

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners: Robert Pitofsky
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III

In the Matter of)
ALDI, INC.,) DECISION AND ORDER C-3764
a corporation.)
_____)

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 615(a) of the Fair Credit Reporting Act and Section 5(a) of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Aldi Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1200 N. Kirk Road, Batavia, Illinois 60510.

2. The acts and practices of the respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For the purpose of this Order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a(c), 1681a(d), and 1681a(f).

I.

IT IS ORDERED that respondent Aldi Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of Section 615(a) of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this Order, to mail two (2) copies of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency supplying the report to each applicant who was denied employment by Aldi Inc. between January 1, 1994, and the date this Order is issued, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such copies of the letter to be sent first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondent. Copies of the letters attached as Appendix A need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent Aldi Inc. has previously given the applicant

notification that complies in all respects with the provisions of Paragraph I.(1) of this Order.

II.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, for five (5) years from the date of issuance of this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of Part I of this Order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, instructions given to employees regarding compliance with the provisions of this Order, all notices or a written or electronically stored notation of the description of the form of notice and date such notice was provided to applicants pursuant to any provisions of this Order, and records of all applicants for whom consumer reports were obtained for whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, for five (5) years from the date of issuance of this Order, deliver a copy of this Order at least once per year to all persons responsible for the respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

IV.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation that may affect compliance obligations arising under this Order, including, but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that with respect to any proposed change in the corporation about which respondent learns less than thirty days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, within sixty (60) days of the date of service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VI.

IT IS FURTHER ORDERED that this Order will terminate on September 5, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this Order that terminates in less than twenty (20) years;
- B. This Order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: September 5, 1997

[Appendices A and B attached to paper copies of Decision & Order]