating

Dear Ms Jones:

The Staff of the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition¹ welcomes the opportunity to provide comments regarding the provisions of proposed rule 22 TAC §573.17. The proposed rule restricts the practice of animal teeth floating, which is the practice of filing down the outer contours of an animal's teeth. The proposed rule would prohibit any non-veterinarian from floating the teeth of animals with motorized or air-powered files except under the direct supervision of a licensed veterinarian. Under the current rules, no such supervision is required. Staff is not aware of evidence that this new restraint is needed to protect animal well-being or otherwise to benefit purchasers of teeth floating services. It would, however, eliminate important competition between veterinarian and non-veterinarian teeth floaters, likely reducing Texas consumers' choices and increasing the prices they must pay for floating. FTC Staff therefore urges the Board not to adopt the proposed rule unless the Board has credible evidence that the benefits to purchasers of teeth floating would be greater than the harm that would result from the elimination of competition.

I. Interest and Experience of the Federal Trade Commission

The FTC is charged with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.² Under this statutory mandate, the

¹ This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission, however, has voted to authorize us to submit these comments.

² See Federal Trade Commission Act, 15 U.S.C. § 45.

Commission seeks to identify conduct that unreasonably impedes competition. As the U.S. Supreme Court has remarked, “The heart of our national economy long has been faith in the value of competition,”³ which “will produce not only lower prices, but also better goods and services.”⁴

II. Background

Perhaps the most significant application of teeth floating in Texas is to horses.⁵ Horse teeth floating is the practice of filing the outer contours of a horse’s teeth, which grow and become sharp naturally. Horse teeth floating is a routine topical service required when caring for horses and the Board has consistently held that it is not dentistry.⁶ Horse teeth floating can be performed manually (with a hand file) and with mechanized and air-powered tools. Current Texas law allows lay teeth floaters, such as horse farriers, horse handlers, and equine dentists, to perform horse teeth floating.⁷ Thus, Texas consumers can select from a broad range of service providers, considering for themselves such factors as cost, convenience, and their confidence in the competence and quality of different services providers.

III. The Proposed Rule Change

The proposed rule would expand the definition of dentistry such that lay horse teeth floaters will not be able to continue to provide these services with mechanized tools, except under the direct supervision of a veterinarian.⁸ Based on evidence upon which the Board appears to have relied, Staff believes the proposed rule is not in consumers’ best interests, because restricting competition in this way likely will harm consumers without providing any countervailing benefits.

³ *National Society of Professional Engineers v. United States*, 435 U.S. 679, 695 (1978).

⁴ *See Goldfarb v. Virginia State Bar*, 421 U.S. 773, 787 (1975).

⁵ According to the American Horse Council, the Texas horse population is 979,000. *See* <http://www.horsecouncil.org/stateeconomics.php>.

⁶ In 2004, the Texas State Board of Veterinary Medical Examiners (“Board”) explained that, “The Board does not consider ‘teeth floating’ to be the practice of dentistry if teeth floating procedures do not extend below the gum line.” *See* Letter from Texas Board of Veterinary Medical Examiners to Martin Brillhart (Jan. 20, 2004).

⁷ Only the practice of invasive dental procedures upon animals is reserved exclusively for veterinarians or those under a veterinarian’s supervision. *See* Rules Pertaining to the Practice of Veterinary Medicine (hereinafter “Rules”) §573.10(f) (prohibiting non-licensed individuals from performing invasive dental procedures). Invasive dental procedures are limited to only those procedures, “exposing of the dental pulp, or extractions.” *See* Rule §573.65(6).

⁸ *See* proposed 22 TAC §573.17 (“Dentistry includes, but is not limited to: . . . (2) ‘Animal teeth floating’ defined as the rasping or cutting of the long projections or points of the teeth of animals. Dentistry does not include the floating of the teeth of animals with handheld, non-motorized, non-air-powered files or rasps.”).

Texas horse owners likely would pay more for horse floating services if veterinarian supervision of lay horse floaters were required, because the proposal would insulate veterinarians from competition by lay horse teeth floaters. Indeed, the Board's materials supporting the rule indicates that prices may increase by 15 to 20 percent due to the proposed rule.⁹

This proposed rule change, however, does not appear to provide any countervailing benefits. The materials supporting the rule cite no evidence about injury to horses attributable to lay horse floaters using mechanized tools, nor do they address how veterinary supervision might be related to improved animal health. These materials also run counter to the findings of the Texas House Committee on Agriculture and Livestock. In 2006, this Committee found that non-veterinarian providers of animal dental services are "highly proficient in their work,"¹⁰ and often are graduates of schools with sound and rigorous training and certification programs.¹¹ Moreover, it stated that there is a shortage of veterinarians willing to provide any dental services,¹² and that veterinary schools do not emphasize animal dentistry in their programs.¹³ Thus, the Staff believes that if competition to provide such services is restrained, consumers may be forced to pay higher prices, experience longer wait times and/or accept lower quality services.

Like all consumers, horse owners who purchase teeth floating services benefit from competition among providers.¹⁴ As the U.S. Supreme Court explained:

The assumption that competition is the best method of allocating resources in a free market recognizes that *all elements of a bargain - quality, service, safety, and durability* - and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.¹⁵

For these reasons, Staff of the FTC believes the Board should not pass the proposed rule.

⁹ See proposed 22 TAC §573.17, Economic Impact Statement and Regulatory Flexibility Analysis at 3.

¹⁰ See Interim Report 2006, House Committee on Agriculture and Livestock, Rick Hardcastle, Chairman, at 15-16 (Nov. 17, 2006).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See, *id.* at, 689; *Goldfarb*, 421 U.S. at 787; see also *United States v. Am. Bar Ass'n*, 934 F. Supp. 435 (D.D.C. 1996), *modified*, 135 F. Supp. 2d 28 (D.D.C. 2001).

¹⁵ *Prof'l Eng'rs*, 435 U.S. at 695 (emphasis added); accord, *FTC v Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 423 (1990).

IV. Conclusion

The proposed rule would modify existing Texas regulations to effectively prohibit non-veterinarians from providing specific and commonly-available forms of horse floating, absent veterinarian supervision. If enacted, the rule appears likely to significantly restrict competition without providing any countervailing benefit, thereby harming consumers. Accordingly, the Staff of the Federal Trade Commission encourages the Texas State Board of Veterinary Medical Examiners to reject the proposed rule unless credible evidence supports it.

Respectfully submitted,

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