IN THE MATTER OF

TRANS WORLD ACCOUNTS, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 9059. Complaint, Sept. 30, 1975 — Final Order, Oct. 25, 1977

This order, among other things, requires a Santa Rosa, Calif. debt collection agency to cease misrepresenting the likelihood or imminency of legal action; and to cease using, or placing in the hands of others, materials which simulate telegraphic communications, or which may otherwise mislead debtor recipients as to the nature, import or urgency of such communications.

Appearances

For the Commission: *Ralph E. Stone.*

For the respondents: *Kirt F. Zeigler, Spridgen, Barrett, Achor, Luckhardt, Anderson & James,* Santa Rosa, Calif.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Trans World Accounts, Inc., a corporation, and Floyd T. Watkins, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Trans World Accounts, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2800 Cleveland Ave., Santa Rosa, California.

Respondent Floyd T. Watkins is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time in the past have been, engaged in the advertising, offering for sale and sale of a service to assist in the collection of alleged delinquent debts. This service consists of the preparation by the respondents of a [2] series

of form notices and letters to be mailed to alleged delinquent debtors at regular intervals.

Two styles of forms have been used in this series: (1) that which is titled TELEGRAM; and (2) that which bears the letterhead of Trans World Accounts, Inc.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of the United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, the respondents have mailed or caused to be mailed to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative, but not necessarily all inclusive, of said forms and material are the following:

1. A yellow window envelope on which a return address is printed, with no name. The word TELEGRAM is printed in large black type over the window and on the reverse side.

2. A yellow printed form, styled TELEGRAM designed to be inserted in the envelope described in subparagraph 1 of this paragraph.

PAR. 5. By and through the use of the envelopes and forms described in subparagraphs 1 and 2 of Paragraph Four, the respondents have represented, directly or by implication, that the envelopes and forms are telegraphic communications.

PAR 6. In truth and in fact, the envelopes and forms referred to in Paragraps Four and Five are not telegraphic communications. Rather, they are printed form letters mailed to alleged delinquent debtors, which forms by their color and appearance, styling, printing and format simulate telegraphic communications. By [3] virtue of said simulation, these envelopes and forms mislead the recipient as to their nature, import, purpose and urgency.

Therefore, the use by respondents of said envelopes and forms as set forth in Paragraph Four was and is false, misleading and deceptive.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the payment of alleged delinquent debts, respondents have mailed, or caused to be mailed, to alleged

delinquent debtors various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

URGENT - - IMMEDIATELY CONTACT OUR CLIENT AND MAKE ARRANGEMENTS FOR PAYMENT. IMPERATIVE TO AVOID FURTHER ACTION WHICH MAY BE TAKEN AGAINST YOU UNDER PROVISIONS OF STATE STATUTES. IF SETTLEMENT IS NOT MADE WITHIN 5 DAYS AFTER RECEIPT OF THIS TELEGRAM YOU MAY WISH TO CONSULT YOUR ATTORNEY REGARDING YOUR LEGAL LIABILITY. . .

* * * * * * *

YOU ARE HEREBY DIRECTED TO APPEAR AT OUR CLIENT'S OFFICE AT 9:00 A.M. NEXT TUESDAY TO PROTEST LIABILITY OF THE ABOVE CLAIM. FAILURE TO COMPLY MAY RESULT IN IMMEDIATE COMMENCEMENT OF LITIGATION BY OUR CLIENT. IF JUDGMENT IS GRANTED, PROPERTY, INCLUDING MONIES, AUTOMOBILIES, CREDITS AND BANK DEPOSITS NOW IN YOUR POSSESSION, COULD BE ATTACHED.

* * * * * * *

YOU HAVE NOT SATISFIED OUR CLIENT CONCERNING THE ABOVE DEBT AS WE REQUESTED A FEW DAYS AGO. WE STRONGLY URGE YOU TO MAKE PAYMENT DIRECT TO OUR CLIENT WHILE YOU STILL HAVE THE OPPORTUNITY. OUR CLIENT MAY REFER THIS MATTER TO LEGAL COUNSEL WHICH COULD BE TURNED INTO AN IMMEDIATE COURT SUIT. . .

* * * * * * *

YOU HAVE RECEIVED THE BENEFIT OF EARLIER NOTICES FROM THIS OFFICE AND HAVE FAILED TO DISCHARGE YOUR OBLIGATION. WE HEREBY REQUEST VERIFICATION AS TO EMPLOYER'S NAME AND ADDRESS, BANKS WITH WHICH YOU DO BUSINESS, MORTGAGE HOLDER ON HOME, AND LEGAL OWNER OF AUTOMOBILE. THIS INFORMATION IS NECESSARY [4] WHEN FILING SUIT AND IS TO BE FORWARDED IMMEDIATELY TO OUR CLAIMS OFFICE FOR THEIR RECORDS. . .

* * * * * * *

URGENT - - - CONTACT OUR CLIENT IMMEDIATELY AND MAKE ARRANGEMENTS FOR PAYMENT. IMPERATIVE TO AVOID FURTHER ACTION BY THIS OFFICE. IF FULL SETTLEMENT IS NOT MADE WITHIN 48 HOURS AFTER RECEIPT OF THIS NOTICE, OUR CLIENT SUGGESTS YOU CONSULT YOUR ATTORNEY REGARDING LEGAL LIABILITY. MAKE PAYMENT DIRECT TO OUR CLIENT, NOT TO CLAIMS OFFICE OF TRANS WORLD ACCOUNTS, INC.

* * * * * * *

PAR. 8. By and through the use of the aforesaid statements and

representations, and others of similar import and meaning not expressly set out herein, respondents have represented, directly or by implication, that legal action with respect to an alleged delinquent debt is about to be, or may be, initiated during the course of the aforesaid series of form notices and letters.

PAR. 9. In truth and in fact, legal action with respect to an alleged delinquent debt is neither about to be, nor will it be, initiated during the course of the aforesaid series of form notices and letters. On the contrary, while respondents' letter writing service was being used, no legal proceedings were being or would be initiated on the basis of the alleged debtor's failure to respond to respondents' communications.

Therefore, the statements and representations set forth in Paragraphs Seven and Eight were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are now in substantial competition, in commerce, with corporations, firms and individuals engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 11. The use by respondents of the envelopes and forms as set forth in Paragraph Four hereof, has had the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said envelopes and forms are [5] telegraphic communications. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to induce the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY DANIEL H. HANSCOM, ADMINISTRATIVE LAW JUDGE.

APRIL 7, 1977

I

STATEMENT OF THE CASE

Allegations of Complaint

The complaint in this proceeding alleged that respondents Trans World Accounts, Inc., and Floyd T. Watkins engaged in the sale of a service to assist in the collection of delinquent debts, and charged respondents with using misrepresentations in a series of form notices and letters sent to debtors as part of their service to induce payment. Essentially the complaint charged respondents with sending dunning [2] communications to debtors in a "yellow window envelope" with the work "TELEGRAM" printed in large black type over the window and on the reverse side. The notice inside was alleged to be a "yellow printed form, styled TELEGRAM." The complaint charged that these communications were not telegrams, but simulated telegrams, and because of such simulation, the envelopes and forms misled recipients as to their nature, import, purpose and urgency.

The complaint also alleged that statements in the messages sent to delinquent debtors misrepresented that legal action "is about to be, or may be" taken against the recipient by his creditor, when in actuality legal action with respect to the debt was not initiated during the course of the aforesaid series of form notices and letters. The following are alleged to be typical representations made by respondents in form letters sent to debtors:

> Urgent — Immediately contact our client and make arrangements for payment. Imperative to avoid further action which may be taken against you under provisions of state statutes. . .
>
> You are hereby directed to appear at our client's office at 9:00 A.M. next Tuesday to protest liability of the above claim. Failure to comply may result in immediate commencement of litigation by our client. . .
>
> Our client may refer this matter to legal counsel which could be turned into an immediate court suit. . .
>
> Urgent — Contact our client immediately and make arrangements for payment. Imperative to avoid further action by this office. . .

The complaint charged that the above statements, and others of

similar import, had the tendency to mislead the public as to their truth, and thus to induce payment of substantial sums of money. [3]

Respondents' Answer

Respondents filed answer admitting most of the factual allegations of the complaint, denying most of the substantive allegations, and raising several affirmative defenses. Respondents Trans World Accounts, Inc., and Floyd T. Watkins, admitted that they advertise and sell a service to assist in the collection of delinquent debts, and that part of their service includes the preparation by respondents of a series of form notices and letters to be mailed to delinquent debtors.

Respondents admitted they have mailed to delinquent debtors various printed forms and that the examples of their forms, set forth in the complaint, although incomplete in their descriptions, do describe to some extent the forms and materials used by them. They further admitted that one of their form notice and envelope styles included in its title the word TELEGRAM. However, respondents deny that by using such form they have represented, directly or by implication, that the messages are telegraphic communications. Respondents admitted that the notices to debtors are not telegraphic communications, and denied that they simulate such communications, or mislead recipients as to the nature, import, purpose and urgency of the messages.

Although respondents admitted that the excerpts of messages sent to debtors as set forth in the complaint are typical, but not inclusive, of representations appearing on printed materials prepared and mailed by them, they denied that they have represented, directly or by implication, that legal action is about to be, or may be initiated during the series of letters. In the alternative, respondents denied that, during the course of their letter mailing service, there is no possibility legal proceedings would be initiated if the debtor failed to respond to a communication.

Respondents denied that their service injures the public, or constitutes unfair methods of competition or unfair or deceptive acts or practices [4] in violation of Section 5 of the Federal Trade Commission Act. They denied that their printed forms and letters have the tendency and capacity to mislead the public into believing the notices are telegraphic communications, or to induce the public into payment of substantial sums because of representations in the mailed messages which they denied were false.

Respondents urged the value of their service and asserted that they have never advertised, offered for sale or sold a service to assist

in the collection of anything but actual, due and owing delinquent debts. Nor, they claimed, had their service been used for any purpose but to collect lawful, just and delinquent debts.

In their answer, respondents admitted that they are now and have in the past engaged in sending and receiving materials from persons located in various states by means of the United States mail and that they engage in substantial competition, in commerce, with like firms.

History of the Proceeding

Complaint was served at the end of October 1975. An initial hearing which had been set in the complaint for November 24, 1975 was cancelled. On December 16 the law judge issued an order directing counsel to attempt agreement on a timetable for completion of prehearing matters and a date and place for hearings on the merits. A timetable was agreed upon and established by the law judge's order of January 22, 1976. Hearings on the merits were set for May 10.

Thereafter, discovery was conducted according to the agreed upon timetable with the exception that complaint counsel requested and was granted a week's extension to file final exhibit lists.

On February 23, 1976, counsel supporting the complaint filed a motion for summary decision and respondents were granted time to respond to the motion. Complaint counsel's motion was founded on respondents' admitted use of the telegram format for its series of [5] letters and admitted use of language alleged in the complaint, thus according to complaint counsel, eliminating all factual issues in dispute. Respondents filed their response on March 17 and included a request for oral argument on the motion. They argued that although the language was used as charged, there remained disputed issues of material fact including whether legal action against the debtor as allegedly depicted in the letters was accurate or a misrepresentation. Respondents charged as vague the wording in the proposed order which prohibited the use of materials which "misrepresented the nature, import, purpose or urgency of any communication," and urged the need for oral argument to obtain more specific guidance as to what forms would be acceptable, including such possible formats as "Speedogram," "Lettergram," and "Transogram." Additionally, respondents objected to the disclaimer required by the proposed order to appear on notices sent to debtors to the effect that there would be no suit filed against the debtor until the end of the series of letters. Respondents argued the disclaimer

would be inaccurate, would be confusing to debtors, and would destroy the efficacy of their service.

A pretrial hearing was scheduled and held on March 25. As a result of this oral argument, the law judge concluded there were genuine issues of material fact in dispute. Therefore, the motion for summary decision was denied and the date for evidentiary hearings was reinstated for May 10, 1976.

On April 30, a joint motion was made by the parties to withdraw this matter from adjudication so that the Commission could consider a consent agreement which had been negotiated. The law judge certified the agreement to the Commission and the matter was withdrawn from adjudication on May 18, the hearings scheduled for May 10 having been cancelled. However, the Commission did not accept the proposed consent order and returned the matter for adjudication on September 28.

On receiving notification of this action the undersigned immediately issued an order directing both sides to submit a proposed timetable for further proceedings including a trial date. Hearings on the [6] merits began on January 10, 1977, the earliest date respondents' counsel was available, and concluded after three days of proceedings. Eight witnesses testified including the individual respondent, and the testimony of others was stipulated. The record, consisting of 78 exhibits, many of them multi-paged, and 355 pages of transcript was closed by order of the law judge on January 17, 1977.

This matter is now before the undersigned for decision based upon the allegations of the complaint, the answer, the evidence and the proposed findings of fact, conclusions and briefs filed by all parties. All proposed findings of fact, conclusions and arguments, not specifically found or accepted herein, are rejected. The law judge having considered the entire record, and all the contentions of the parties, makes the following findings and conclusions and issues the order set out at the end hereof:

II

Findings of Fact

Respondents' Business Activities and Sales in Commerce

1. Respondent Trans World Accounts, Inc.[1] is a California corporation with its office and principal place of business located at 2800 Cleveland Ave., Santa Rosa, California (Ans. TWA, ¶1). TWA

[1] Hereinafter referred to as TWA.

was incorporated in California on November 5, 1970 and is a licensed full service collection agency engaged in the sale of debt collection services (CX 2a, b, 40–41).

2. Individual respondent Floyd T. Watkins formulates, directs and controls the acts and practices of the corporate respondent (admitted Ans. TWA, ¶1) including the drafting and review of the forms challenged in the complaint (Watkins, Tr. 98, 105, 331, 333–35). He now owns the majority of the outstanding shares of stock of TWA (CX 40–41; Watkins, Tr. 55).[2] He has been an officer and [7] director of the corporation since its beginning (Watkins, Tr. 53–54; CX 40–41; Ans. TWA, ¶1, CX 2a). Mr. Watkins has been the vice-president or president and general manager of TWA since January 1971 and he is currently the president (Watkins, Tr. 53–54; CX 40–41; Ans. TWA ¶1, CX 2a).

3. TWA is currently operating and marketing debt collection services in California, Washington, Arizona, and Hawaii. Previously, TWA sold its services in South and North Dakota, Minnesota, Montana, Massachusetts, Alaska, Utah and Nevada (CX 2, 40–41; Watkins, Tr. 83).

In addition to the main office in Santa Rosa, TWA has had branch offices in Seattle, Los Angeles, Oakland, Dallas and Hawaii (Watkins, Tr. 83). As an example of the size of each branch office, Mr. Watkins testified that approximately 10 or 11 people work at the Los Angeles office (Watkins, Tr. 129–30). There are about 35 employees at the main office in Santa Rosa (Watkins, Tr. 82).

4. The corporate respondent offers a number of different debt collection services such as collection of accounts for a percentage of the remittance, personal contact of debtors, and the preparation of a series of form notices and letters to be mailed to delinquent debtors at regular intervals (Ans. TWA, ¶2, CX 2b). The series of form letters are purchased by creditors for a "flat rate" (CX 3b, 4; Watkins, Tr. 61). The charges in this case are related primarily to the acts and practices which occurred in the operation of TWA's flat rate debt collection service (Motion for Summary Decision, Tr. 44–45).

5. Respondents are one of the largest debt collection agencies in California and, as estimated by Mr. Watkins, have the largest flat rate service in the state (Watkins, Tr. 84–85). TWA attempts to collect about $40 million of delinquent debts per year and annually contacts about 130,000 individual debtors (Tr. 345–46).

[8] 6. In the course and conduct of their business, TWA and Floyd T. Watkins have been and now are in substantial competition in or

[2] There are six other stockholders with percentage interests ranging from 2 1/2 percent to 13 percent (Watkins, Tr. 55).

affecting commerce (as "commerce" is defined in the Federal Trade Commission Act) with other corporations, firms and individuals in the sale of debt collection services (Ans. TWA, ¶3, ¶10).

7. The corporation, TWA, is made up of three divisions, Trans World Accounts, Credit Management Services, and Trans World Computer Services. The Trans World Accounts division is a full service debt collection agency with both flat rate and percentage of remittance services. The primary responsibility, however, for this division of the corporate respondent is the preparation and mailing of the flat rate letter series (Watkins, Tr. 57–58; 67).

About a year after TWA was formed, respondents developed the Credit Management Services (CMS) division (Watkins, Tr. 65). CMS is also a full service collection agency, but it normally handles the percentage fee accounts after the letter series has been mailed to the debtor and failed to evoke response and the creditor has assigned the account to TWA for "hardcore" collection (Watkins, Tr. 67, 74–75).

The third division of TWA is a computer services division which provides computer services for the other divisions and to outside entities. The computer division prints TWA's debtor contact letters (Watkins, Tr. 81).

8. Respondents' services are sold to clients by independent commissioned sales representatives (Watkins, Tr. 83). The client using the flat rate service purchases four-part transmittal forms from the sales representatives. The form is filled out by the client with the debtor's name and address and other pertinent information and is sent to TWA. Upon receipt of the transmittal, the letter series is begun by respondents. The client, either because it has received payment or made payment arrangements with the debtor, may send the respondents the second part of [9] the transmittal form and stop the letter series. If the debtor should make a committment to pay on a certain schedule but fail to meet it, the client could send the third part of the transmittal form to TWA to resume the letter series. The fourth part of the form can be used to indicate payment and to generate a "Thank-you" letter to be sent to the debtor (CX 7i; Watkins, Tr. 89, 91–93; Stark, Tr. 176; Morris, Tr. 201).

9. TWA charges its clients between $3.92 and $8.00 to activate a letter series to a debtor (Watkins, Tr. 122). All of the flat rate letters originate from TWA's Santa Rosa office, but a local return address may be on the envelope if required by state law where the letter is sent (Watkins, Tr. 102).

A flat rate series of six letters is sent to the debtor over a period of from 85 to 90 days. A five letter series would be mailed over a 60 or

70 day period. The letters are sent to the debtors approximately 10 to 14 days apart (Watkins, Tr. 336).

The respondents guarantee to purchasers of the flat rate service that they will "contact the debtor over a period of 85 to 90 days so many times, depending upon the type of business that's involved" (Watkins, Tr. 62). Respondents also offer to their creditor-clients, a guarantee that the client will collect from their debtors at least two times their investment to purchase the flat rate service transmittals (CX 8b; Watkins, Tr. 122).

10. In general, an agency which sells only a flat rate letter service does not obtain an assignment of the debt from the creditor. The collection agency's only obligation with respect to the debt is to send the series of letters to the debtor (Brouilette, Tr. 267). A collection agency which pursues a debt beyond a letter series and is paid a percentage of the monies collected normally obtains an assignment of the debt from the creditor.

TWA, however, sells its flat rate debt collection services to creditors on both an assignment and a non-assignment basis (Watkins, Tr. 70–71). The percentage of flat rate services sold on an assignment [10] basis by TWA has increased steadily since its incorporation. Currently, TWA receives an assignment of the debt before the first letter in the series is mailed in about 80–90 percent of all flat rate sales. TWA's flat rate letter series service is the same whether or not the creditor-client has assigned the debt. Respondents obtain the assignment in the first instance so that if all letters in the series have been sent and there has been no response from the debtor, the account can be transferred to the CMS division for "hardcore" collection on a percentage fee basis. CMS employs methods other than letters such as telephone calls and conceivably law suits. Nevertheless, even in "hardcore" collection cases, CMS sends several "pre-treatment" letters over a period of 15 days (Watkins, Tr. 74–75). The principal difference between the letters sent as part of the flat rate service and the "pre-treatment" letters is that in the former the debtor is instructed to pay the creditor while the latter requests payment directly to respondents (Watkins, Tr. 75–76).

11. TWA has used different letters in different states and has changed its forms for the flat rate series at various times, albeit somewhat infrequently (Watkins, Tr. 103–104). Principally, TWA's letters are from one of three series, intensive (see, *e.g.*, CX 21b, 22b, 23c, 24c, 25c); diplomatic (see, *e.g.*, CX 21a, 22a, 23b, 24b, 25b); and bad check (see, *e.g.*, CX 21c, 22e, 23d, 24d, 25d). Only the first letter in each of the three series differs.

Telegram Format

12. The complaint alleges and respondents admit that they have mailed through United States mail, as one form of their letter series to delinquent debtors, "A yellow window envelope on which a return address is printed, with no name. . .The work TELEGRAM is printed in large balck type over the window and on the reverse side," and "A yellow printed form, styled TELEGRAM designed to be inserted in the envelope. . . ." The forms used by the respondents are reproduced as follows (CX 36a–b)[3]:

[3] The name of the alleged debtor has been deleted in the reproduction herein.

TELEGRAM

No Words	Pd or Coll	Charge to the Account of	☒ Over Night Telegram Unless box above is checked this Message will be sent as a Telegram
66	PAID	TRANS WORLD ACCOUNTS, INC.	

BALDWIN PARK COMMUNITY HOSP DEBTOR NO.01405904 C
05940 14148 FRANCISQUITC REF.
001 BALDWIN PARK CA 91706
AMT DUE $72.10

12/31/74

17444 HOLLY DR
FONTANA CA 92335

ABOVE CLAIM IS STILL UNSATISFIED. INVESTIGATION MAY DISCLOSE UNPAID CHATTELS, LIENS OR OTHER OUTSTANDING CLAIMS AGAINST YOU. SETTLE ABOVE ACCOUNT WITHIN 48 HOURS BY MAKING FULL PAYMENT DIRECT TO OUR CLIENT WHO WILL ADVISE US TO CEASE FURTHER ACTIVITY. DO NOT CONTACT CLAIMS OFFICE OF TRANS WORLD ACCOUNTS, INC., 2800 CLEVELAND AVENUE, SUITE 1, SANTA ROSA, CALIF., OR ANY OF OUR HUNDREDS OF ASSOCIATE OFFICES NATIONWIDE.

CX-36a

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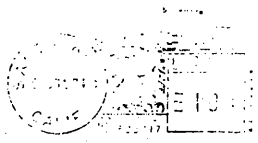
Message Enclosed in Foregoing CX-36b

P. O. BOX 1864
SANTA ROSA, CALIF. 95403



TELEGRAM

CX-36b

Trans World Accounts, Inc., et al.
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Front Side of CX-36b

Telegram

Reverse Side of CX-36b

[13] As the complaint charges, the respondents have represented directly or by implication that the envelopes and forms pictured above are telegraphic communications when in fact they are form letters printed by a computer and sent by United States mail (Watkins, Tr. 109; CX 40–41, Adm. No. 30).

13. The Communications Act of 1934, Section 214, gives the Federal Communications Commission authority to approve all entry into public message telegraphic service. Telegrams are messages forwarded by telegraphic service.[4] Electricity is used to transmit a telegraphic message or telegram.

The Western Union Telegraph Company is the only "carrier" duly licensed by the Federal Communications Commission to conduct a public message telegraphic service. For over thirty years, Western Union has been the sole licensee for this service in the United States. The people in this country associate the term "telegram" with messages sent by telegraphic transmission and also with Western Union.

14. Western Union telegrams are printed on different forms but the different forms are quite similar. One such format used by Western Union is in the record. See attachment to affidavit, CX 43, of M. Borsella, patent attorney for Western Union. For respondents' stipulation of the admissibility of this affidavit, see CX 42a, No. 4.

15. The similarities between the respondents' simulated telegram and the Western Union telegram are obvious.

(a) Both forms are yellow (see CX 4 in complaint counsel's Motion for Summary Judgment).

(b) The forms are relatively the same size, *i.e.,* smaller than an 8 1/2" x 11" standard business letter.

(c) Both forms have a dark band across the top which bears the word "telegram." [14]

(d) Both forms have the following notations which would be extraneous to respondents' forms were they not simulating a Western Union message:

(1) the box on the extreme right with the notations "Over Night Telegram" and "Unless box above is checked, this Message will be sent as a Telegram."

(2) the box in the center which says, "Charge to the Account of."

(3) on the left, the notation for "No. words."

(4) Both forms have a box to indicate whether the message is "Pd. or Coll."

(e) Both forms are delivered in a yellow envelope of nearly

[4] Webster's Seventh New Collegiate Dictionary defines telegram as a "telegraphic dispatch."

identical size, both of which have a transparent window for the address.

16. Respondents' "telegram," sent through ordinary United States mail, is sufficiently similar to a genuine telegram to have the tendency and capacity to deceive members of the general public, and lead debtors to believe that respondents' message has been transmitted telegraphically by Western Union.

17. Clearly respondents' use of the yellow "telegram" (CX 35) misrepresented that the message was a telegram, and thus, misrepresented the nature of communication. Respondents argue that they developed the telegram format, believing that the word "telegram" was in the public domain because of an alleged notice to that effect from the attorney general's office for the State of California (RX 4, but see also CX 39). Even if the word "telegram" is in the public domain, and it is not for this hearing to decide whether it is or is not, respondents went further than just using the word "telegram." They attempted both with color and format to make their debtor contact look very much like a Western Union telegraphic communication. [15] This form did then misrepresent the nature of the communication. It appeared to be a Western Union telegram and it was not. At the least, respondents' "telegram," as stated, had the tendency and capacity to deceive recipients into the mistaken belief that they were receiving a telegraphic communication, and thus had also the tendency and capacity to mislead delinquent debtors or allegedly delinquent debtors as to the nature of the communication received.

18. Western Union charges, or at one time charged, the sender of a telegram $7.95 for a basic delivered 15-word message. Thereafter, the cost increased at the rate of 8 cents per word. A Western Union Mailgram[5] now costs the sender about $2.75 for a single message. Presently a first class message sent by United States mail costs $.13 per ounce. A reasonable person who sends a message using the Western Union telegram or mailgram must have a particular reason for spending considerably more to use the telegraphic system than the mail. The sender either wants the message to reach the recipient quickly or wants the recipient to regard the message as so important to the sender that extra money was spent to send it, or both. Examples of possible uses for telegraphic messages include notices of personal tragedy, confirmation of contracts, and myriads of others.

19. In everyday life, because of the expense of sending telegraph-

[5] Western Union presently offers the public an alternative to the telegram, called the Mailgram, which is partially sent by telegraphic communication and partially by mail. The message is telegraphed from the sender to the recipient's general location and is then delivered by regular mail. A Mailgram is printed on blue and white paper (RX 1).

ic messages, most people receive more items of commumication through the mail than through the use of Western Union's telegraphic system. By its sheer uniqueness the telegram has a greater impact[6] on the recipient than a letter. One client of respondent was aware of this extra impact and testified: [16]

> Q: Well, why is it that [TWA] is effective in getting results where you yourself have made a phone call and sent a letter and you didn't get results?
>
> A: Well, there I have to — having not been at that end — not being in the customer's organization, I can only suppose what it is. I really think that the telegrams — now Trans-O-Grams — are handed to higher echelon that effect payment. . . . (Anderson, Tr. 254).

20. The complaint in this case charges respondents with misrepresenting the import and urgency as well as nature and purpose of the communication. The dictionary is our best guide for determining what is meant by misrepresenting "import" and "urgency." Import is equated by Webster's with significance. Urgency is defined as something requiring prompt attention. By its greater impact on the recipient, a telegram tells the recipient that it is more significant and requires prompter attention than a letter.

21. Complaint counsel's recipients all stated that they felt the first communication from the respondents was - upon first impression - more significant and urgent than they regarded it after reading the message, as follows:

> When I first received this — looking at the front of the envelope. . . .The Trans-O-Gram—[7] the first thing that struck my mind, "I wonder if this is something similar to a Mailgram, urgent letter, you know." So I opened it, you know, thinking something has happened to my family or something. Then I see that it's from a collection agency. I was rather distrubed (Doolittle, Tr. 46). [17]
>
> My first contact with Trans World Accounts, Inc., began in mid-1973, when my mother received by mail a billing notice in the form of a telegram. She became very upset when she saw the telegram and thought something had happened to someone in the family. She opened the envelope and read the contents and discovered it was a billing notice and was further upset that it was sent as a fake telegram. When my mother showed me the billing notice, I thought it was a real telegram until I read it and realized it was a fake (Semien, CX 42a, 44a).
>
> When I first received the collection notices, I thought they were real telegrams sent by Western Union. I did not realize they were fakes and not real telegrams sent by wireless. . . when I got the fake telegram I got upset becsause I thought something was wrong (Pere, CX 42a, 45a,b).

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[6] In its advertisements the Western Union Company emphasizes the "impact" of messages sent by their telegraphic system (RX 3a, Tr. 146-149).

[7] Respondents have discontinued the use of the yellow form notice to debtors which is styled TELEGRAM (Watkins, Tr. 107). They now use a form called the Trans-O-Gram which is blue and white and is mailed to debtors in the same manner as the "telegram." The Trans-O-Gram and its envelope are in the record and are discussed later herein (CX 51a-b).

22. There is no doubt that respondents' creditor-clients feel respondents' messages are "significant" and "require prompt attention." Mr. Anderson of Bechman Instruments expressed it most persuasively:

> We have an agreement with our customer that we would supply our product, and in our opinion we've done everything that we had committed ourselves to, and now the customer has a commitment to us, an obligation to pay us, and to pay us according to the terms that we agreed. When he is not living up to that, certainly it's urgent. The longer it goes beyond our terms the more urgent it becomes. We're a profit making organization, and we must have our money. We must have a continuous cash flow in order to survive (Anderson, Tr. 260).

However, creditors apparently do not consider these messages as important or urgent as they want recipients to believe them to be or they would actually use the [18] telegraphic system and pay the higher cost. If the format of the message causes, or has the capacity to cause, recipients to believe the message has been sent faster or more expensively and is more important than regular mail, the format misrepresents the import and urgency of the message. The undersigned finds that the "telegram" format used by respondents had the capacity to accomplish, and accomplished, this result.

23. The *purpose* of the format of any debt collection message is to try to make the debtor take special note of the message, to read the message, pay attention to it and pay the debt, as opposed to filing it away with other mail or throwing it away. If a creditor were to send a real telegram or mailgram to the debtor, the creditor's purpose would be to make the debtor take special note of the message, to read it, and act on it as opposed to filing it or throwing it away. The purpose of both a real telegram and a telegram format in a debt collection context is to impress upon the debtor the import and urgency of the contact. Therefore, it is hard to understand how the use of the telegram format misrepresents the *purpose* of the communication. Webster's defines purpose as the particular thing to be effected or attained. The creditor wants to attain the attention of the debtor. This can be accomplished by sending a telegram or a simulated telegram, the purpose being the same in either case. Respondents' use of a telegram format thus, in the opinion of the undersigned, did not misrepresent the purpose of the communication.

Imminence and Probability of Legal Action against Debtors

24. The complaint charges that statements in the messages sent by respondents during the course of their flat rate letter service misrepresented that legal action "is about to be, or may be initiated" against the debtor during the course of the flat rate letter series. The collection notices sent by respondents do represent, by implication, that the third party (TWA) or the creditor brings a lawsuit during its flat rate letter series when, in fact, it does not. The language in the letters sent to debtors during the flat rate letter service has been carefully composed so that no threat of legal action is literally [19] expressed. Nevertheless, what the letters say and what the letters imply are different things. Consider the following sent by respondents to debtors. One letter (CX 25c) says:

> Urgent — Immediately contact our client and make arrangements for payment. Imperative to avoid further action which may be taken against you under provisions of state statutes. If settlement is not made within 5 days after receipt of this telegram, you may wish to consult your attorney regarding your legal liability.

The second sentence of this communication uses the word "may" to express possibilities but implies, in the context of the communication, high probability. The last sentence tells the debtor that he or she may wish to consult with an attorney regarding legal liability "[i]f settlement is not made within 5 days." The phrase strongly implies that the recipient will need a lawyer if payment is not made in 5 days. A "net impression" of imminent legal action is thus conveyed. Further, the communication is termed a telegram with a concomitant suggestion of urgency.

25. Another letter, number four in a series (CX 25g), reads, as follows:

> Amount of this unpaid claim may justify client taking legal action in small claims court or through his attorney in higher courts. If such action is undertaken and results in judgment against you, writ of execution may be issued against your attachable assets. Cost of such proceedings may be assessed against you thereby increasing your indebtedness. Strongly advise you to make payment direct to our client today.

By warning the debtor that the unpaid claim "may justify" "legal action in small claims court," and making reference to "judgment," "writ of execution" and "[c]ost [20] of such proceedings," suggesting court costs, the implication is strongly conveyed that, without payment, legal action is likely and imminent. The final sentence "[s]trongly" advising payment "today" reinforces the impression of imminence.

26. Respondents recently added an "attorney letter" to their series which is a form letter typed by computer and signed by an attorney retained by respondents (Watkins, Tr. 338). One example (CX 50) of respondents' "attorney letter" is recited below:

> My client, Trans World Accounts, Inc., has requested this office review the above claim and contact you. If you owe the debt, I seriously suggest you pay it now or contact your creditor immediately to resolve this matter. Full payment or satisfactory arrangements must be made forthwith or I must recommend to my client that your creditor go forward and seek its full legal remedy under the law. Should this claim warrant legal action, additional expense such as court costs and service of process may well increase your debt and thus your financial obligation. I must advise you to give this matter immediate attention as my office has no authority to withhold further processing or proceedings.

This "attorney letter," signed by respondents' California attorney, is sent to debtors in all the states, although the signing attorney sends delinquent accounts, which have been assigned to TWA for "hard core" collection, to an attorney in the debtor's locale for review and the local attorney files suit if deemed advisable (Watkins, Tr. 340–341). The net impression conveyed is strongly that if payment is not forthcoming, the signing attorney will initiate suit, particularly in view of the last sentence which implies that the creditor has ordered legal processes to start and the attorney has no authority to withhold them. [21]

27. Still another letter (CX 22d), conveys the imminent probability of a lawsuit, as follows:

> You have not satisfied our client concerning the above debt as we requested a few days ago. We strongly urge you to make payment direct to our client while you still have the opportunity. Our client may refer this matter to legal counsel which could be turned into an immediate court suit. Such a procedure could be very costly to you. Avoid unpleasant complications and make payment direct to our client, not to claims office of Trans World Accounts, Inc.

28. Another sequence of letters used by respondents in the State of Washington (CX 21a–g) employs essentially similar language to that in the letters quoted above. An early letter advises:

> You are hereby directed to appear at our client's office at 9:00 A.M. next Tuesday to protest liability of the above claim. Failure to comply may result in immediate commencement of litigation by our client. If judgment is granted, property, including monies, automobile, credits and bank deposits now in your possession could be attached. If our client receives payment in full prior to the time of protest as scheduled, your appearance will not be required (CX 21b).

This letter suggests that the creditor has some legal power to require the debtor to appear at his office when, of course, the creditor cannot, without a court's intervention, require the debtor to appear

anywhere. The letter conveys the impression that if the debtor does not appear, the creditor will sue. The letter implies that unless the debtor pays or [22] appears as directed, he may forthwith lose his property. Again the legal phrases such as "liquidating this claim," and "litigation" are used to give the message a legal authoritative, and compelling aura. The net impression of legal action and the imminence thereof is very strong.

29. Another letter in the series states:

> You have had ample time to pay this claim. I have advised you of some of the legal remedies our client may use to obtain satisfication, and I strongly advise you not to take that risk. If settlement is not made within 5 days after receipt of this letter you should consult with your attorney regarding your legal liability. Make voluntary payment now and protect your credit standing (CX 21e).

This language not only implies legal action, but that it is imminent by stating that the debtor should consult his attorney if settlement is not made within 5 days.

30. The next letter, (CX 21f), reads:

> You have received the benefit of earlier notices from this office and have failed to discharge your obligation. We hereby request verification as to employer's name and address, banks with which you do business, mortgage holder on home, and legal owner of automobile. This information is necessary when filing suit and is to be forwarded immediately to our claims office for their records. If payment has been made, it is imperative that our client notify our office immediately so we can discontinue the processing of this claim.

[23] Again, the net impression that legal proceedings are about to be initiated unless payment is received is strongly conveyed, for example, the employer's name and address, name of banks, etc., are "necessary when filing suit," and are to be forwarded by the debtor "immediately." It is suggested to the debtor that his home, automobile and savings are in jeopardy. The final sentence reinforces the foregoing. Respondents warn the debtor that it is "imperative" that they be notified by the creditor if payment has been made. Why? The sentence suggests that respondents are "on the way to the courthouse with filing papers in hand" and if the debtor pays, he must tell his creditor to contact TWA *immediately* to stop the suit.

31. The series used by respondents in Massachusetts, (CX 22), has a letter, #4 in the series, which states the following:

> Urgent — Appear at Claimant's office within four days to pay above claim or protest your liability. Failure to appear in person or have legal counsel represent you may result in immediate litigation by our client with ultimate seizure of property, auto, bank accounts and other personal assets if judgment is obtained.

This letter suggests, like others already discussed, that respondents

and their clients can conduct a court-like proceeding and require the debtor's appearance. More importantly, it conveys the impression that failure to appear in person or by counsel may result in "immediate litigation" with ultimate seizure of the debtor's auto and other assets if judgment is obtained. In the language of the complaint, the letter represents that "legal action" is "about to be, or may be, initiated."

32. Respondents argue that because they have an assignment of the debt in approximately 90 percent of the accounts they receive for collection (Watkins, Tr. 70–71), [24] and because they are a full service debt collection agency (Watkins, Tr. 134–135), the possibility of legal action depicted in their letters is, in fact, a distinct reality. In actuality, however, whether or not the debt was initially assigned made no difference in the consequences of a debtor's failure to respond to any of the letters in the series.

33. In both TWA's assignment and non-assignment flat rate debt collection service, the collection notices are sent in a set sequence (*see* handwriting on CX 21 through CX 28 which notes are in evidence, Tr. 106). The consequence of the debtor's failure to pay after receipt of one letter was receipt of the next letter. One of the letter series (CX 25b) was read to Mr. Watkins during the hearing and he was questioned about the reference to the statement that in 10 days other collection procedures could begin.

> Q: . . . what would these procedures consist of?
>
> A: We'd generate another contact, a No. 2 contact to the debtor (Watkins, Tr. 333).

34. Legal action with respect to an alleged delinquent debt was neither about to be, and, except in the rarest of circumstances, would not be initiated by either creditors or respondents during the course of the series of form notices and letters.

35. Creditors who purchased the flat rate service and testified at the hearing, indicated that they did nothing in regard to the account for the duration of the letter writing series:

> Q: Do you do anything to effect payment of the overdue or delinquent debts during Trans World Account's service?
>
> A: No. That's the nice part of it, from our point of view.
>
> I'm responsible for many other things, dollarwise more important and timewise, that there are some [25] periods during the year where I literally would just be derelict in my duty if I had to get something out like that.

The fact that they sent out automatically on a timely basis these followups, is very good . . . .

Q: So other than sending out the invoices or bills, if that didn't work, then you just turned it over to Trans World Accounts and basically forgot about it?

A: Uh-huh (Stark, Tr. 177).

* * * * * * *

Q: When you turn the account over to TWA for the flat rate service, their letter service — once you have turned it over to TWA, do you make other reference [sic] to collect the debt?

A: No, we do not (Schmale, Tr. 215).

Q: When you have to, you've gone through your collection procedure and turned it over to Trans World Accounts.

Do you do anything to effectuate payments?

A: Only if the member contacts us.

Q: If they don't contact you, you leave it up to Trans World Accounts?

A: (Witness nods Head) (Morris,Tr. 205).

36. As in the assignment situations, one creditor client of TWA who did not assign his accounts for the flat rate letter series testified that he would not [26] begin legal proceedings against a debtor during the course of the letter series:

Q: Do you ever bring a lawsuit while the series of letters is being sent out?

A: No. We would first stop the — terminate or suspend TWA.

Q: But if they — suppose a debtor has not responded at all after the first, second or third, would you let the series go to its conclusion?

A: Yes. That's our policy.

Q: Then you would decide whether to bring a lawsuit; is that correct?

A: Yes, unless we heard through other sources, either from a salesman that goes by and sees them moving out of the building, or some evidence that would indicate that, "Hey, they're closing up." Then we'd stop the service and file suit (Anderson, Tr. 257).

37. TWA, moreover, makes clear in its advertisements that it does not sue when the creditor only purchases the flat rate service:

DOES TRANS WORLD ACCOUNTS SUE DEBTORS? NO! . . . OUR LOW PRICE MAKES THIS UNFEASIBLE. IF YOU WISH TO SUE, CONTACT

YOUR SERVICE REPRESENTATIVE WHO WILL EXPLAIN OUR COST FOR THIS SERVICE TO YOU (CX 8b).

Thus, TWA, in selling its flat rate debt collection letter service does not enter into any agreement with the creditor at the outset of the letter service to do anything other than mail a certain number of form letters to debtors.

[27] 38. After the last notice or letter in the flat rate series has been sent to the debtor, TWA contacts the creditor, whether or not there has been an assignment of the debt, to determine future courses, including legal action (Watkins, Tr. 73–74). Even in assignment situations, the creditor-clients have a right to cancel the assignment after the letter series is completed:

> Our arrangement with them [TWA] is that all of the accounts are assigned. We do have an option of cancellation within a certain specified time without paying a fee, other than the flat fee that we have paid at the outset (Schmale, Tr. 210; see also Morris, Tr. 205–206).

39. After all letters in the flat rate series have been sent and when the accounts have been assigned and respondents have received approval from their clients to go ahead with "hardcore" collection, a lengthy period of time typically elapses before suit is brought, if suit is ever brought.

Mr. Watkins explained during the course of the hearings the kind of procedures which are used by most agencies in percentage commission situations:

> . . .agencies use what we call the PTL in the industry, a pre-treatment series. That can be anywhere from two, three, four, five contacts by letter that they send out to a debtor.
>
> The advantage of this is the fact that they don't pay a commission to a collector if the account is collected.
>
> Now, if the account is not collected on the PTL program, then the account would be given to a collector or assigned to a collector's desk by alphabet. Most collection agencies are divided A through L and et cetera. [28]
>
> The collector at that time would make two or three contacts, telephone contacts, and then determine that the account is not collectable through the use of the normal collection procedure. He would make up what we call a court action or a debtor assignment — I mean, a record of assets. He would request permission from his manager to sue the account.
>
> The manager, then, would take a look at the assets and make a judgment, send it to the attorney's office with instructions for suit. If the attorney agreed, the account would be sued.

> After the judgment is granted, then you would execute on the assets, if the debtor didn't pay voluntarily (Tr. 126).

Respondents follow all these procedures typically utilized in the debt collection industry (Watkins, Tr. 127).

40. Even after the pre-treatment letters have been sent by respondents' CMS division, the debtor is not immediately sued. The account is given to a collector to make telephone calls to the debtor. And even if the debtor adamantly refuses to pay, respondents make some evaluation before they bring a lawsuit. Each individual account is reviewed by respondents to determine whether the debtor has any assets, the amount of the debt, and whether the contract with the creditor calls for recovery of costs by respondents. After the review, respondents decide whether they will initiate a lawsuit (Watkins, Tr. 76–78).

41. There are no set policies used by respondents as to which debtors will be sued, and each case is individually evaluated before respondents bring suit. Mr. Watkins noted respondents' guidelines: [29]

> One would be the strength of the case. In other words, if we look at the account and there's no dispute, there's no problem. Two, if it calls for attorneys' fees, court costs, contract where we have an opportunity to recover our costs.
>
> Three, there are other things that are also involved. The fact of whether the debtor is currently employed. In other words, what we call job assets, an asset investigation, whether there's property involved, attachable assets. Things like this (Watkins, Tr. 307).

42. Although in many communications with one debtor whose affidavit is in the record of this proceeding, respondents indicated the imminent possibility of suit, almost a year of collection activity was expended and no suit was brought (Watkins, Tr. 305). The same is true of the other debtor who signed an affidavit. This debtor was sent the letter series, her account was transferred to CMS division and she was sent a notice of assignment. She set up a payment program with respondents but failed to meet this commitment (Watkins, Tr. 298–299). She was then sent additional "pre-treatment," dunning letters. Again, although each letter indicated that a lawsuit was imminent, this was not the case (Watkins, Tr. 299–301).

III

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents. Respondents are now sending and receiving and have previously, in the course of their business, sent and received through the United States mail, letters, notices, forms, and other materials for use in the collection of delinquent debts. Respondents have done business in various states such as South and North Dakota, Minnesota, Montana, Massachusetts, Alaska, Utah and [30] Nevada. Respondents currently do business in the States of California, Arizona, Washington, Texas and Hawaii. Respondents have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. Mr. Watkins is individually responsible for the acts and practices of the corporate respondent. As an officer, director, and majority stockholder, he formulates, directs and controls the acts and practices of the corporate respondent, including those challenged in the complaint herein. Mr. Watkins has been the principal manager of TWA since its inception and was associated with the debt collection industry before the establishment of TWA. The order issued herein must be issued against Mr. Watkins individually as well as against the corporate respondent TWA to ensure that the acts and practices violative of Section 5 alleged in the complaint are finally stopped.

3. By the use of the envelopes and forms described in Paragraph Four of the complaint, and shown by the record of this proceeding, respondents have represented, directly and by implication, that the envelopes and forms are telegraphic communications when, in truth and in fact, they are not. The use by respondents of such envelopes and forms has, and has had, the tendency and capacity to mislead and deceive members of the public receiving them into the erroneous and mistaken belief that such envelopes and forms are telegraphic communications, and to mislead and deceive members of the public receiving them as to their nature, import and urgency.

4. Respondents have made statements and representations, as alleged in Paragraphs Seven and Eight of the complaint, in their notices and letters to debtors as part of their flat rate service which were and are false, misleading and deceptive in that they represent, directly and by implication, that legal action with regard to the debt may be, or is about to be, instituted during the course of respondents' series of form notices and letters when, in truth and in fact, as

alleged in Paragraph Nine of the complaint, such was not the case. While respondents' [31] letter writing service was being used, no legal proceedings were being or would be initiated on the basis of the alleged debtor's failure to respond to respondents' communications. Such false, misleading and deceptive statements and representations have, and have had, the tendency and capacity to cause members of the public to pay substantial sums of money as alleged in Paragraph Eleven of the complaint.

5. The acts and practices of respondents, as alleged in the complaint and found herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

IV

Discussion

There can be no doubt that debt collection is a legitimate function in our economic system. Consumers everywhere must subsidize, through higher product prices, those persons who buy products or use services which they do not pay for. Unquestionably there are those who take advantage of the relative ease with which credit can be obtained in this country, buying with little or no intention of paying. There are others, however, who do not pay because they have disputes with their creditors. And there are still others who do not pay simply because they cannot pay, either due to changed circumstances in their lives or, perhaps, to over extension of their payment capabilities. Whatever the reason for non-payment, payment from debtors may not be exacted by misrepresentation, deception, and other unfair practices in debt collection activities. *Floersheim* v. *F.T.C.,* 411 F.2d 874, 878 (1969), *cert. denied,* 396 U.S. 1002. [32] Respondents argue that all three of complaint counsel's witnesses have ultimately escaped payment of legitimately owed obligations (Respondents' Proposed Findings, p. 5). The Commission, however, has repeatedly expressed its view, as already indicated, that "The legitimate objective of seeking to induce debtors to pay their debts does not justify the use of illegitimate and unlawful means. There is no lack of public interest in the protection of such persons merely by reason of their delinquency." *Allied Information Service,* 56 F.T.C. 1615, 1618 (1960).

Telegram Format

The telegram format as used by respondents had the tendency and capacity to mislead recipients as to the nature, import and urgency of the message. Capacity for deception is sufficient for a violation and the invocation of a cease and desist order under Section 5 of the Federal Trade Comission Act. It has been well settled since *Charles of the Ritz* v. *FTC,* 143 F.2d 676, 680 (2nd Cir. 1944), that actual deception need not be shown. Respondents contend that complaint counsel should have produced at least one witness who was led by the telegram format to pay or to take some other action which would not have been taken if such person had not been misled by the misrepresentation as to the simulated telegram's nature, import and urgency. All three of complaint counsel's witnesses indicated that they felt the message they had received was something other than a regular letter. Though each of these persons ultimately discerned that the messages were simply debt collection letters in the format of a "fake" telegram, their initial impression was that they had received a telegram. As noted in *Carter Products, Inc.* v. *FTC,* 186 F.2d 821, 824 (7th Cir. 1951):

> The law is violated if the first contact or interview is secured by deception, *Federal Trade Commission* v. *Standard Education Society,* 302 U.S. 112, 115, 58 S. Ct. 113, 82 L.Ed. 141, even though the true facts are made known to the buyer before he enters into [33] the contract of purchase. *Progress Tailoring Co.* v. *Federal Trade Commission,* 7th Cir., 153 F.2d 103, 104, 105. See also, *Aronberg* v. *Federal Trade Commission,* 7th Cir., 132 F.2d 165, 169.

Moreover, one of complaint counsel's affiants apparently did contact Trans World Accounts after she had received the "telegram" and arranged an installment payment plan (Watkins, Tr. 297, 298, 299). Whether this was a reaction to the telegram format or to the statements in the communication in it, or both, is not established. In any event, the Commission can look at the fact that a "fake" telegram was utilized and conclude that such practice has the tendency and capacity to deceive.

Respondents, however, oppose inferences drawn from the "four corners" of the "fake" telegram itself relying on the Commission's recent decision in the Alaskan artifacts case, *Leonard F. Porter, Inc.,* CCH Trade Reg. Rep. ¶21,225, Order of October 19, 1976 [88 F.T.C. 546]. The Commission, after looking at the various artifacts in the record, decided that it could not assume that consumers mistook the souvenirs to be genuine Alaskan art objects without some evidence to that effect. But the Commission determined that this ruling was warranted by the unique circumstances of the Indian artifacts case.

No such record evidence is necessary when, as with a "fake" telegram, the item or message alleged to be deceptive conveys "the same meaning to the Commission viewing it in chambers as it does to consumers seeing it in their living rooms." The Supreme Court in *FTC* v. *Colgate Palmolive,* 380 U.S. 374, 391–92 (1964), concluded that it was not "necessary for the Commission to conduct a survey of the veiwing public before it could determine that the commercials had a tendency to mislead for when the Commission finds deception it is also authorized, within the bounds of reason, to infer that the deception will constitute a material factor in a purchaser's decision to buy" or, by a parity of reasoning, a debtor's decision to pay a claim or to take other action. The Commission has the discretion to interpret meanings of communications and the "impressions they would likely make upon the viewing public." *Libbey-Owens-Ford Glass Company* v. *F.T.C.,* 352 F.2d 415, 417 (6th Cir. 1965).

[34] Respondents essentially do not insist on any right to continue to use "fake" telegrams, and in fact have stopped such use. Nevertheless, respondents offered numerous exhibits (RX 6–19) to support their contention that their simulated telegram was no more deceptive than somewhat similar devices, such as "Speed-O-Gram," "Autogram," "Gram," "Messagegram," etc., currently used in many different situations, *i.e.,* to notify customers of product sales, to elicit votes in political campaigns and to deliver messages of various kinds. In many if not most of these situations, however, the format does not have the capacity to misrepresent. In the opinion of the undersigned, the use of a "fake" telegram reinforced with a message implying dire consequences resulting from non-payment of a debt does, as earlier found, have the capacity to misrepresent to the debtor the nature, import and urgency of a communication which is merely a form letter in a series of form letters. The net impression which the format and communication makes upon the debtor is what counts. *Murray Space Shoe Corporation,* v. *FTC,* 304 F.2d 270, 272 (2nd Cir. 1962); *Kalwajtys* v. *F.T.C.,* 237 F.2d 654, 656 (7th Cir. 1956), *cert. denied,* 352 U.S. 1025 (1957). The Commission has previously considered, in the case of documents designed to simulate legal process, the impression likely to be generated by the overall appearance of documents. *S. Dean Slough* v. *FTC,* 396 F.2d 870 (5th Cir. 1968), *cert. denied,* 393 U.S. 980.

Several other arguments made by respondents should be noted. First, there is no reason to question respondents' good faith. Trans World Accounts, Inc. is a major debt collection operation in California and various other states, and there is no reason to assume

that respondents did not try to comply with regulations governing collection practices in all the states in which they did business.[8] "Proof of petitioner's intention to [35] deceive is not a prerequisite to a finding of a violation . . . ." *Regina Corporation* v. *F.T.C.*, 322 F.2d 765 (3rd Cir. 1963); *Gimbel Bros., Inc.* v. *FTC*, 116 F.2d 578 (2nd Cir. 1941).

Secondly, respondents urge that they have discontinued the use of the "telegram" form. It has been long established that even if a practice has been abandoned and assurances have been made that it will not be revived, the Commission has discretion to determine if the public interest requires protection against possible related and similar practices in the future, and the Commission can issue an order to prevent such. *Libbey-Owens-Ford Glass Company* v. *FTC*, *supra*, at 418.

Respondents have replaced their "telegram" with a format called the "Trans-O-Gram." The Trans-O-Gram is blue and white and approximately the same size as their "telegram" (CX 51a and b). The Trans-O-Gram does not explicitly refer to itself as a telegram, except in the body of the message of the first Trans-O-Gram letter in the series which states that if settlement is not made within 5 days after "receipt of this telegram," the debtor may wish to consult his attorney (CX 47a).

Respondents have been concerned throughout this proceeding about their ability to continue to use the Trans-O-Gram if an order is entered in this proceeding. The use of the Trans-O-Gram was not challenged in the complaint and thus a determination of its legality is not required. In the opinion of the law judge, nevertheless, the Trans-O-Gram envelope with the communication contained in it (CX 51a and b), has the tendency and capacity to mislead recipients. Although the Trans-O-Gram is less blatant, the name [36] Trans-O-Gram and the format of the communication is susceptible to being confused by poorly educated, credulous or unthinking recipients with telegraphic communications (see Doolittle, Tr. 46; and Stark, Tr. 172–173). The essence of what has been said with respect to respondents' "fake" telegram, in our judgment, applies to their subsequent Trans-O-Gram format.

Similarly, any other label and format used for respondents' communication with debtors which has the tendency and capacity to

[8] In fact, there is evidence that respondents did attempt compliance with the regulations of the various states in which they did business. Respondents did not use the telegram in Washington and Texas where it was prohibited (Watkins, Tr. 98, 120–121). Respondents discussed all of the letter forms used in their business with the Bureau of Collection and Investigative Services of the State of California, and although it was not the practice of the Bureau to specifically approve debt collection forms, the Bureau did not disapprove of any forms used by respondents (Bishop, Tr. 221–222; Watkins, Tr. 98).

mislead by confusion with more expensive, different or urgent types of communication, such as telegraphic or personal delivery, would violate Section 5 and the order issued herein. If the debtor has simply received a letter from respondents, he should know it is simply a letter without possibility of confusion or deception.

Imminency of Legal Action

The messages contained in the form letters sent to debtors as part of respondents' flat rate service misrepresented that legal action was about to be initiated against the debtor when, in fact, many steps and much time would intervene, in both assignment and non-assignment situations, before legal action, even if determined upon, truly was imminent.

Respondents argue that because they are a full-service debt collection agency and because they obtain an assignment of the debts from about 90 percent of their clients, that they are fully able to begin legal action at any time against their clients' debtors. Accordingly, respondents contend that the statements made in their form letters about the possibilities of legal action are literally true. But this does not render respondents' statements nondeceptive because what was misrepresented was the *imminence* of legal action. Actually in only the rarest of cases, if ever, would respondents bring suit during the course of their flat rate service.

[37] The contention that the ability to bring suit rendered respondents' communications truthful is rejected. Although there may have been a theoritical ability to institute legal action during the form letter series, as stated, this was never done or was done so rarely as to warrant being disregarded. Even if respondents' statements, or some of them, are considered to be literally true, the overall net impression conveyed was that legal action, and concomitant dire consequences, was *imminent* if the debt were not paid forthwith, or an accommodation entered into forthwith with respect to the debt. This net impression was false and deceptive. In *Murray Space Shoe Corporation, supra,* the Commission found that a shoe manufacturer's statements about the pain relieving qualities of its shoes were literally true but that the additional implications of its advertisements were misleading. The Second Circuit, *supra,* at 272, upheld the Commission and said:

> In deciding whether petitioners' advertising was false and misleading we are not to look to technical interpretation of each phrase, but must look to the overall impression these circulars are likely to make on the buying public . . . And statements susceptible of both a misleading and a truthful interpretation will be construed against the advertiser.

See also, *Katwajtys, supra,* at 656: "a statement may be deceptive even if the constituent words may be literally or technically construed so as not to constitute a misrepresentation;" *United States* v. *95 Barrels of Vinegar,* 265 U.S. 438, at 443 (1924) which states, "[d]eception may result from the use of statements not technically false or which may be literally true;" and *Rhodes Pharmacal Co.,* v. *F.T.C.,* 208 F.2d 382, 387 (7th Cir. 1953), modified on other grounds, 348 U.S. 940 (1955), noting that, "[a]dvertisements which are capable of two meanings, one of which is false, are misleading . . . . [a]dvertisements which create a false impression although literally true, may be prohibited." That deception by innuendo rather than outright false statements may be so accomplished is firmly established. *Bakers Franchise Corporation* v. *F.T.C.,* 302 F.2d 258, 261 (3rd Cir. 1962).

[38] Respondents cite (Final Brief, p. 18) *F.T.C.* v. *Sterling Drug Company, Inc.,* 317 F.2d 669 (2nd Cir. 1963), as support for their view that the courts will curtail the Commission's discretion to determine when literal truths emit misleading impressions. In rejecting a Commission argument the court refused, at 676, to attribute to the ordinary reader "a careless and imperceptive mind" or "a propensity for unbounded flights of fancy." However, in this case, "no unbounded flights of fancy" would be necessary for a debtor to infer from the letters sent by respondents that suit is imminent, particularly in view of the fact that some of the sentences in respondents' letters have no meaning beyond that suggestion.

It may be true, as respondents note in their proposed findings, p. 17, that "[a] mass mailing of even the mildest type of debtor communication is bound to ferret out a certain percentage of individuals who will be misled, frightened or intimidated." Respondents' mailings to debtors were not of the mildest kind. Their letters included references to additional court costs, loss of earnings and assets, and investigation of the debtors personal business. Some of the letters told the debtors to pay or see a lawyer, and that they would have no further opportunity to pay the debt voluntarily.

The undersigned accepts respondents' statement in their final brief that ". . .most people do pay their debts, that often all that is needed to motivate one to pay an obligation, or at least to contact the creditor involved, is a series of reminders which reflect a sense of urgency and importance on the part of the creditor." But reminders to the debtor must accurately and truthfully reflect the situation, and cannot convey, directly or indirectly, false or misleading impressions. If the reminders are of no value in collections without misrepresentation then reminders as a system of collecting debts

cannot be countenanced. As the Supreme Court said in *FTC* v. *Colgate-Palmolive, supra,* at 390–391: [39]

> . . .we think it inconceivable that the ingenious advertising world will be unable, if it so desires, to conform to the Commission's insistence that the public be not misinformed. If, however, it becomes impossible or impractical to show simulated demonstrations on television in a truthful manner, this indicates that television is not a medium that lends itself to this type of commercial, not that the commercial must survive at all costs.

There is, of course, no reason flat rate letter services for debt collection cannot be lawfully marketed. Two cases do show the requirement for carefully scrutinizing the messages sent in the course of such services. In *S. Dean Slough* v. *FTC,* 396 F.2d 870 (5th Cir. 1968), *cert. denied,* 393 U.S. 980, *affirming* 70 F.T.C. 1318, the respondent marketed a variation of the flat rate service in that he sold debt collection forms to businessmen. These were later remailed under respondent's letterhead and address, thus deceptively implying that a third-party had been engaged to collect the debt. The statements made in *S. Dean Slough's* forms were similar in a number of respects to statements made in TWA's forms. *S. Dean Slough* was prohibited from representing directly or by implication that ". . . any delinquent account had been referred to it for collection," and from representing that ". . . any legal or other actions will be instituted to effect collection" 70 F.T.C. at 1368. The Commission further noted in *S. Dean Slough,* at 1358, that third party referral is an effective debt collection device because the debtor feels the creditor has assigned the account for legal action. To the extent that the third party is not in a position to sue, the use of a third party's name and address for the collection of a debt "is wholly grounded in deception." *Helix Marketing Corporation,* 3 CCH Trade Reg. Rep. ¶20,368 (1973) [83 F.T.C. 514], is also in point. It involved a corporation which assigned debts to a separate division with a different name for collection to give its debtors the impression that the account had been assigned to an outside collection agency. The corporation was prohibited from representing that legal action will be taken unless it is taken in all cases, or that legal action may be taken unless it is [40] taken in a *majority* of cases. Respondents attempt to distinguish *Helix* by arguing that because in *Helix* the assignor and assignee were the same corporate person, there could be no question in the minds of the individuals running the collections division as to what the parent corporation would, in fact, do to collect the debt. There is no merit in respondents' attempt to distinguish this case from *Helix.* TWA sells its flat rate service as a

series of form letters to be sent to debtors, and no legal action is planned or taken during this series.

Floersheim v. *FTC, supra,* is a case where the debt collectors' actions were more egregious than those of TWA in that the debt collection notices were made to simulate legal documents, and were sent by Floersheim from Washington, D.C., to give the notice an official government aura. Nevertheless, the Commission's findings in that case are pertinent here. The Commission found "that vague references to state laws permitting attachment of various types of property had a tendency to deceive . . .," and that the " 'sole purpose of including this catalog of creditors' rights is to intimidate and deceive the debtor, rather than to inform him of the legal rights of his creditor.' " *Floersheim,* at 877. Moreover, Floersheim was prohibited from giving the impression that a third party, other than the creditor, was interested in the debt.

Respondents counter that they are required by state law to catalogue possible extra costs to the debtors should legal action be taken. The language which is suggested for use by the California Bureau of Collection and Investigative Services is as follows:

> You are advised that we intend to commence legal action against you. This action can result in a judgment against you which will include the actual cost of . . . filing fees and . . . actual cost of service of process (Watkins, Tr. 153; RX 5, p. 6).

However, according to the testimony of the former Chief of California's Bureau of Collection and Investigative Services, this requirement was passed by the California legislature as a consumer protection [41] measure because of the peculiarity of California's court system and was directed at regular third party collection measures *not* flat rate services. He testified that the reason for the rule is that in California collection agencies cannot sue in small claims courts, and the legislators wanted debtors to know that, even though the amount of the debt was small, once the account was assigned to a collection agency, the account would be sued in regular court where costs could be assessed against the losing party (Bishop, Tr. 230–231). The particular language quoted above was suggested because some collection agencies abused the notification requirement (Bishop, Tr. 231–232; RX 5, p. 6).

V

Remedy

Respondents raise a threshold First Amendment question in

regard to the order which has been proposed by complaint counsel. First Amendment attacks upon Commission orders are not novel. See *Murray Space Shoe Corporation* v. *FTC, supra,* at 272; *Regina Corporation* v. *F.T.C. supra,* at 770. There is now no question that commercial speech is protected by the First Amendment, *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748 (1976), but there is no protection for false and misleading speech. "The power of the Federal Trade Commission to restrain misleading, as well as false statements . . . has long been recognized." *Young* v. *American Mini Theatres, Inc.,* 427 U.S. 50, 69 (1976). There is obviously no constitutional right to disseminate false or misleading statements. *FTC* v. *National Commission on Egg Nutrition,* 517 F.2d 485 (7th Cir. 1975). In view of the recent decision in *Beneficial Corp.* v. *FTC,* 542 F.2d 611, 619 (3rd Cir. 1976), any order which restricts commercial speech must be as precise as possible and should be no more broad "than is reasonably necessary to accomplish the remedial objective of preventing the violation."

The words "nature," "import" and "urgency" in the abstract have ranges and shades of meaning when applied to possible future communications of respondents in their debt collection activities which, in the veiw of the undersigned, are too imprecise to serve as a proper guideline. Therefore, the proposed order has been narrowed in this respect. [42]

Disclaimer

Respondents vehemently object to the disclaimer contained in the "Notice" order for inclusion in all of the letters sent by respondents in their flat rate service. The disclaimer is as follows:

> This communication is a reminder of creditors' claim. Trans World Accounts, Inc., does not take any legal action against the debtor during the letter writing series.

The undersigned is of the opinion that the foregoing disclaimer would be extremely confusing to recipients of TWA's communications. The disclaimer does not state clearly TWA's relationship with its creditor clients and has the capacity to leave the misleading impression that TWA has been engaged to pursue all avenues of collection and has complete authority to sue. The debtor, furthermore, not only does not know how many letters are included in the "letter writing series" but, until a number of communications have been received, would not necessarily even understand the phrase "letter writing series."

It is without question that the Commission has broad discretion in

framing an order to insure that law violations will not continue, so long as there is a reasonable relation between the violation and the remedy. *FTC* v. *Colgate-Palmolive supra; FTC* v. *National Lead Company,* 352 U.S. 419 (1957); *Jacob Siegel Co.* v. *FTC,* 327 U.S. 608 (1946). And where necessary the Commission can require affirmative disclosures. *Ward Laboratories, Inc.* v. *FTC,* 276 F.2d 952 (2nd Cir. 1960), *cert. denied,* 364 U.S. 827. In the opinion of the undersigned, the disclosures here are not only unnecessary but would obscure and render less valuable the truthful representations compelled by the order. *Alberty* v. *FTC,* 182 F.2d 36 (D.C. Cir. 1950), *cert. denied,* 340 U.S. 818. [43]

VI

ORDER

It is ordered, That respondents, Trans World Accounts, Inc., a corporation, its successors and assigns, and its officers, and Floyd T. Watkins, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by their appearance, content, or otherwise, misrepresent that they are telegrams or a telegram.

2. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by simulating telegrams or other methods or forms or types of communication misrepresent the nature, import, or urgency of any communication.

3. Misrepresenting directly or by implication, that legal action with respect to an alleged delinquent debt has been, is about to be or may be initiated, or misrepresenting in any manner the imminency of legal action.

4. Engaging in any misrepresentations in communication with alleged delinquent debtors, or placing in the hands of [44] others for use in communicating with alleged delinquent debtors, letters, forms, or any other materials, which contain misrepresentations.

5. Placing in the hands of others the means and instrumentali-

ties to accomplish any of the matters prohibited in this order, or which fail to comply with the requirements of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives, or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as 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 which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his employment with Trans World Accounts, Inc., and of his affiliation with a new business or employment. In addition, the individual respondent named herein shall promptly notify the Commission of his affiliation with a new business or employment whose principal activities include the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts, or of his affiliation with a new [45] business or employment in which his own duties and responsibilities involve the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts. Such notice shall include individual respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall, within sixty (60) days from the date this order becomes final, and periodically thereafter as required by the Federal Trade Commission, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

Dissenting Statement of Commissioner Collier

In my opinion the record proof fails to support any reasonable interpretation that Trans World Accounts (TWA) threatened debtors with imminent and likely lawsuits. The challenged communications generally followed a two-part format. In the first part, TWA demanded immediate payment and sometimes demanded to be contacted by the debtor as an alternative to payment. In the second part TWA advised debtors (or suggested to them) that a failure to make the payment demanded "may" result in a lawsuit, sometimes an "immediate" one.

This record does not show that TWA's clients never brought lawsuits, "immediate" or otherwise. Three of the four of these clients who testified said either that they sued or that TWA sued for them. (Tr. 205–06, 210–12, 256.) The fourth client was not asked whether his employer sued. (Tr. 171–78.)

It cannot be discerned from this record, even in general terms, how much time elapsed between the sending of the letters that mentioned a lawsuit and the subsequent decision to sue. The majority concludes that a lawsuit is not "imminent" if it is not initiated during the letter series. I find no support in the record for placing this meaning on TWA's letters, and the record proof regarding clients' litigation policies is in disarray. The client witness who was asked the most probing questions about his firm's policy testified as follows:

> Question (by complaint counsel): But if they—suppose a debtor has not responded at all after the first, second or third, would you let the series go to its conclusion?
>
> Answer (by Mr. Anderson of Beckman Instruments): Yes. That's our policy.
>
> Q. Then you would decide whether to bring a lawsuit; is that correct?
>
> A. Yes, unless we heard through other sources, either from a salesman that goes by and sees them moving out of the building, or some evidence that would indicate that, "Hey, they're closing up." Then we'd stop the service and file suit. (Tr. 257.)

[2] This hardly proves that lawsuits were not brought before the series expired.[1]

What were the chances of a lawsuit when the challenged letters went out and afterwards? What were the determinants? Were they different between respondents' "commercial" and "non-commercial"

[1] The same client earlier testified:
"If . . . the customer says, 'Well, look, there isn't any way that I can pay you because at the advice of counsel we're thinking seriously of filing bankruptcy, we have such a cash flow problem that we really don't know whether we're going to stay in business,' we'll stop the TWA service and immediately turn the account over to an attorney." (Tr. 250.)

clients? In all these matters, the Commission is asked to resolve silence against the respondents.[2]

If the communications had told debtors that the respondents or their clients would definitely sue, or even, that they would probably sue if payment were not made, complaint counsel might have proved its case. But the respondents were careful to say only that a lawsuit "may" be brought.

In deciding for liability, the majority gives "may" a statistical meaning that runs against common usage. Although the majority purports to do this only for the sake of clarifying the order, it is clear that this statistical conception of "may" is the root of its finding of liability. The word "may" usually conveys uncertainty of a fairly elastic nature, [3] and I think that it must have been understood in this way by the debtors who received the respondents' letters. So far as it is used to express volition, "may" conveys the absence of a present intention—certainly not the presence of one, as the majority suggests. Unlike the situations that we sometimes face where communications are hurled in staccato rhythm at partially attentive audiences of mass media, one can reasonably assume that readers of the morning mail will read and understand the common meaning of simple words.

The majority's decision effectively regulates the word "may" out of respondents' vocabulary, at least insofar as it can be used by them to express the possibility of a lawsuit. If respondents can establish that a debtor has a 51 percent chance of being sued, I do not see why they wouldn't say, "You will probably be sued" rather than "You may be sued." (Unless, or course, the majority also intends to establish a regulatory meaning for "probably" beyond what is commonly comprehended by that word.)

The public policy reasons that dictate this reworking of the English language are obscure to me. There is a public interest in consumers knowing that they may be sued, and possibly assessed costs, in time to head off the consequences.[3] If the majority believes

[2] Rather than on the testimony, which was inconclusive, complaint counsel may be relying on respondents' admission that certain communications mentioning the possibility of a lawsuit "were sent by Trans World Accounts, Inc. to debtors in instances where the creditor had not assigned the debts involved to Trans World Accounts, Inc. until after the final notice in the series had been sent." CX 40 at p. 6, CX 41c. This does not prove that TWA's clients did not bring suit during the series, assuming *arguendo* that to be the relevant time period. Moreover, there was evidence and the ALJ found that "currently, TWA receives an assignment of the debt before the first letter is mailed in about 80-90 percent of all flat rate sales." I.D. 10. There was evidence that two years before trial this figure was 60 to 70 percent. (Tr. 70.)

[3] A California statute, which governs a substantial part of respondents' operations, effectively conditions a debt collector's recovery of costs in municipal and justice courts upon his prior notice to the debtor that the debt collector "intended to commence legal action against the defendant and that legal action could result in a judgment against the defendant which would include the costs and necessary disbursements. . . ." Cal. Code Civ. Proc. § 1031 (Deering's Ann. Supp. 1977). Obviously, this is a consumer protection measure, and I do not see that the interest that it guarantees is less important when a suit is only possible.

that there will be time enough to locate debtors in a class that will probably be sued, I don't know the basis for that belief. A debtor may be more likely to have the means to pay a debt over a longer period of time than over a shorter one. I do not think we earn the gratitude of those consumers who will receive the shorter "notice periods" and quicker litigation decisions that the majority's language convention may inspire. Even if the long-term consequences of our language reform efforts are nil, as those who leave their debts unpaid learn not to trust the absence of mention of a lawsuit, there are bound to be some short-term costs of this reeducation process.

[4] Having concluded that the text of the letters contains no misrepresentation, I believe that there is no public interest in entering and enforcing an order against respondnets' practice of styling these communications "telegrams," "Trans-O-Grams" and the like.[4]

Clearly TWA would be permitted to call their communications telegrams if they had paid the price to Western Union. Western Union may—or may not—have a private right of action for TWA's conduct.[5] In the ordinary trademark infringement case, the trademark holder's private right of action can protect the important interest that consumers have in getting what they have chosen, an interest that we also have a duty to protect. *See FTC* v. *Algoma Lumber Co.*, 291 U.S. 67 (1934); *but see FTC* v. *Klesner*, 280 U.S. 19 (1929). Here, however, the case is different. There is no question that TWA's clients got what they chose, and the recipients of these communications were not in a position to choose whether they were to receive a Trans World telegram (or Trans-O-Gram) or a Western Union telegram, because the recipients obviously were not buying the communications. The nature of the consumer injury in this case must be on a different plane than in the ordinary trademark infringement case. It is not apparent exactly what this consumer injury is. Surely it is not merely that respondents failed to pay Western Union.

[5] The majority writes that respondents' practice of calling their communications telegrams is material, because "the obvious conclu-

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[4] The reach of the majority's holding on this issue is unclear. The record, buttressed by our experience in reviewing marketing practices, indicates that [fill-in-the-blank]-O-Grams are often used in promotional activities, ranging from soliciting political campaign contributions to sales of products. RX 7-19.

[5] Mr. Michael Borsella, patent and trademark attorney for Western Union, seems to admit in his affidavit that "the word 'telegram' is a dictionary word in the public domain." He objects not to the use of the word "telegram" but to the use of that word "on a spurious telegraphic format *together with a number of proprietary features ordinarily embodied in one or more of Western Union's formats.*" (emphasis in original) CX 43c. *See also* CX 43d. While this objection may be more valid with regard to respondents' original "telegram" communication (CX 43e, CX 43f), it seems very weak with regard to the "Trans-O-Gram" format. *See Western Union Telegraph Co.* v. *ITT World Communications, Inc.*, 164 U.S.P.Q. 651 (Patent Office Trademark Trial and Appeal Board 1970) (editorial description).

sion to be drawn from the receipt of a demand to pay, telegraphically communicated at substantial cost, is that precipitous action may follow if immediate response to the message is not made." Presumably this "immediate response" would be either payment of the debt or some communication by the debtor to the creditor.

There is no evidence on this record that shows that TWA's practice of styling its communications as "telegrams" induced consumers to pay their debts or communicate with their creditors. Two consumer affiants gave evidence of their impressions of respondents' communications.

> Affiant Semien: When my mother first showed me the billing notice, I thought it was a real telegram until I read it and realized it was a fake. (CX 44a.)
>
> Affiant Pere: When I first received the collection notices, I thought they were real telegrams sent by Western Union. (CX 45a.)

Both of these statements make clear to my mind that any misimpression was temporary and did not last long enough to induce payment or other prejudicial action by the debtor. A third consumer testified to the same effect:

> Question (by respondents' counsel): [Y]ou received a Trans-O-Gram from Trans World Accounts?
>
> Answer (by Mr. Doolittle): That's correct.
>
> Q. And the first thing you wondered is whether it was something similar to a Mailgram?
>
> A. That's correct.
>
> Q. How long did that frame of mind exist?
>
> A. Until I opened it. (Tr. 47-48.)

On this evidence I am not willing to find as a matter of expertise that respondents' use of the telegram or Trans-O-Gram format was a "material" deception, even assuming that it was a deception at all. *See FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965). At most, these symbols on the envelope may have led readers to be more attentive to the contents, but this ephemeral reaction is not the sort of public injury that I had thought Congress had charged the Commission with preventing.

[6] The ALJ held that an incorrect "initial impression" is enough to make a violation, whether or not this initial misimpression induced any action.[6] I.D. at 32-33. The "first contact" cases that he cites do not go so far as to read the materiality requirement out of

[6] The ALJ found that the telegram format may have actually induced one consumer to work out an installment payment program. I.D. at 33. I reject this finding. The consumer to whom the ALJ refers is affiant Semien whose statement quoted *supra* indicates that she was disabused of her initial misimpression as soon as she opened the envelope.

Section 5. In each, the initial misimpression induced or could have induced consumers to take some action to their prejudice, such as taking a trip to the store, *Carter Products, Inc.* v. *FTC,* 186 F.2d 821, 824, (7th Cir. 1951), consenting to a deceptive sales presentation, *FTC* v. *Standard Education Society,* 302 U.S. 112, 115 (1937), or answering a deceptive offer of employment, *Progress Tailoring Co.* v. *FTC,* 153 F.2d 103, 104–05 (7th Cir. 1946).

Because, in my view, the text of the letters were not proved false and the use of the telegram format did not cause material deception, I would dismiss the complaint.

I believe that this result is consistent with the soon-to-be-effective Fair Debt Collection Practices Act, Pub. Law 95–109, which will comprehensively regulate deception and unfairness in the debt collection industry.

There is nothing in the Act or in its legislative history to suggest that the general prohibitory sections[7] set different standards for deception and unfairness than Section 5. Because I do not believe that respondents cognizably violated Section 5, I do not believe that they have violated these general sections.

[7] Neither did the respondents violate the specific prohibitions of the Act. Section 807(5) prohibits "the threat to take any action that cannot legally be taken or is not intended to be taken." Nothing that the respondents said about the possibility of a lawsuit could reasonably be construed as a "threat," at least giving that term its plain meaning as Congress apparently intended.[8]

There are two specific provisions in the new Act that might be argued to bar the "telegram" and "Trans-O-Gram" formats. Section 807(9) prohibits "the use or distribution of any written communication . . . which creates a false impression as to its source . . . ." I do not believe that respondents misrepresented the "source" of their communications within the meaning of the Act. Even if a consumer thought a Trans World telegram were a Western Union telegram, he would not be mistaken as to the source, because Western Union is a medium of messages, not a source of them. (CX 43c.) A consumer could not possibly doubt from any of the respondents' communica-

[7] Section 807 provides: "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." Section 808 provides: "A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt."

[8] The Act expressly prohibits the Commission from interpreting its terms through administrative regulations. Fair Debt Collection Practices Act, Section 814(d). *See* S. Rep. No. 95–382, 95th Cong., 1st Sess. 6 (1977) [hereinafter cited as "Senate Report."] This feature was stressed in the House debate. 123 Cong. Rec. H2921 (daily ed. April 4, 1977) (remarks of Rep. Annunzio); 123 Cong. Rec. H2928 (daily ed. April 4, 1977) (remarks of Rep. Evans).

tions on this record that the source was TWA. Moreover, both the prohibitory language associated with the language quoted above[9] and the Senate Report[10] make clear that the evil addressed by this provision is the practice of some debt collectors passing themselves off as government officials, attorneys or credit bureaus. There is no allegation of this kind of deception here.

The second specific provision that might be relevant to the respondents' practice of calling their communications telegrams and Trans-O-Grams is Section 808(8) which prohibits "using any language or symbol, other than the debt collector's [8] address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business." The interest protected by this provision is obviously the consumer's privacy from the awareness of others that he owes an uncollected debt. As the Senate Report explains, the section prohibits "using symbols on envelopes indicating that the contents pertain to debt collection." There would be little sense, from the perspective of avoiding deception, to read this section to permit use of the word "telegram" on the letter to the debtor and forbid it on the envelope.[11] Unless the respondents' use of the telegram and Trans-O-Gram formats links in the public mind their communications to the business of debt collection, I do not see how their use offends this subsection. Moreover, since this subsection expressly permits debt collectors to send telegrams, I cannot see how TWA's conduct contravenes its policy.

The majority clearly interprets respondents' statements to mean something different than my interpretation of them. If this were a case of a merchant describing his products in language susceptible of misunderstanding, I might be inclined to take another view. In such a case we are entitled to infer injury from the mere fact of misunderstanding of a material aspect of the transaction. *FTC* v. *Algoma Lumber Co.*, 291 U.S. 67, 78 (1934). But here the injury is more remote: it is the possibility that a debtor might because of his misunderstanding pay an unjust debt. In my view, the respondents' proven conduct does not make this a substantial risk. In any event, the real risks of this injury are regulated far more effectively by the

[9] The subsection 807(9) reads in full: "The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

[10] Senate Report at 8.

[11] This reading of subsection 808(8) is reinforced by subsection 804(5) which governs collector communications to third parties (not the debtor) and forbids the use of identifying symbols on both the envelope and the letter.

new Fair Debt Collection Practices Act than they will be by the majority's order.

Opinion of the Commission

By Dixon, *Commissioner:*

The extraction of money owed from the pockets of those who owe it is a necessary, if not universally revered occupation in a society, like ours, whose growth and prosperity depend so heavily upon the extension of credit. Worthy ends, nonetheless, cannot excuse means which slide beyond education, persuasion, and exhortation into the realm of deception and unfairness. This case involves allegations of such overreaching by a large West Coast collection agency.

Respondents are Trans World Accounts, Inc., (hereinafter Trans World), a full-line collection agency, which contacts over 100,000 consumers per year, and Floyd T. Watkins, its principal shareholder and guiding light. The complaint in this matter, issued in October 1975, charged that respondents had used two sorts of misrepresentations in a series of form [2] notices and letters sent to debtors in an effort to induce payment. Respondents were first alleged to have sent communications in a "yellow window envelope" with the word "TELEGRAM" printed in large black type over the window and on the reverse side. The notice inside was alleged to be a "yellow printed form, styled TELEGRAM." The complaint further alleged that these simulated telegrams misled recipients as to the nature, import, purpose, and urgency of the message they contained. The complaint also charged that statements in the messages to debtors represented that legal action was about to be, or might be taken against the recipients by their creditors when in fact legal action with respect to the debt would not be taken at all during the course of sending the series of form notices and letters, if ever.

A trial was held before Administrative Law Judge (ALJ) Daniel Hanscom who entered an initial decision sustaining the allegations of the complaint and recommended an order to cease and desist. This matter is before the Commission upon the appeal of respondents from the ALJ's decision.

Like many collection agencies, Trans World will take assignment of delinquent accounts, make contact with the debtor, and attempt to collect the debt, retaining as its fee a fixed percentage (often 50 percent) of any amounts recovered. A more commonly employed offering is a series of form letters which may be purchased by creditors for a "flat rate" and are mailed to debtors by Trans World

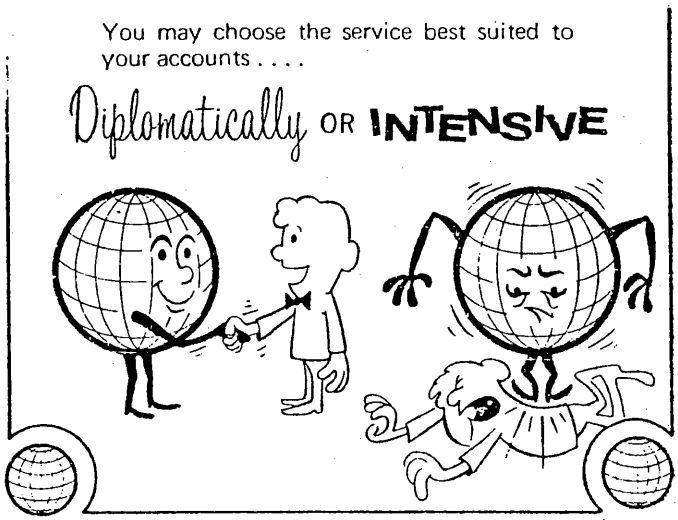
over a period of time, typically 85–90 days for a six letter series and 60–70 days for a five letter series. (I.D. 9.)[1] Trans World offers "diplomatic" and "intensive" [3] dunning notices to suit the varied corporate philosophies of its customers.[2] Both series hint, in diplomatic or "intensive" prose, at dire consequences that may befall a debtor who neglects to pay up, but typically the only consequence to afflict a person who ignores one letter is the receipt of another, and another until the flat-rate series is exhausted. Should the debtor pay at any point he or she may be sent, at the creditor's option, a message of thanks. (I.D. 8.)

I. TELEGRAM

A review of the record leaves no doubt that certain of respondents' collection notices were misleading because they simulated telegraphic communications. The overwhelming similarities between respon-

[1] The following abbreviations are used herein:
I.D. — Initial Decision, Finding No.
I.D. p. — Initial Decision, Page No.
Tr. — Transcript of Testimony, Page No.
CX — Complaint Counsel's Exhibit No.
RX — Respondents' Exhibit No.

[2] CX 3(b). The diplomatic and intensive approaches are graphically portrayed in Trans World's promotional materials:



dents' "telegrams" and Western Union's are set forth in the initial decision at I.D. 15.

[4] Affidavits of two consumers obtained by complaint counsel and admitted into evidence (CX 42a) indicated that these people believed that communications they received from Trans World were telegrams. (CX 44a, 45a,b.) One affiant apparently concluded upon further inspection that the communications were fake (CX 44a); it is unclear whether or not the other one did before being contacted by complaint counsel (CX 45a).

In any event, the deception here is a paradigm of the sort which does not require the testimony of consumers to prove, *e.g., FTC* v. *Colgate-Palmolive Co.* 380 U.S. 374, 391-2 (1965); *Carter Products, Inc.* v. *FTC,* 323 F.2d 523, 528 (5th Cir. 1963). Our own inspection of exhibits CX 35-37 and 23-25 leaves no doubt that they are designed to look like telegrams and would likely be thought upon casual inspection to be telegrams by many people. Indeed, even after careful study, it is not likely to be apparent to one who has not recently received a real telegram what the differences are.

The materiality of the deception is, moreover, manifest. We take judicial notice that on some occasions money speaks louder than words. A creditor would not spend $7.95 to convey a message when 13 cents might suffice, unless the message being sent were of the utmost importance and urgency. The obvious conclusion to be drawn from the receipt of a demand to pay, telegraphically communicated at substantial cost, is that precipitous action may follow if immediate response to the message is not made.

The law judge entered two order provisions (paragraphs 1 and 2) addressed to the deceptive telegram count. Paragraph 1 prohibits respondents from using or placing in the hands of others materials which misrepresent that they are telegrams or a telegram. Respondents do not question the applicability of this provision if an order is to be entered. Respondents do, however, object to Paragraph 2 which prohibits the use or placement in the hands of others of materials which

> by simulating telegrams or other methods or forms or types of communication misrepresent the nature, import, or urgency of any communication.

[5] We believe this paragraph is entirely appropriate "fencing in," designed to prevent recurrence in slightly altered form of the violation proven. *Jacob Siegel Co.* v. *FTC,* 327 U.S. 608, 611 (1946); *Fedders Corp.* v. *Federal Trade Commission,* 529 F. 2d 1398 (2d Cir.), *cert. denied* 429 U.S. 818 (1976). Indeed, there is evidence of record that the misrepresentation proven has already occurred in slightly

different form. Following their discontinuance of the "telegram" format in 1975 respondents switched to the "Trans-O-Gram," a blue and white missive which looks suspiciously like a Western Union Mailgram.[3] That the Trans-O-Gram bears striking resemblance to the Mailgram is further apparent from the testimony of one of respondents' own witnesses, who apparently had trouble telling the difference:

> Question [by Respondents' Counsel]: Now, as a portion of your accounts receivable operation, do you utilize Trans World Accounts, Incorporated?
>
> Answer: Yes, we do.
>
> Q. And what portions of their services do you utilize?
>
> A. Well, we use both the Mailgram—not Mailgram—Trans—what's that thing called?
>
> Q. Trans-O-Gram.
>
> A. Trans-O-Gram. (Tr. 172–173; *See also* Tr. 46.)

Witness Stark's confusion is understandable. It is apparent to us that the current Trans-O-Gram format is simply a less flagrant variation of the fake telegram scheme previously employed. Respondents ask in their brief whether the second paragraph of the order prohibits their use of [6] the Trans-O-Gram format. For purposes of assisting them in interpreting the order we reiterate the answer of the ALJ: "Yes."

Respondents are entirely free to attract the debtor's attention with all manner of non-deceptive, eye-catching pictures, colors or words.[4] The order contains no prohibition upon use of such exhortations as "Important Message" to call the reader's attention to what respondents believe to be a communication deserving serious consideration. What is deceptive, however, is for respondents to attempt to convince their readers that a message is of such urgency or importance that they have taken particular pains or spent extra money to deliver it, *when in fact they have not.* We think the order as framed by the ALJ is sufficiently explicit in this regard, but should respondents remain honestly in doubt as to whether any particular format would run afoul of the order, Section 3.61(d) of the Commission's Rules of Practice permits them to obtain an advisory opinion to allay their uncertainty.

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[3] A message unit that is telegraphically communicated to the general locale of the recipient, and mailed from there. (RX 2.)

[4] These remarks apply to any *letter* sent to a debtor as opposed to the envelope in which it is sent. In redesigning their envelope, respondents must take account of our order as well as the Fair Debt Collection Practices Act, Pub. Law No. 95–109, 15 U.S.C. 1692 (1977) to take effect shortly. That Act apparently proscribes the use of "any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business." [§808(8), 15 U.S.C. 1692f] The dissent concludes that a much narrower reading of these words is warranted than their literal significance suggests. We intimate no view on the scope of this provision at this time, but it obviously warrants respondents' attention.

II. IMMINENCE OF LEGAL ACTION

We think there can be no question that some of respondents' communications were intended to, and had the capacity to convince their readers that legal action to collect a debt was imminent, when in fact it was not. While it appears that respondents sought to avoid certain of the flagrant express misrepresentations that have characterized cases of this sort in the past, the message they did get across differed very little. What, for example, is a reader likely to understand by these words: [7]

> Urgent — Appear at Claimant's office within four days to pay above claim or protest your liability. Failure to appear in person or have legal counsel represent you may result in immediate litigation by our client with ultimate seizure of property, auto, bank accounts and other personal assets if judgment is obtained. (CX 22, I.D. 31.)

or these:

> You are hereby directed to appear at our client's office at 9:00 A.M. next Tuesday to protest liability of the above claim. Failure to comply may result in immediate commencement of litigation by our client. If judgment is granted, property, including monies, automobile, credits and bank deposits now in your possession could be attached. If our client receives payment in full prior to the time of protest as scheduled, your appearance will not be required. (CX 21b, I.D. 28.)

or these:

> Urgent — Immediately contact our client and make arrangements for payment. Imperative to avoid further action which may be taken against you under provisions of state statutes. If settlement is not made within 5 days after receipt of this telegram, you may wish to consult your attorney regarding your legal liability. (CX 25c, I.D. 24.)

Other examples are cited and analyzed by the administrative law judge at I.D. 24–31.

With respect to the overwhelming majority, if not all of those to whom the above letters were sent, it is evident that neither respondents nor their creditor-clients had any intention of bringing suit in the event that the letters were ignored. Instead, another letter in the series would be sent routinely. Only when the flat rate series and perhaps additional collection techniques (I.D. 39) had been exhausted (a process that would typically consume a period of months) would accounts be re-evaluated from the standpoint of possible legal action, which might or might not be commenced depending upon the size and other characteristics of the claim. (I.D. 33–42.)

[8] The dissenting statement cites the testimony of one client of

Trans World who indicated (apparently in reference to commercial debtors) that if he discovered that a debtor were about to file for bankruptcy or close up shop this client might cancel the letter writing series and commence legal action (Tr. 250, 257). Such an occurrence, however, would clearly be fortuitous and wholly unrelated to the failure of the debtor to respond to any of Trans World's threats of immediate legal action. As the dissent observes, this same client testified that in the event a debtor ignored one or more letters in the series, the client's policy was to allow the series to run to conclusion before deciding whether to bring a lawsuit. Other clients of Trans World testified to identical effect (Tr. 177, 205, 215), which is consistent with the testimony of Mr. Watkins himself as to how the flat-rate service was designed to operate.

Far from being "in disarray," we believe that the record in this case makes perfectly clear that the intention of Trans World (whether or not it had an assignment of the debt) and of Trans World's creditor-clients when undertaking the flat-rate series was to exhaust the series (which would typically consume 60 to 90 days) before deciding whether to take or not take further action in particular cases.[5] Nevertheless, having made no evaluation of individual files to determine whether legal action in any particular case would be warranted; knowing nothing about an account except that it was "delinquent;" not having determined whether the debtor refused to pay because he or she had a legitimate complaint, because he or she had lost a job and was not able to pay, or because he or she was a "deadbeat;" and despite the [9] absence of any present intention on its own part or that of its creditors to take any action, Trans World threatened people with the possibility of being immediately taken to court unless they paid "immediately," "within five days," "within four days," "by 9:00 A.M. next Tuesday" or whenever it would strike the fancy of Trans World's letter writers to threaten. We fail to perceive how this can constitute acceptable conduct under a law that prohibits misrepresentations affecting commerce.

Nor do we believe that the use of the word "may" in Trans World's statements as recited on page 7 of this opinion and in the initial decision serves to diminish the deception. This conclusion is not

[5] Given the testimony of Trans World's president as to how its flat-rate service was designed to work, complaint counsel were not obliged to call every creditor-client of Trans World in order to prove that the service did work in this way. In fact, several creditors testified that it was their policy not to interrupt the series, *i.e.*, not to act where threats of immediate action were ignored. In response to this testimony, Trans World introduced no evidence to suggest that *any* creditor ever took immediate action against *any* debtor in response to the debtor's failure to heed one of Trans World's contrived deadlines.

based on our assignment of an unusual meaning to the word "may" but rather upon the plain meaning of the letters in evidence.[6] A person reading these letters would clearly perceive himself or herself to be in some danger of being named defendant in a lawsuit if payment were not made by the deadlines indicated in the letters. It would never occur to any reader who took the words seriously that neither the writer nor its client intended to do anything other than send another letter if the threat were ignored.

[10] As noted above, a worthy end does not justify deceptive means. And a false threat of immediate legal action is highly deceptive. If we had to guess at one class of debtors that might be least likely to be deceived by false threats of legal action we suspect it would be the deadbeats who from long experience probably recognize that such claims are indeed mere "bluff and bluster." Others, however, lacking extensive experience with the collection agent, may be more impressed, perhaps to the point of becoming upset or seeking to pay in situations where they may have a legitimate defense to the debt, or for reasons beyond their control be unable to afford it. All three of complaint counsel's witnesses in this case, one in person and two by affidavit, testified to a feeling of at least temporary or longer lasting distress upon receiving respondents' communications. (CX 44, 45, Tr. 30–31, 46). Where such distress results from a truthful reminder of an arguably legal debt it is an unavoidable cost of a credit society; where, however, the injury results from a misleading threat of impending litigation, the seriousness and imminence of which is further misrepresented by a format which suggests telegraphic or other expedited communication, the Commission is obliged to intervene.[7]

[11] Paragraph 3 of the order speaks to the misrepresentation of

[6] In succeeding paragraphs we discuss one means by which respondents may assure themselves of using the word "may" non-deceptively in complying with the order entered herein prohibiting misrepresentations of the imminence and likelihood of legal action. This is done in response to respondents' request for guidance as to the meaning of the ALJ's proposed order. However, respondents' *liability* is predicated upon their use of threats that immediate legal action "may" occur in situations where the record shows absolutely no intention to take immediate legal action.

[7] Although the legitimacy of the claims asserted by Trans World against its debtors is irrelevant to the legitimacy of its tactics, we do note that the witness called by complaint counsel in this case had several clearly formidable defenses to his alleged debt. (Tr. 44–45, 47.) That notwithstanding he received a series of five letters from Trans World. In the second (CX 48) the writer assured the alleged debtor that if payment were not received he would request that the account be transferred to Trans World's attorney for collection. In the third (CX 49a) the alleged debtor was warned that if payment were not sent the account would be referred to an attorney for legal action within 7 days. In the fourth letter the alleged debtor was told to make immediate payment because the author, this time an attorney, "has no authority to withhold further processing or proceedings" (CX 50), the significance of which in the context of CX50 and the earlier letters is abundantly clear. The final letter (CX 51), (dated 29 days after the second letter threatening legal action within 7 days), warned the alleged debtor that his last chance had come, and that "legal assignment and authorization for suit has been requested or has already been obtained." No suit was ever filed. Respondents' counsel stated at oral argument that the foregoing letters were part of respondents' "percentage collection" as opposed to flat-rate, service. They nevertheless contain deceptions.

legal action. As modified by the Commission it would prohibit respondents from misrepresenting the imminence of legal action, and from misrepresenting that legal action has been, is about to be or may be initiated or otherwise misrepresenting the likelihood of such action.[8] Respondents do not question the propriety (if an order is to be entered) of that portion of the paragraph prohibiting misrepresentations of the imminence of legal action, and there can be no doubt that it speaks directly to the violation alleged and proven at trial. The order language pertaining to misrepresentations of the likelihood of legal action is, we think, necessary to prevent recurrence of the violation proven at trial in a very closely related form, *e.g., FTC* v. *Mandel Bros., Inc.,* 359 U.S. 385, 393 (1959); *Jacob Siegel Co.* v. *FTC,* 327 U.S. 608, 611 (1946). An order which prohibited respondents from threatening a debtor with an immediate lawsuit for nonpayment would be of little value if it did not also prevent respondents from threatening the debtor with legal action at an unspecified future time, when in fact such legal action was not being contemplated by the collector or creditor and was not likely ever to be taken.

In their briefs respondents have professed concern over their asserted inability to apply a prohibition against misrepresenting that legal action "may be initiated." The quoted language is substantially identical to that contained in numerous litigated and consent orders entered by the Commission in the past, *e.g., Providence Washington Insurance Co.,* Dkt. 9063 (May 3, 1977) [89 F.T.C. 345]; *United Compucred Collections, Inc. et al.,* 87 F.T.C. 542 (1976); *Trans National Credit Corporation et al.,* 87 F.T.C. 549 (1976); *Continental Collection Bureau of America, Inc. et al.,* 87 F.T.C. 557 (1976); *North American Collections, Inc. et al.,* 87 F.T.C. 566 (1976); *Power's Service, Inc. et al.,* 87 F.T.C. 574 (1976); *Continental Collection Service, et al.,* 87 F.T.C. 582 (1976); *G.C. Services Corp. et al.,* 83 F.T.C. 1521 (1973); *The Hearst Corporation, et al.,* 82 F.T.C. 1792, 1797 (1973), and we do not believe that it should present undue problems [12] in effecting compliance. Indeed, we believe that respondents are much more adept than they acknowledge at determining what meaning alleged debtors are likely to take from their communications. The essence of Trans World's business, after all, is communicating with people, using words to convey a message. As communicators respondents are doubtless aware that the meaning conveyed by words often exceeds or diverges from their

[8] Upon our own review we have added the generalized reference to misrepresenting the "likelihood" of legal action, which is merely desigend to encapsulate the purpose of the ALJ's proposed prohibition against misrepresenting that legal action "has been, is about to be, or may be" initiated.

literal significance, and a debt collector may not exploit this disparity to deceive, using words which a defense lawyer might be able to argue are literally true but which convey a false message to the reader. See *J. B. Williams Co.* v. *FTC,* 381 F.2d 884, 889 (6th Cir. 1967); *Murray Space Shoe Corp.* v. *FTC,* 304 F.2d 270, 272 (2d Cir. 1962).

On the other hand, we do not agree with complaint counsel that the order entered herein should be read to prohibit necessarily any reference to legal action in respondents' flat rate letter series. But such references must be carefully and selectively employed to avoid deception. Respondents should not state or imply that legal action *will* be taken unless they indeed take such action in *all* cases wherein the threat of legal action is not met by payment. *Helix Marketing Corporation, et al.,* 83 F.T.C. 514 (1973). And respondents should not state or imply that legal action *may* be taken unless they can demonstrate from their experience that suit is the *ordinary* response to nonpayment. *Cf.* Fair Debt Collection Practices Act, Pub. Law No. 95–109, §805(c)(2); 15 U.S.C. 1692c (1977). For purposes of the guidance respondents have solicited, suit in more than half the instances on nonpayment will suffice under this order to substantiate a claim that legal action may be taken, *Helix Marketing Corp., supra.*

In complying with the foregoing standard, respondents would do well to treat discernible classes of alleged debtors differently, depending upon the likelihood that members of each class will be sued. Unsatisfied claims of a particular client or clients should not be lumped together for the purpose of establishing that legal action is taken in more than 50 percent of all cases where it is the practice to treat different classes of claims in different ways. For example, there is record testimony suggesting that claims below a certain small amount are not ordinarily pursued by some creditors in court. (Tr. 78–79.) If that is the practice then letters used to collect such small debts should not [13] contain references to legal action (except in a particular case where the file has been reviewed and a decision to sue has been made). On the other hand, if it is true, as respondents' counsel indicated at oral argument, that it is the corporate policy of some clients to pursue nearly all unsatisfied claims, even small ones, through the courts, references to the possibility of eventual legal action would be appropriate in a series of letters drafted for such clients.

Distinguishing among discernible classes of debtors can also provide a way for respondents to make mention of possible legal action in a non-deceptive fashion where it might otherwise be

improper. For example, when serving a creditor whose policy is to sue infrequently, respondents might nonetheless be able to make non-deceptive mention of possible legal action in some cases by separating out a class of claims that their non-litigious client would ordinarily pursue (for example, bad checks written for large amounts). In all instances, however, respondents when making any reference to possible legal action must avoid misrepresentation of its imminency. References to specific deadlines by which payment must be made or references to the need for haste, urgency, immediate action or whatever, coupled with references even to tentative legal action, will inevitably convey the impression that legal action impends. Such an approach is wholly improper in a series of form letters that are mailed over a period of weeks or months without any determination to sue in any particular case having been made.

Finally we reiterate that if respondents remain genuinely in doubt as to the propriety of any particular proposed course of action they may obtain Commission advice pursuant to Section 3.61(d) of the Commission's Rules of Practice.

III. PROHIBITION ON ALL MISREPRESENTATIONS

The ALJ accomodated what appears to have been respondents' principal concern at trial by deleting a provision requiring an affirmative disclosure in their collection notices. Complaint counsel have not appealed from the ALJ's determination and we, therefore, have not considered its propriety in this case. The ALJ, however, added a provision, not present in the notice order, which would prohibit the making of any false statement in connection with the collection of a debt. Under the particular circumstances of this case we believe this paragraph is not [14] warranted. In framing an order to cease and desist the Commission may, of course, go beyond the technical confines of the violation alleged and proven, to "fence in" the violator by proscribing conduct of the same general type as that which has occurred, *e.g., FTC* v. *Mandel Bros. Inc., Jacob Siegel Co.* v. *FTC, Fedders Corp.* v. *Federal Trade Commission, supra.* Paragraph 2 of the law judge's order is an excellent example of this.

It is also, in some cases appropriate to fence in unlawful conduct by means of the broader sort of prohibition on misrepresentations contained in the law judge's proposed paragraph 4, *cf. Southern States Distributing Co., et al.,* 83 F.T.C. 1125, 1162–63 (1973). Where, for example, a wide variety of misrepresentations have occurred, or misrepresentations have recurred despite promises or orders to stop them, a broad blanket prohibition on misrepresentations would be warranted. Here, however, we believe that paragraphs 1–3 and 5

adequately address the violations found to have occurred, as well as related violations to which respondents might turn to achieve the same results. Accordingly we shall delete the ALJ's proposed paragraph 4 from the order we enter.[9]

In all other respects the initial decision disposes ably of respondents' contentions and is affirmed and adopted as the decision of the Commission.

FINAL ORDER

This matter has been heard by the Commission upon the appeal of respondents' counsel from the initial decision and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying Opinion, has substantially denied the appeal.

It is ordered, That pages 1–42 of the initial decision of the administrative law judge are hereby adopted as the Findings of Fact and Conclusions of Law of the Commission.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered, That the following order to cease and desist be hereby entered: [2]

ORDER

It is ordered, That respondents, Trans World Accounts, Inc., a corporation, its successors and assigns, and its officers, and Floyd T. Watkins, individually and as an officer of said corporation, and respondents, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which by their appearance, content, or otherwise, misrepresent that they are telegrams or a telegram.

2. Using or placing in the hands of others for use, envelopes,

[9] We must remind respondents, however, that their counsel's victory on this point is largely pyrrhic, since the soon to be effective Fair Debt Collection Practices Act forbids debt collectors to use any "false, deceptive, or misleading representation or means in connection with the collection of any debt." Pub. Law No. 95–109, §807, 15 U.S.C. 1692 (1977).

letters, forms or any other materials which by simulating telegrams or other methods or forms or types of communication misrepresent the nature, import, or urgency of any communication.

3. Misrepresenting directly or by implication, that legal action with respect to an alleged delinquent debt has been, is about to be, or may be initiated, or otherwise misrepresenting in any manner the likelihood or imminency of legal action.

4. Placing in the hands of others the means and instrumentalities to accomplish any of the matters prohibited in this order, or which fail to comply with the requirements of this order.

[3] *It is further ordered,* That the respondent corporation shall distrubute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives, or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as 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 which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his employment with Trans World Accounts, Inc., and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, the individual respondent named herein shall promptly notify the Commission of his affiliation with a new business or employment whose principal activities include the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts, or of his affiliation with a new business or employment in which his own duties and responsibilities involve the offering for sale, sale or distribution of any service or printed matter for use in the collection of, or attempted collection of, or for assisting in the collection of, or for inducing or attempting to induce the payment of, alleged delinquent debts. Such notice shall include individual respondent's current

business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein shall, within sixty (60) days from the date this order [4] becomes final, and periodically thereafter as required by the Federal Trade Commission, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

Commissioner Collier dissenting.

IN THE MATTER OF

GRAND SPAULDING DODGE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2914. Complaint, Oct. 25, 1977 — Decision, Oct. 25, 1977

This consent order, among other things, requires a Chicago, Ill. automobile dealer to cease failing to furnish in a timely manner Spanish-speaking customers with relevant bilingual disclosures and documents. Additionally, the firm is required to display notices in Spanish as set forth in the order, and to maintain prescribed records for a period of two years.

Appearances

For the Commission: *Robert C. Goldberg.*

For the respondent: *Howard Alterman, Spivack & Lasky,* Chicago, Ill.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Grand Spaulding Dodge, Inc., a corporation, violated Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Grand Spaulding Dodge, 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 3300 W. Grand Ave., Chicago, Illinois.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising, offering for sale, sale and distribution to the public of new and used automobiles.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent has engaged in and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases for resale new automobiles from Chrysler Corporation located in Detroit, Michigan and used automobiles from individuals and others. Respondent causes these products, when purchased by them, to be transported from the place of manufacture or purchase to their business establishment located in Illinois.

In addition, respondent has disseminated and has caused to be

disseminated advertisements concerning said products in newspapers and radio broadcasts of interstate circulation.

Said advertisements, presented in both the English and Spanish language, have been disseminated for the purpose of inducing the purchase of respondent's merchandise by the general public.

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing consumers who only speak, read, write or understand Spanish to purchase its products, respondent has disseminated and has caused to be disseminated, in commerce, advertisements in the Spanish language and, in a substantial number of instances, has caused its sales personnel to conduct oral sales presentations to such consumers in the Spanish language.

PAR. 5. In the further course and conduct of its business as aforesaid, and for the purpose of facilitating the purchase of its merchandise, respondent regularly arranges for credit to be extended to retail purchasers.

In connection with said credit transactions, respondent utilizes contracts, documents, notices, forms or other legal instruments which are printed predominately in the English language.

PAR. 6. In the further course and conduct of its business as aforesaid, respondent fails to provide customers who only speak, read, write or understand Spanish, or whose predominant language is Spanish, with a complete and accurate translation in Spanish of all the documents normally executed and provided to customers in connection with credit sales, or which are required by law to be provided to customers in connection with such sales at the time of the transaction.

PAR. 7. Respondent's failure to provide customers who only speak, read, write or understand Spanish, or whose predominant language is Spanish, with a full and complete translation in Spanish of all the documents described in Paragraph Six hereof, deprives a substantial number of Spanish-speaking consumers, many of whom have been induced to deal with respondent as a result of respondent's advertisements or sales presentations in Spanish, of the opportunity to receive full and adequate disclosure of the terms and conditions of any agreements they have entered into, of their rights and obligations under such agreements, and of other written information or notices normally provided to consumers at the time of the transaction.

Therefore, the acts and practices of respondent, as set forth in Paragraphs Five and Six hereof, were and are unfair, misleading and deceptive.

PAR. 8. In the course and conduct of its aforesaid business, and at

all times mentioned herein, respondent has been, and is now, in substantial competition in commerce, with corporations, firms and individuals in the sale of new and used automobiles of the same general kind as those sold by respondent.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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 respondents with violation of the Federal Trade Commission Act; and

The respondent 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 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 pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of the Commission Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Grand Spaulding Dodge, 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 3300 West Grand Ave., Chicago, Illinois.

2. 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

It is ordered, That respondent Grand Spaulding Dodge, Inc., a corporation, its successors and assigns and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of new and used automobiles in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, in connection with credit sales in which the sales presentation has been conducted in whole or in part in Spanish, from:

1. Failing to furnish consumers with complete and accurate translations in Spanish of any documents, notices or disclosures normally provided to consumers in connection with respondent's credit sales at the time of the transaction.

2. Failing to furnish to consumers executing any contracts, agreements or other documents in connection with such credit sales, a complete and accurate translation in Spanish of each such writing, prior to the execution of the same.

Provided, however, that nothing in this order shall be understood to apply to sales receipts or other documents which serve merely as a memorandum of sales and do not, in themselves, contain covenants, disclaimers or other provisions defining the rights and responsibilities of the parties.

Further provided, that respondent must comply with subparagraphs 1 and 2 of this order by providing consumers either with:

a. bilingual documents containing all the provisions and disclosures in both English and Spanish, or

b. separate documents containing complete and accurate translations in Spanish of each English language document, and which shall contain in a clear and conspicuous manner in the Spanish language, the following heading in boldface 10 point type:

READ THIS FIRST

THIS IS A TRANSLATION OF THE DOCUMENT OR DOCUMENTS YOU HAVE RECEIVED OR ARE ABOUT TO SIGN.

It is further ordered, That respondent shall display, in at least two different locations on its premises, one of them being the location

where consumers usually execute consumer credit instruments or other legally binding documents, the following notice in Spanish:

NOTICE TO SPANISH SPEAKING CUSTOMERS

IF YOU ARE A SPANISH-SPEAKING CONSUMER AND THE SALES PRESENTATION WAS MADE, IN WHOLE OR IN PART IN SPANISH, YOU ARE ENTITLED TO RECEIVE A SPANISH TRANSLATION OF THE CREDIT CONTRACT AND OF THE OTHER DOCUMENTS RELATED TO THE FINANCING OF YOUR PURCHASE BEFORE YOU SIGN ANYTHING. DO NOT SIGN ANY DOCUMENTS UNTIL YOU HAVE RECEIVED AND READ THE SPANISH TRANSLATIONS.

It is further ordered, With respect to each account in which translations in Spanish are provided, as required herein, that respondent shall maintain in its files, for a period of two years, statements signed by respondent's consumers acknowledging receipt of such translations.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondent engaged in making sales presentations and in the consummation of any consumer credit transactions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the operation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency, or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondent complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

GOLD BULLION INTERNATIONAL, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND HOBBY PROTECTION ACTS

Docket 9094. Complaint, Jan. 17, 1977 — Decision, Nov. 1, 1977.

This consent order, among other things, requires B.H. Mayer's Kunstprageanstalt of Pforzheim, West Germany, a manufacturer of imitation numismatic items, to cease manufacturing, distributing or importing into the United States imitation numismatic items which are not conspicuously and permanently marked "copy", as required by federal regulations.

Appearances

For the Commission: *Justin Dingfelder* and *Ronald G. Isaac.*

For the respondents: *William H. Bogart, Bogart & Andrews,* Syracuse, N.Y. and *Michael A. Stachowski,* Buffalo, N.Y.

COMPLAINT

Pursuant to the provisions of the Hobby Protection Act (15 U.S.C. 2101, *et seq.*), and the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gold Bullion International, Ltd., a corporation, and H. Kenneth Costello, Walter N. Thompson and William H. Bogart, individually and as officers of said corporation, and B.H. Mayer's Kunstprageanstalt, a corporation, and Bernhard H. Mayer, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gold Bullion International, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 216 State Tower Building, Syracuse, N.Y.

Respondent H. Kenneth Costello, Walter N. Thompson and William H. Bogart are officers of the corporate respondent Gold Bullion International, Ltd. They formulate, direct and control the acts and practices of said corporate respondent. Their business address is the same as that of said corporate respondent.

Respondent B.H. Mayer's Kunstprageanstalt is a corporation

existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its principal office and place of business located at Turnplatz 2, Pforzheim, West Germany.

Respondent Bernhard H. Mayer is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent, B.H. Mayer's Kunstprageanstalt.

PAR. 2. Respondents are now and for some time in the past have been engaged in the manufacture, importation, sale and distribution of various items of merchandise, including imitiation numismatic items, to dealers and others for resale to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause and for some time in the past have caused imitation numismatic items to be imported into the United States and shipped from their place of business in the State of New York to retailers and others located in various other states in the United States. Respondents therefore maintain, and at all times mentioned herein have maintained, a substantial course of trade in said items in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, subsequent to November 29, 1973, have imported into the United States for distribution in commerce copies of privately minted five (5), ten (10), and twenty (20) German Reichmark gold coins, privately minted fifty (50) Mexican Peso gold coins, privately minted one hundred (100) Austrian Corona gold coins, and other privately minted gold coins. The aforesaid coins are imitation numismatic items as defined in Section 7 of the Hobby Protection Act. Said coins were not marked "copy" as required by Section 2(b) of said Act.

PAR. 5. Respondents' aforesaid acts and practices, as alleged in Paragraph Four hereof, were and are in violation of the Hobby Protection Act. Such violation is, pursuant to Section 2(b) of the Hobby Protection Act, an unfair and deceptive act or practice in or affecting commerce under the Federal Trade Commission Act. Pursuant to Section 4(b) of the Hobby Protection Act, the aforesaid acts and practices of respondents constituted and now constitute a violation of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging he respondents named in the caption hereto with violation of the Iobby Protection Act and the Federal Trade C0mmission Act, as

amended, and the respondents having been served with a copy of that complaint, together with a proposed form of order; and

The respondents B.H. Mayer's Kunstprageanstalt, a corporation, and Berhard H. Mayer, individually, and as an officer of said corporation, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 withdrawn the matter from adjudication in accordance with Section 3.25 of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the proceedure described in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent B.H. Mayer's Kunstprageanstalt is a corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany with its principal office and place of business located at Turnplatz 2, Pforzheim, West Germany.

Respondent Bernhard H. Mayer is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation.

2. 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

It is ordered, That respondent B.H. Mayer's Kunstprageanstalt, a corporation, its successors and assigns, and its officers, and Bernhard H. Mayer, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, importation or distribution in or affecting commerce of any imitation numismatic item, as "imitation numismatic item" is defined in the Hobby Protection Act (Pub. Law 93-167, 15 U.S.C. 2101, *et seq.*), do forthwith cease and desist from:

Importing, manufacturing or distributing any imitation numismatic item that is not plainly and permanently marked "COPY" as required by Section 2(b) of the

Hobby Protection Act and the regulations promulgated thereunder. The word "COPY" shall appear in conformance with 16 C.F.R. 304.6, *i.e.*, in capital letters in the English language, incused in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm) and a minimum depth of three-tenths of one millimeter (0.3) or to one-half (1/2) the thickness of the reproduction, whichever is the lesser. The minimum total horizontal dimension of the word "COPY" shall be six millimeters (6.0 mm).

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its corporate affiliates in the United States.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries in the United States, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment doing business in the United States. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture in the United States, or the importation into the United States, of numismatic items, or of his affiliation with a new business or employment in which his own duties and responsibilities require him to reside in the United States or to be present in the United States on a regular basis. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

CITY STORES COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2910. Complaint, Nov. 1, 1977 — Decision, Nov. 1, 1977

This consent order, among other things, requires a New York City retail department store chain to cease imposing unauthorized collection fees on delinquent charge accounts and to provide such disclosures and refunds as are set forth in the order.

Appearances

For the Commission: *Richard H. Gateley* and *Russell A. Benghiat,* Consumer Protection Specialist.

For the respondent: *Stuart M. Rosen, Weil, Gotshal & Manges,* New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that City Stores Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent City Stores Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 500 Fifth Ave., New York, New York. Respondent, through its divisions and wholly-owned subsidiaries, operates approximately one hundred forty-nine (149) department, specialty, and home furnishing stores, as well as certain collection agencies.

PAR. 2. Respondent City Stores Company is responsible for the formulation, control, and direction of the policies and practices of its divisions and subsidiaries, including the acts and practices hereinafter set forth.

PAR. 3. Respondent City Stores Company sells and distributes merchandise in commerce by operating and controlling retail department, specialty and home furnishing stores in a number of states, and by causing merchandise to be shipped from its warehouses and retail department stores for distribution to, and purchase by,

the general public located in states other than those from which such shipments originate. By these and other practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of its aforesaid business, respondent permits many customers of its retail stores to charge purchases. Customers charge their purchases pursuant to a credit agreement with respondent, which provides, among other things, for payment by the customer of attorney's fees and court costs if the customer's account is referred to an attorney who is not a salaried employee of respondent for collection.

PAR. 5. Respondent customarily provides to each charge account customer a monthly statement setting forth the amount of the balance in the account. In some instances, respondent's charge account customers have failed to make timely payments on their accounts. Respondent's Franklin Simon and Lit Brothers divisions, after internal collection efforts, in certain instances have added a twenty percent (20%) collection fee to accounts upon referring accounts to a collection agency (other than to an attorney who is not a salaried employee of respondent). The collection fee was imposed contrary to the terms of respondent's agreement with the customer since the account had not been referred to an independent attorney for collection. Respondent has, through such acts and practices, collected various amounts from customers.

PAR. 6. The aforesaid acts and practices of respondent have had, and now have, the capacity and tendency to mislead members of the purchasing public into the payment of a collection fee contrary to the terms of respondent's charge account agreement with customers. Respondent has thereby caused certain of its charge account customers to be deprived of substantial sums of money rightfully theirs.

PAR. 7. The aforesaid acts and practices of respondent, set forth in Paragraphs Five and Six above, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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 Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent 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, 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 City Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 500 Fifth Ave., New York, New York.

2. 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 term "unauthorized collection fee" refers to any fee, penalty or default charge which was collected by respondent prior to the date on which this order becomes final and which did not meet the requirements of subparagraphs (A) and (B) of paragraph (1) of this order.

It is ordered, That the respondent, City Stores Company, a corporation, and its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the handling of customer charge accounts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Imposing any fee, penalty or default charge on accounts which respondent considers delinquent or uncollectable or with respect to which collection procedures have been instituted unless:

(A) the imposition of the fee, penalty or charge is authorized by law; and

(B) the amount, or method of computing the amount of the fee, penalty or charge has been clearly and conspicuously disclosed to the customer in the Retail Installment Credit Agreement, or other credit agreement, prior to the consummation of the transaction.

Provided, that, the disclosure requirements of this paragraph are not applicable to any fee, penalty or charge awarded by a court or imposed by a judgment entered by a court.

(2) Failing to disclose the amount, or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments as required by Section 226.8(b)(4) of Regulation Z, 12 C.F.R. 226.8(b)(4), in the manner and form required by that regulation.

(3) Failing to disclose the conditions under which any charges other than finance charges may be imposed on an account and the method by which they will be determined as required by Section 226.7(a)(6) of Regulation Z, 12 C.F.R. 226.7(a)(6), in the manner and form required by that regulation.

(4) Failing to send the disclosures and make the refunds required by this order.

It is further ordered, That, with respect to each unauthorized collection fee in excess of one dollar ($1.00) which respondent has at any time heretofore imposed on a customer and which has been collected from any such customer, on or after February 4, 1974, or which is collected at any time subsequent thereto:

1. Respondent shall refund to each such customer the full amount of such fee:

(i) within sixty (60) days of the date this order becomes final, respecting all fees heretofore collected (unless such fee has previously been refunded); and

(ii) within 30 days after receipt, respecting any such fees which may be collected subsequent to the date of this order; and

2. Respondent shall make a clear and conspicuous disclosure which shall state:

REFUND

The enclosed check represents a refund of a collection fee which you paid as part

of a previous bill. Since our account agreement with you does not provide for such a charge, we are refunding the amount of the collection fee.

Each refund shall be given to the customer either in person or by mail, and shall be in the form of a check payable to the order of the customer. The check shall be sent to the last known address shown in respondent's records for said customer. If any such check is returned to respondent with a notification to the effect that the customer to whom it was mailed is not located at the address to which it was sent, respondent shall remail the check, with an address correction request, to the Post Office unless respondent has already done so. If the check or statement which has been remailed is returned to respondent and the amount to be refunded exceeds fifteen dollars ($15.00), respondent shall obtain from a credit bureau the most current address available for the customer in the credit bureau's files by means of an in-file report or other credit bureau report. If the customer is not located by the preceding methods, respondent shall thereafter be relieved of any further obligation to send any additional notice and/or any refund with respect to the collection fee in question; *provided, however,* that in the event said customer should subsequently request such refund, respondent shall, within thirty (30) days from the date of such request, provide the disclosures and refund the collection fee in accordance with the provisions of this order.

It is further ordered, That respondent shall, upon request, produce for the purpose of examination and copying by representatives of the Federal Trade Commission, all records pertinent to disclosures and refunds made pursuant to this order.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and subsidiaries.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as 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 which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days after the service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

STANDARD OIL COMPANY (OHIO)

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8910. Complaint, Jan. 18, 1973 — Decision, Nov. 2, 1977

This consent order, among other things, requires a Cleveland, Ohio, manufacturer of petroleum and automotive products, to cease prohibiting its dealers from obtaining non-gasoline products from independent sources or requiring them to deal exclusively with Sohio for automotive accessories. The order requires the firm to offer its lessee dealers new agreements which comply with the terms of the order, or give notice that agreements will not be offered. Additionally, it provides that where Sohio seeks to cancel an agreement prior to its expiration for "good cause," dealer may request that determination of good cause be submitted to arbitration.

Appearances

For the Commission: *Frank Lipson* and *Jonathan Gaines.*

For the respondent: *Rufus S. Day, Jr., David A. Nelson* and *James H. Bodurtha, Squire, Sanders & Dempsey, George J. Dunn* and *Richard M. Donaldson,* all of Cleveland, Ohio.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Standard Oil Company (Ohio), a corporation, hereinafter sometimes referred to as respondent or as Sohio, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Standard Oil Company (Ohio) is a corporation organized, existing and doing business under the laws of the State of Ohio. Its executive office and principal place of business is located at the Midland Building, Cleveland, Ohio.

PAR. 2. The Standard Oil Company (Ohio) and its subsidiaries (herein collectively referred to as Sohio) engage in all phases of the petroleum business, including exploration for and production of crude oil and natural gas and the manufacture, transportation and marketing of petroleum products. Sohio also markets automobile supplies and accessories through its retail outlets. In addition, Sohio produces and sells coal, manufactures and markets plastic products

and chemicals, and operates motor inns, restaurants and a vending business.

PAR. 3. Sohio is, and for many years has been, the leading marketer of gasoline and other refined petroleum products in Ohio under the Sohio brand name. Sohio also markets such products through subsidiaries in Central and Western Pennsylvania, Southeastern Michigan, in areas of Kentucky, West Virginia and Indiana adjacent to Ohio under the Boron brand name, and in the Eastern Seaboard States under the B-P brand name. Sohio presently supplies a total of about 11,500 retail outlets, of which approximately 5,000 are owned or leased by it. Sohio operates two refineries in Ohio, one in Pennsylvania and one in Texas, and approximately 600 bulk plants and terminals. Sohio's total sales for the year 1971 were approximately $1,393,798,000.

PAR. 4. In the course and conduct of its business, Sohio has engaged in, and is presently engaged in, commerce as "commerce" is defined in the Federal Trade Commission Act. In addition to its own production, it purchases and exchanges crude oil and refined petroleum products and purchases tires, batteries and accessories from suppliers throughout the United States and causes such products to be transported from various states to other states for refining, distribution or resale by Sohio to retailers in various states.

PAR. 5. Sohio, in the course and conduct of its business as aforesaid, actively competes with other petroleum companies throughout the United States in the purchase for resale of petroleum products, tires, batteries and accessories. Sohio is also engaged in direct retail sales of petroleum products, tires, batteries and accessories, through the use of company operated retail outlets, in competition with its retail service station dealers as hereinafter defined, with other petroleum companies and their dealers, and other retailers of such products in the various States of the United States.

PAR. 6. In the course and conduct of its business as aforesaid, Sohio, in the sale of its gasoline and other refined petroleum products, tires, batteries and accessories at retail, commonly utilizes the following different methods of operation:

(1) "Company operated retail stations," including:

(a) Company operated, full facility retail stations with managers compensated by salary.

(b) Company operated, full facility retail stations with managers compensated by commission.

There are approximately 1,270 company operated, full facility retail

stations, from a total of some 3,500 Sohio retail stations in the State of Ohio and adjacent states, using the Sohio and Boron trade names.

(2) "Retail service station dealers," including:

(a) "Lessee dealers" who are either DR's (dealer rented) who operate under a one-year lease with Sohio and who purchase gasoline and other products from Sohio; or motor fuel consignment dealers who have a continuing agreement cancellable on thirty (30) days' notice, who obtain their gasoline, for payment purposes only, on consignment and who purchase other products outright from Sohio. All lessee dealers operate full facility retail stations.

(b) "Authorized dealers" who sell Sohio products using the Sohio or Boron trade names in retail outlets which they own or lease from a lessor other than Sohio in Ohio and adjacent states. These include full facility retail stations, outlets which sell motor fuel only, automobile dealers and marinas.

There are approximately 2,230 dealers, from a total of some 3,500 Sohio retail stations in the State of Ohio and adjacent states, using the Sohio and Boron trade names.

These different methods of operation of Sohio retail gasoline stations place Sohio's company operated retail stations in competition with Sohio's retail service station dealers in the sale of gasoline, other refined petroleum products, tires, batteries and accessories.

PAR. 7. It is now, and has been for a period of time, the policy of Sohio to grant to certain of its retail service station dealers temporary competitive allowances credited to the regular tankwagon price of its gasolines. The granting of such allowances generally occurs in market areas where there is a price disturbance, usually in the nature of a local or area price war.

PAR. 8. Beginning on or about March 1970, and at different times thereafter, Sohio entered into a combination, planned common course of action, agreement or understanding with certain of its retail service station dealers in the Dayton, Columbus and Lima areas and other Ohio areas, and in Pennsylvania under the terms and conditions of which the aforestated temporary competitive allowance policy of Sohio was placed into effect, maintained, and carried out.

PAR. 9. Pursuant to, and in furtherance of, the aforesaid combination, planned common course of action, understanding or agreement, Sohio, acting together and in combination with certain of its retail service station dealers, and as both a supplier and a competitor, agreed to fix and maintain, and did fix and maintain, the retail price at which gasolines were sold or were to be sold at said retail service stations, and further agreed to, and adhered to, certain

discounts, rebates, allowances, terms and conditions, upon which said gasoline would be sold to said retail service station dealers and to the purchasing public.

PAR. 10. The policy of granting such allowances is conditioned upon the retail service station dealer's agreement to accept such assistance and, in conjunction therewith, to post such prices as Sohio stipulates to correspond with the level of assistance agreed upon. Failure or refusal on the part of the retail service station dealer to post such stipulated prices is regarded by Sohio as a sufficient basis not to grant or continue such allowance or, in those cases where it has been granted, to terminate such allowance even though such allowance was then still being given to other retail service station dealers in the same competitive area.

PAR. 11. In addition, in the course and conduct of its business as aforesaid, Sohio, by the use of coercion, intimidation or threats such as, but not limited to, canceling or threatening to cancel, terminating or refusing to renew Sohio's lease with its lessee dealers, compels, and has compelled, certain of its retail service station dealers to: carry trading stamps, engage in various promotional activities, purchase exclusively or preferentially tires, batteries and accessories sold or sponsored by respondent and to adhere to required hours of operation. The effect of these practices is to make many, if not all, of such dealers subservient to Sohio as to price, hours of operation and promotional activities, or to carry, exclusively or preferentially, certain products sold by Sohio. In addition, approximately one-third (1/3rd) of the Sohio branded outlets are owned and operated by Sohio as company operated retail stations in close proximity to its retail service station dealers; and in many metropolitan areas, Sohio owns and operates in the range of forty to sixty percent (40% to 60%) of the total Sohio branded stations. Since Sohio has complete control of the hours of operation, resale prices of petroleum products, tires, batteries and accessories, promotional activities and use of trading stamps in its company operated retail service stations, the location and concentration of the company operated retail stations gives Sohio a further means of influencing, intimidating and coercing its retail service station dealers.

PAR. 12. Through its control of the lease terms and the use of one-year DR leases and a thirty (30) day termination provision in the motor fuel consignment dealer leases, Sohio disciplines many of its lessee dealers, forcing adherence to Sohio's resale prices, offer trading stamps, participate in promotions or keep the retail stations open during required hours of operation.

PAR. 13. The acts and practices alleged above, particularly those

set forth in Paragraphs Seven through Ten hereof, have had the additional effect of disciplining other gasoline suppliers and dealers which are in competition with Sohio and its dealers, and discouraging such suppliers and dealers from reducing gasoline retail prices and engaging in price competition with Sohio. All of the acts and practices as alleged above are to the prejudice of the public and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondent named in the caption hereof has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and

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

The Commission having thereafter 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 pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of the Commission Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent The Standard Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located at Midland Building, Cleveland, Ohio.

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

ORDER

I

For purposes of this order only, the following definitions shall apply:

A. The term *"Automotive Service Station"* or *"Station"* means a retail

service station having one, two or three service bays in operation, and engaged in the business of selling automotive gasoline, lubricants, tires, batteries, automotive accessories, and mechanical service to the motoring public.

B. The term *"Dealer"* means the operator of an *Automotive Service Station* on premises owned by SOHIO or leased by SOHIO from someone other than the *Dealer.* The term *"Dealer"* does not include employees of SOHIO; jobbers or wholesale distributors of gasoline, lubricants, tires, batteries or automotive accessories; persons who own their *Stations* or lease *Stations* from jobbers or wholesale distributors or other third parties; aviation fixed base operators, truck stop operators; or marina operators.

C. The term *"Dealership Agreement"* means all agreements (including leases and operating agreements) between SOHIO and a *Dealer* under which the *Dealer* operates an *Automotive Service Station* in the State of Ohio, or under which the *Dealer* operates an *Automotive Service Station* in any other state under the trade name "Boron" or under any successor trade name thereto.

D. The term "TBA" refers to automotive tires and tubes, automotive batteries and automotive accessories, including, but not limited to, spark plugs, oil filters, fan belts, auto lamps, fuses, windshield wipers and blades, antifreeze preparations, waxes, polishes, automotive lubricants and other items used on or in the servicing or repairing of highway automotive vehicles.

E. The term *"Effective Date of This Order"* refers to the date of issuance of the Commission's decision and order with respect to this matter.

F. The term "SOHIO" means respondent, The Standard Oil Company, an Ohio corporation, and its subsidiaries.

II

It is ordered, That SOHIO, its successors or assigns to all or substantially all of its assets, and SOHIO's officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device shall not insofar as its marketing activities are conducted in commerce or affect commerce, as "commerce" is defined in the Federal Trade Commission Act:

A. Enter into, renew or initiate an offer to enter into or renew a *Dealership Agreement* for a term of (a) less than five years if the *Dealer* has been a *Dealer* for at least the preceding three years, with the immediately preceding year being at the *Station* to which the *Dealership Agreement* relates, or (b) less than three years, if the *Dealer* has been the *Dealer* at the *Station* to which the *Dealership*

Agreement relates for at least the preceding year, or (c) less than one year in other cases, *provided, however,*

(1) that where any *Station* premises are held by SOHIO as lessee and not as owner for a period less than that required by this Paragraph II A, the term offered to the *Dealer* need not exceed the term of such underlying lease, and

(2) that in any *Dealership Agreement* the *Dealer* shall have the option to cancel such *Dealership Agreement* upon 60 days written notice to SOHIO;

B. Prohibit *Dealers,* through coercion or otherwise, from purchasing TBA products from non-SOHIO sources, or require, by contract, agreement, understanding, course of dealing, or by any means whatsoever, that *Dealers:*

(1) deal exclusively in TBA products manufactured, sold, distributed or sponsored by SOHIO or maintain any specified minimum stock of such TBA products; *provided, however,* SOHIO may require *Dealers* to maintain on the premises a representative amount of SOHIO trademarked or trade named lubricants or motor oils, or

(2) refrain from handling TBA products obtained from non-SOHIO sources, or from placing such products in such locations and in such quantities as is customary in service stations operated by SOHIO;

C. Prohibit the display on the pump island and on peripheral lamp posts, or elsewhere except in such locations as SOHIO may reasonably specify shall not be used for this purpose, of signs showing the *Dealer's* acceptance of non-SOHIO credit cards.

III

It is further ordered, That:

A. At any time within 180 days following the *Effective Date of This Order,* a *Dealer* who is operating under a *Dealership Agreement* may in writing request SOHIO to notify him whether or not he will be offered a new *Dealership Agreement.* SOHIO shall give such notice in writing within 90 days of such request. *Dealership Agreements* consistent with the terms of this order shall be offered to all such *Dealers* who have received notice of SOHIO's intent to offer them new *Dealership Agreements* and to all such *Dealers* who have received no notice whose *Dealership Agreements* are in effect 180 days after the *Effective Date of This Order.* Such agreements shall be offered within 180 days following the *Effective Date of This Order.*

B. Not more than 120 days prior to the expiration of a *Dealership*

Agreement, if the *Dealer* has not yet received notice from SOHIO as to whether or not SOHIO intends to offer the *Dealer* a new *Dealership Agreement,* the *Dealer* may request in writing such notice. If such request is made, within 60 days after receipt thereof, SOHIO shall either notify the *Dealer* that a new *Dealership Agreement* will not be offered or offer to the *Dealer* a new *Dealership Agreement* consistent with the terms of this order. The requesting *Dealer* shall be entitled to remain in the premises under the existing *Dealership Agreement* until the expiration thereof or 60 days following receipt of SOHIO's response to his request, whichever is later.

IV

It is further ordered, That:

A. During the effective period of this order, SOHIO may revoke a notice of intent to offer a new *Dealership Agreement* or cancel a *Dealership Agreement* prior to the expiration thereof only upon not less than 60 days advance written notice and for good cause. Material noncompliance by the *Dealer* with the *Dealership Agreement* shall constitute "good cause" as used in this order. Notwithstanding the provisions of this paragraph, SOHIO may cancel a *Dealership Agreement* without notice (except as provided in subparagraphs (6), (7) and (8) herein), without any right of arbitration, and without any further showing of good cause, upon the occurrence of the following events:

(1) death or legal incompetency of the *Dealer;*

(2) the institution of insolvency, bankruptcy, or receivership proceedings by or against the *Dealer,* the taking advantage by the *Dealer* of any law for the benefit of debtors, the filing of a tax lien, or the institution against the *Dealer* of lien proceedings which interfere with operation of the dealership;

(3) vacancy, abandonment of the *Station* premises, or failure to open the *Station* for the sale of gasoline, for a continuous period of 120 hours;

(4) condemnation or other taking for public purposes of the premises or a sufficient portion thereof to prevent use as an *Automotive Service Station,* including any voluntary conveyance or assignment in lieu of such condemnation or taking;

(5) any involuntary destruction of the *Station;*

(6) a decision by SOHIO to close or raze the *Station,* or sell its interest in the *Station* premises, provided that the *Dealer* is given not less than 90 days advance written notice of such decision;

(7) a decision by SOHIO to change the use of the site in such a way that it will no longer be operated as an *Automotive Service Station* provided that the *Dealer* is given not less than one year advance written notice of such decision;

(8) not less than 30 days advance written notice by SOHIO of its intention to cancel the *Dealership Agreement* in connection with divestiture made in compliance with the Final Judgment in *United States* v. *Standard Oil Co.,* No. C69-854 (N.D. Ohio);

(9) conviction of the *Dealer* of a misdemeanor committed in the course of or related to the *Dealer's* use or occupancy of the *Station,* or conviction of any felony;

(10) failure of the *Dealer* to keep in force the insurance coverage required in the *Dealership Agreement;* or

(11) failure of the *Dealer* to pay any past due indebtedness to SOHIO, after not less than 30 days written demand for payment has been made, to the extent that any such indebtedness exceeds any sum owing from SOHIO to the *Dealer.*

B. Except as specified in Paragraph IV A of this order, upon receipt of the requisite notice of intent to cancel the *Dealership Agreement,* either party may elect to invoke arbitration pursuant to the Commercial Arbitration Rules and the Procedures of the American Arbitration Association (AAA) for the purpose of determining whether good cause exists or existed for the cancellation.

C. The arbitration pursuant to Paragraph IV B of this order shall be as follows:

(1) The party invoking arbitration shall give the other party written notice of its intent to invoke arbitration within 15 days from the receipt of the notice of intent to cancel the *Dealership Agreement,* setting forth the basis for such invocation and filing two copies of said notice with the Regional Office of AAA closest to the *Dealer's* residence. If such written notice of intention to arbitrate is not made within such 15 day period, arbitration shall be deemed to have been waived. If arbitration is invoked by either party, such arbitration shall be exclusive and in lieu of any other common law rights. The locale for arbitration shall be fixed by the AAA and shall be selected from the standby facilities maintained by the AAA for arbitration. It is understood and anticipated that such locale shall be the closest available to the *Dealer's* residence.

(2) The arbitrator shall be selected by the parties from the panel of arbitrators of the AAA, and shall be appointed within 30 days from receipt by AAA of the notice of intent to invoke arbitration. The arbitrator shall be empowered to determine whether good cause for

cancellation exists or existed under the terms of the *Dealership Agreement,* to decide, in accordance with such determination, which party shall have possession of the premises, and to assess the costs of arbitration, excluding attorneys' fees (except as provided in Paragraph IV C(6)), on a just and equitable basis. The decision of the arbitrator shall be final and binding upon the parties, and judgment thereon may be entered in any court of competent jurisdiction. In the event of a default by either party in appearing before the arbitrator, pursuant to advance written notice, the arbitrator is authorized to render a decision upon the evidence of the party appearing. Within 45 days after his appointment, the arbitrator shall render a written decision on the evidence before him, which decision shall include the arbitrator's findings of fact.

(3) Subject to the provision of Paragraph IV A of this order, the *Dealer* may elect to remain in possession of the *Station* premises pending the decision of the arbitrator, and for an additional fifteen days in the event the decision of the arbitrator is against the *Dealer; provided, however,* that upon a showing by SOHIO under a motion made at any time during the arbitration that the *Dealer* has discontinued or substantially curtailed normal operations, or is disparaging SOHIO, its products, or its trademarks, the arbitrator shall be empowered to order that SOHIO may take immediate peaceable possession of the *Station* premises.

(4) The arbitrator shall have no authority except as explicitly set forth in this Paragraph IV C and shall have no power or jurisdiction to add to, subtract from, alter or modify any of the terms of a *Dealership Agreement.* If the arbitrator finds that good cause for cancellation does not or did not exist, the sole remedy he has jurisdiction and authority to award is a decision allowing the *Dealer* to continue as a *Dealer* under the terms and conditions of the existing *Dealership Agreement.* The arbitrator has no jurisdiction or authority to award monetary damages or other affirmative relief beyond deciding which party is entitled to possession of the *Station.*

(5) At any time during the arbitration proceedings, the arbitrator, upon motion by either party, shall be empowered to order the other party to post bond with a reputable bondsman or surety company or otherwise provide security to the arbitrator in an amount sufficient to cover any costs of arbitration to be borne by the parties as hereinafter provided and to cover any losses in rent, reimbursement for supplies or other damage to the leasehold during the period following the invoking of arbitration. The arbitrator shall not be empowered to make any award under the bond, but the party

protected thereby may assert his rights under the bond in any court of competent jurisdiction.

(6) In all instances each party shall bear its own attorneys' fees, except that if the arbitrator shall find that good cause for cancellation does not or did not exist, the arbitrator shall award *Dealer* a reasonable attorney's fee.

D. No *Dealership Agreement* shall require a *Dealer* to agree that any acts or omissions shall constitute material non-compliance with the *Dealership Agreement.*

V

It is further ordered, That the *Dealer's* right to elect arbitration for the purpose of determining whether good cause exists or existed for cancellation, including *Dealer's* time limitations, *Dealer's* remedies, AAA's headquarter's address and the Regional Office of AAA closest to the *Dealer's* residence as then known, shall be conspicuously noted in all *Dealership Agreements,* that express reference to the *Dealer's* right to elect arbitration shall appear on all notices of cancellation subject to the provisions of this order, and that the *Dealer's* right to request notice of whether a new *Dealership Agreement* will be offered, as provided in Paragraph III B of this order, including the actual earliest date such request may be made, shall be conspicuously noted in each *Dealership Agreement.*

VI

It is further ordered, That SOHIO shall, within 30 days after the *Effective Date of This Order,* serve upon all *Dealers* having a *Dealership Agreement* a letter by certified mail, signed by a responsible official binding SOHIO and on official SOHIO stationery, which shall include the following statement in its first paragraph:

> Sohio and the Federal Trade Commission have agreed on a consent decree which provides, among other things, for longer term dealership agreements, cancellation of which would be subject to arbitration under certain circumstances. Sohio has also agreed that its dealers will not be required to deal exclusively in TBA products sold by Sohio, to maintain any specified minimum stock of such products, or to refrain from dealing in TBA products sold by others. The relevant provisions of the consent decree are enclosed.

The relevant provisions of this order which shall be enclosed in such letters to such *Dealers* are Paragraphs I–IV hereof. The second paragraph of such letter shall contain the following statement:

> You have the right to request in writing notice from Sohio as to whether or not

you will be offered a new dealership agreement in accordance with the consent decree, and Sohio must give such notice within 90 days after receipt of your request. All dealership agreements in effect as of (insert the 180th day after *Effective Date of This Order*) must be brought into conformity with the order.

VII

It is further ordered, That SOHIO shall forthwith distribute a copy of this order to each of its marketing sales divisions and regions.

VIII

It is further ordered, That SOHIO shall notify the Commission at least 30 days prior to any proposed change in corporate organization which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

IX

It is further ordered, That SOHIO shall, within 210 days after service upon it of this order, and thereafter annually at the anniversary date of the order for a period of five years, file with the Commission a written report setting forth in detail the manner and form in which it has complied and will comply with this order.

X

It is further ordered, That unless altered, modified or set aside in accordance with Sections 3.71 and 3.72 of the Commission's Rules or such similar rules as may be in effect from time to time, this order shall remain in effect for 10 years after its *Effective Date.*

IN THE MATTER OF

CENTURY 21, COMMODORE PLAZA, INC., ET AL.

Docket 9088. Interlocutory Order, Nov. 2, 1977

Denial of motion for reconsideration of prior decision to deny leave to intervene.

ORDER DENYING MOTION FOR RECONSIDERATION

On October 19, 1977 the Commission denied Mr. Unterberg's appeal from the decision of the Administrative Law Judge that Mr. Unterberg be denied permission to intervene.

On the same date Mr. Unterberg filed a pleading styled "Reply to Complaint Counsel's Response to Application of David Unterberg for Review of Administrative Law Judge Parker's Order." The Commission's Rules give no right to file such a pleading. The Commission construes this pleading as a motion for reconsideration of its earlier decision, and so construed,

It is ordered, That Mr. Unterberg's motion be, and it hereby is, denied.

IN THE MATTER OF

PROVIDERS BENEFIT COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2911. Complaint, Nov. 8, 1977 — Decision, Nov. 8, 1977

This consent order, among other things, requires a Philadelphia, Pa. consumer credit corporation and its subsidiaries to cease failing to provide consumers, in connection with the extension of credit, such material and disclosures as are required by Federal Reserve Board regulations; and to cease misrepresenting or failing to inform customers of the optional nature of credit insurance. Further, the order requires firms to offer customers the opportunity to cancel such insurance and to make appropriate refunds as specified.

Appearances

For the Commission: *Salvatore F. Sangiorgi.*

For the respondents: *Sheldon Feldman, Weil, Gotshal & Manges,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that the parties identified in the caption hereof, and herein more particularly described and collectively sometimes referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Providers Benefit Company is the parent corporation of Provident Credit Corp., a wholly-owned subsidiary. Provident Consumer Discount Company, Inc. is a wholly-owned subsidiary of Provident Credit Corp. All three corporations are organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. The office and principal place of business of Providers Benefit Company is located at 8045 West Chester Pike, Upper Darby, Pennsylvania. The office and principal place of business of Provident Consumer Discount Company, Inc. and Provident Credit Corp. is located at 42 South 15th St., Philadelphia, Pennsylvania.

PAR. 2. Respondents Frederick I. Robinson and George Billings are officers of corporate respondents Provident Consumer Discount Company, Inc. and Provident Credit Corp. They formulate, direct and control the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth.

PAR. 3. Respondents are now, and for some time last past have been engaged in the offering to extend, and the extension of consumer credit to the public in the Commonwealth of Pennsylvania and the State of New Jersey.

PAR. 4. In the ordinary course and conduct of its business, as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 5. Subsequent to July 1, 1969, in extending consumer credit, respondents execute an "Installment Sale and Security Agreement" on which disclosures were made which failed to conform to the terminology required, and made certain other cost of credit disclosures, including the dollar amount of the finance charge, without disclosing the "annual percentage rate," thereby failing to comply with the disclosure requirements of the Truth in Lending Act as defined and set forth in Sections 226.8(a), (b), and (c) of Regulation Z. In addition, respondents furnish their customers with a separately executed "Federal Disclosure Statement" which makes disclosures under Section 226.8(d) "Loans and other non-sale credit," rather than furnishing disclosures as required by Section 226.8(c), consistent with the definition of a "credit sale" as that term is defined in Section 226.2(t) of Regulation Z.

By and through their use of the separate disclosure statements and in conjunction with a credit sale, respondents:

1. Fail to make required disclosures in a clear and conspicuous manner using the terminology as required by Section 226.6(a) of Regulation Z.

2. Fail to print the term "finance charge" more conspicuously than other terminology as required by Section 226.6(a) of Regulation Z.

3. Fail to make all of the required disclosures together on either the contract or other instrument evidencing the obligation on the same side of the page, or one side of a separate statement which identifies the transaction, as required by Sections 226.8(a)(1) or 226.8(a)(2) of Regulation Z.

4. Fail to accurately disclose the finance charge expressed as an

annual percentage rate, using the term "annual percentage rate" as required by Section 226.8(b)(2) of Regulation Z.

5. Fail to disclose the sum of the payments scheduled to repay the indebtedness using the term "total of payments" as required by Section 226.8(b)(3) of Regulation Z.

6. Fail to use the term "cash price" to describe the price at which the creditor offers, in the ordinary course of business, to sell for cash the property or services which are the subject of the consumer credit transaction as required by Section 226.8(c)(1) of Regulation Z.

7. Fail to use the term "cash downpayment" to describe the amount of the downpayment of money, using the term "cash downpayment" as required by Section 226.8(c)(2) of Regulation Z.

8. Fail to use the term "total downpayment" to describe the sum of cash downpayment in money and the downpayment in property, using the term "total downpayment" as required by Section 226.8(c)(2) of Regulation Z.

9. Fail to use the term "unpaid balance of cash price" to describe the difference between the cash price and total downpayment, as required by Section 226.8(c)(3) of Regulation Z.

10. Fail to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(5) of Regulation Z.

11. Fail to use the term "amount financed" to describe the amount of credit of which the customer will have actual use determined in accordance with Section 226.8(c)(7) of Regulation Z.

12. Fail to disclose the method of computing any unearned portion of the finance charge in the event of prepayment in full of an obligation which includes precomputed finance charges, a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to an obligation or refunded to the customer, and if no rebate of unearned finance charges upon prepayment in full is made, the disclosure of such fact.

PAR. 6. In the further course and conduct of their business as aforesaid, respondents have charged and are now charging a substantial number of consumers for credit life and/or credit disability insurance, written in connection with consumer credit transactions.

Typical and illustrative but not all inclusive, of the circumstances in which such insurance charges are incurred by consumers are the following:

1. Prior to presenting the credit disclosure statement to the

consumer, respondents automatically include the cost of credit life and/or credit disability insurance on such statement, and unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

2. In most instances, respondents have placed a checkmark, or "x" mark or some other mark next to blank lines on the credit disclosure statement to obtain obligor's signatures for credit life and credit disability insurance and/or have placed the date in the designated position in the insurance disclosure portion of said statement without permission or authority of the consumer.

3. Respondents record the charges for credit life and credit disability insurance as disbursements and these charges become part of the amount financed, but are excluded from the finance charge in computing the annual percentage rate, as "finance charge" and "annual percentage rate" are defined in Regulation Z.

PAR. 7. By and through the acts and practices described in Paragraph Six, and others of similar import, meaning and consequence but not specifically set forth herein, respondents, in a substantial number of instances, and particularly in connection with the sale of credit life and credit disability insurance, obtain consumers' signatures through acts and practices which operate, directly or indirectly, to defeat the elective language on the credit disclosure statements by obscuring from consumers knowledge about the option. In some instances, respondents lead consumers to believe that their signatures are necessary solely for the purpose of obtaining credit. In other instances, respondents allow consumers to sign the credit disclosure statement, electing insurance, in the mistaken belief that such insurance is required by respondents. Respondents also discourage the declination of the insurance coverage when it is questioned. These acts and practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain credit life and credit disability insurance.

Therefore, respondents, in a substantial number of instances, induce consumers to incur charges for credit life and credit disability insurance without said consumers making a knowing, affirmative election to have such insurance and, thereby, respondents fail to obtain from each of their customers a "specifically dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a)(5) of Regulation Z, in spite of the existence of language to the contrary in the credit disclosure statement.

PAR. 8. By and through the acts and practices described in

Paragraphs Six and Seven hereof, respondents fail to include the charges for credit life and credit disability insurance in the finance charge when a specific dated separately signed affirmative written indication of the consumer's desire for such insurance has not been obtained, as required by Section 226.4(a)(5) of Regulation Z, and thereby respondents:

1. Fail to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and
2. Fail to compute and disclose accurately the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5, as required by Section 226.8 of Regulation Z.

PAR. 9. In the further course and conduct of their business and particularly in connection with their extensions of consumer credit, respondents have charged a substantial number of consumers for automobile medical insurance and/or automobile club plan membership. The charge for this coverage is imposed directly or indirectly by respondents as an incident to or as a condition of the extension of credit. The charges or premiums are usually paid by the consumer from the proceeds of the credit transaction to the respondents. Respondents do not include the charge or premium for said coverage in the finance charge.

Therefore, respondents are violating Sections 226.4 and 226.8 of Regulation Z, by failing to include the charges for "Automobile Medical Insurance" and/or "Automobile Club Plan Membership" in the finance charge and by failing to specifically disclose such charges as an element of the finance charge.

PAR. 10. By and through respondents' failure to include the charges for "Automobile Medical Insurance" and/or "Automobile Club Plan Membership" in the finance charge as described in Paragraph Nine, respondents:

1. Fail to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and
2. Fail to compute and disclose accurately the "annual percentage rate" accurately to the nearest quarter of one percent in accordance with Section 226.5, as required by Section 226.8 of Regulation Z.

PAR. 11. Pursuant to Section 103(s) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108(c) thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Providers Benefit Company is the parent corporation of Provident Credit Corp., a wholly-owned subsidiary. Provident Consumer Discount Company, Inc. is a wholly-owned subsidiary of Provident Credit Corp. All three corporations are organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. The office and principal place of business of Providers Benefit Company is located at 8045 West Chester Pike, Upper Darby, Pennsylvania. The office and principal place of business of Provident Consumer Discount Company, Inc. and Provident Credit Corp. is located at 42 South 15th St., Philadelphia, Pennsylvania.

2. Respondents Frederick I. Robinson and George Billings are officers of corporate respondents Provident Consumer Discount Company, Inc. and Provident Credit Corp. They formulate, direct and control the policies, act and practices of said corporations.

3. The Federal Trade Commission has jurisdiction of the subject

matter of the proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For purposes of this order, the following definitions of terms shall apply:

(a) "Consumer credit transactions in open status" refers to those consumer credit transactions in which payments at least totaling the amount of one regular monthly payment have been made by the obligor in the last six months.

(b) "Delinquent account" refers to those accounts which are more than 30 days past due for an amount which equals the amount of one regular monthly payment.

(c) "Penetration rate" refers to the percentage of all transactions eligible for credit insurance on which charges for such insurance are made.

(d) "Refund method" refers to an accounting method to compute refunds of insurance premiums in connection with cancellation of insurance coverage which method makes use of both the Rule of 78 and a pro rata computation. As an example, the Rule of 78 would operate on a 12-month obligation as follows: The numbers 1 through 12 added together provide the figure 78. This is the denominator. The sum of the months expired at the date of cancellation supplies the numerator. The first month of a 12-month obligation is considered as 12 because the outstanding balance is 12 times as large during the first month as it is for the last month. The second month is 11, and so on to 1. The portion of insurance premiums which must be refunded, is for cancellation during the first month, 78/78–12/78 or second month 66/78–11/78 or 55/78; and so on down to the 12th month. The numerator for a 24-month contract is obtained by beginning with 24, instead of 12, as for a 12-month contract, or 36 in the case of a 36-month contract or any other number denoting the total number of months or periods in a particular contract. To the amount of any refund due in connection with any credit transaction as determined by use of the Rule of 78 will be added an amount which is equal to 40 percent of the difference between said Rule of 78 amount and that amount which would be due if said refund were to be computed on a pro rata basis. Said pro rata amount refers to an amount which shall be at least as great a proportion of the total insurance premiums collected by respondents in connection with any credit transaction as the number of remaining monthly payments, scheduled to follow the installment date nearest the date of cancellation as explained below,

bears to the total number of monthly payments scheduled by the obligor's contract. Any cancellation made on or before the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately preceding the date of cancellation. Any cancellation made after the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately following the date of cancellation. Any obligor making cancellation on or before the fifteenth day following consummation of the transaction shall receive a refund or credit for the full amount of insurance premiums in connection with said transaction. Cancellation for purposes of computing the amount of any refund or credit due shall be as of the date of receipt by respondents of the notice set forth in Attachment C of this order or as of the date of receipt by respondents of any other communication from the borrower under the terms of this order indicating his desire to cancel his insurance coverage.

(e) "Time of closing" refers to that period of time during which credit agreements are presented to the customer for consummation of a credit transaction whereby the customer becomes obligated to make payments to respondents to satisfy said transactions.

I

It is ordered, That respondents Providers Benefit Company, Provident Consumer Discount Company, Inc. and Provident Credit Corp., corporations, their successors and assigns, and their officers and Frederick I. Robinson and George Billings, individually and as officers of Provident Consumer Discount Company, Inc. and Provident Credit Corp., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit subject to the provisions of Regulation Z (12 CFR 226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. 1601-65 (1970), as amended 15 U.S.C. 1601-65a, (Supp. IV, 1974)), do forthwith cease and desist from:

1. In connection with a credit sale, as applicable:

(a) Failing to make required disclosures in a clear and conspicuous manner using the terminology as required by Section 226.6(a) of Regulation Z.

(b) Failing to print the term "finance charge" more conspicuously than other terminology as required by Section 226.6(a) of Regulation Z.

(c) Failing to make all of the required disclosures together on either the contract or other instrument evidencing the obligation on

the same side of the page, or on one side of a separate statement which identifies the transaction, as required by Sections 226.8(a)(1) or 226.8(a)(2) of Regulation Z.

(d) Failing to accurately disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate" as required by Section 226.8(b)(2) of Regulation Z.

(e) Failing to disclose the sum of the payments scheduled to repay the indebtedness using the term "total of payments" as required by Section 226.8(b)(3) of Regulation Z.

(f) Failing to use the term "cash price" to describe the price at which the creditor offers, in the ordinary course of business, to sell for cash the property or services which are the subject of the consumer credit transaction as required by Section 226.8(c)(1) of Regulation Z.

(g) Failing to use the term "cash downpayment" to describe the amount of the downpayment of money, using the term "cash downpayment" as required by Section 226.8(c)(2) of Regulation Z.

(h) Failing to use the term "total downpayment" to describe the sum of cash downpayment in money and the downpayment in property, using the term "total downpayment" as required by Section 226.8(c)(2) of Regulation Z.

(i) Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and total downpayment, as required by Section 226.8(c)(3) of Regulation Z.

(j) Failing to use the term "unpaid balance" to describe the sum of the unpaid balance of cash price and all other charges which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(5) of Regulation Z.

(k) Failing to use the term "amount financed" to describe the amount of credit of which the customer will have actual use determined in accordance with Section 226.8(c)(7) of Regulation Z.

(l) Failing to disclose the method of computing any unearned portion of the finance charge in the event of prepayment in full of an obligation which includes precomputed finance charges, a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to an obligation or refunded to the customer, and if no rebate of unearned finance charges upon prepayment in full is made, the disclosure of such fact.

2. Failing, when the charges for credit life insurance, credit disability insurance, automobile medical insurance and/or club plan are not included in the finance charge for a consumer credit transaction.

(a) To present to the obligor as the first document at the time of closing, which document shall be the first document to be completed by respondents and the first document to be signed by the obligor(s) at the time of said closing in respondents' offices, or to mail to the obligor, who is consummating his credit transaction through the mail, at the same time as consummation papers are to be mailed, a separate, written, personal insurance authorization form which sets forth clearly and conspicuously:

(i) the obligor has received credit approval up to a specified amount;

(ii) the obligor's decision with regard to the various forms of insurance coverage available through respondents is not considered in granting the credit;

(iii) the purchase of any form of credit insurance is optional and is not required by the creditor, in connection with the credit transaction.

(iv) the amount of the total premium for credit life insurance, the amount of the total premium for credit disability insurance, the amount for automobile medical insurance and the amount for automobile club plan (which if elected will be added to the "amount financed");

(v) the amount financed options applicable to the transaction would result from the obligor's election to consummate the credit transaction, set forth in the following order from left to right across the document: (1) without either credit life insurance or credit disability insurance, (2) with credit life insurance only, (3) with credit disability insurance only, (4) with both credit life insurance and credit disability insurance, (5) with other available forms of credit insurance offered by respondent, except that, in addition to providing the required information for the above-stated four options, respondent need only provide the required information for one other option if the obligor has indicated an interest in such an option;

(vi) a signature and date line for each option set forth in (v) above for the obligor(s) to indicate his election;

(vii) the obligor authorizes respondents on behalf of the obligor to pay the insurance premiums to the insurance company for such insurance coverage which has been chosen.

(b) To send to mail order obligors, at the same time and along with the papers to consummate said credit transaction, a separate written statement containing the notice, in no less than 12 point bold type and easily legible, which this order requires to be displayed at respondents' office.

(c) To make the disclosures required by subparagraph (a) above on a separate document which contains no other printed or written material.

(d) To make disclosures required by subparagraphs (i), (ii) and (iii) above in not less than 12 point bold type. A form substantially in conformance with Attachment A herein will be considered as in compliance with the provisions of subparagraphs (a), (b) and (c) above. Respondents shall maintain the original statement for two years following its execution and provide the customer with an executed copy thereof.

3. Making any marks or otherwise instructing an obligor where to sign or date the separate insurance authorization form required by subsection 2(a) above in advance of the obligor's free and independent choice for such insurance.

4. Misrepresenting, orally or otherwise, directly or by implication, that credit life insurance, credit disability insurance, automobile medical insurance and/or automobile club plan membership are required as a condition of obtaining credit from respondents.

5. Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of credit life insurance, credit disability insurance, automobile medical insurance and/or automobile club plan membership.

6. Misrepresenting, orally or otherwise, directly or indirectly, that the obligor's failure to elect credit insurance coverage will result in a delay in processing his credit transaction or in his receiving the proceeds thereof.

7. Failing, in any consumer credit transaction or advertisement, to make all disclosures in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.8, 226.9 and 226.10 of Regulation Z.

II

It is further ordered, That respondents display at their place of business, at each booth, or at or near each desk or other location where transactions are consummated, in such a manner and in such dimensions so as to be easily viewed and read by the obligor from his seated or other normal position in such booth or at such desk or other location, and which shall not be in close proximity to any other written or display material, the following notice:

NOTICE TO CREDIT CUSTOMERS

THE PURCHASE OF CREDIT INSURANCE IS OPTIONAL. IT IS NOT

REQUIRED BY THIS COMPANY. YOUR DECISION IS NOT CONSIDERED IN THE GRANTING OR DENYING OF CREDIT TO YOU.

III

It is further ordered, That respondents maintain records on a state-by-state basis (covering each state in which they do business) of the penetration rate of (a) credit life insurance for transactions; and (b) credit disability insurance for transactions. Such records shall be maintained on a yearly basis and submitted to the Commission each year for a period of five years, and thereafter from time to time as the Commission may request.

IV

It is further ordered, That within forty-five (45) days after the date this order becomes final respondents mail to all existing obligors to whom credit life insurance, credit disability insurance, auto club membership and/or auto medical payment insurance, were sold prior to the date this order becomes final and the premium(s) or fee(s) for same were not included in the finance charge, and who did not receive death benefits or health benefits under said insurance policies, in connection with respondents' consumer credit transactions in open status on the date this order becomes final, notwithstanding the sale or assignment of any or all of said transactions to a third party, the two notices set forth in Attachments B and C of this order, together with a self-addressed postpaid, return envelope.

Provided, however, that: (1) respondents shall not be required to forward the two notices set forth in Attachments B and C of this order to any obligor who has already received the above-mentioned notices prior to the date this order becomes final, and where any and all follow-up provisions required by this order with respect to said notices, including the making of refunds or the crediting of accounts, where applicable, have been or will be accomplished by respondents within the time periods specified in this order; and (2) respondents shall not be required to forward the two notices set forth in Attachments B and C of this order to any obligor who, for any transaction consummated prior to the date this order becomes final, received from respondents during the time of closing of said transaction, the personal insurance authorization form required by Section 2(a) of this order and where any and all requirements connected with said form as required by this order have been accomplished by respondents.

V

It is further ordered, That a record of mailing by respondents of the notices set forth in Attachments B and C of this order be kept by respondents and that said record be available for examination by Commission personnel in connection with any compliance obligations arising out of this order. Respondents' obligations under Paragraph IV of this order shall not be fulfilled until each obligor affected by such paragraph has received the notices, or been contacted, as specified therein; *provided, however,* that respondents shall be deemed to have complied with said Paragraph IV if respondents can demonstrate that they expended reasonable efforts, in writing or orally, to deliver such notices or make such contact according to the terms of this order.

VI

It is further ordered, That all requests for refunds of credit life insurance and/or credit disability insurance premiums under the terms of this order be calculated by respondents based on the "Refund Method" as defined in subpart (d) of the definitions of this order; and all requests for refunds of premiums for auto club and auto medical insurance coverage be calculated by respondents on a pro rata basis; and that said refunds be accomplished by respondents within thirty (30) days of receipt by respondents, within the time period specified in this order, of the notice set forth in Attachment C of this order or receipt by respondents of any other form of communication from obligors indicating their desire to cancel their coverage.

VII

It is further ordered, That respondents shall make refunds in cash to all obligors requesting refunds, except those obligors whose accounts are "delinquent accounts." Respondents shall have the option to either make refunds to delinquent accounts in accordance with the terms of this order to credit said accounts for the full amount of any refund due.

VIII

It is further ordered, That respondents, when making cash refunds or when crediting any account with the full amount of any refund due following receipt of the notice set forth in Attachment C of this order, mail or deliver the refund or credit said account within thirty

(30) days of the receipt by respondents of said notice. The above-mentioned credit shall be reflected on the next account status statement to be sent to the obligor following the above-mentioned crediting of his account.

Provided, however, that respondents shall not be required to make refunds or to credit accounts with respect to any cancellation notice, as so set forth in Attachment C of this order, or any cancellation request, received by respondents later than sixty (60) days following the date of said notice's receipt by the obligor or later than sixty (60) days from the date that respondents otherwise notified the obligor of his cancellation prerogatives.

IX

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents involved in consummating consumer credit obligations, and that respondents secure a signed statement acknowledging receipt of said copy of this order from each such person.

X

It is further ordered, That no provision of this order shall apply to an entity which is neither related to nor has any continuity of interest with any respondents named herein, other than being assignee or holder of respondents' consumer credit transactions.

Provided, however, that the provisions of this paragraph shall not be interpreted to excuse any assignee of any liability imposed by Section 115 of the Truth in Lending Act, or to excuse any respondent from complying with any obligation imposed by this order with regard to the consumer credit transactions so assigned.

XI

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as 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 which may affect compliance obligations arising out of the order.

XII

It is further ordered, That each individual respondent named herein promptly notify the Commission of each change in the respondent's business or employment status, which includes discon-

tinuance of the respondent's present business or employment, and each affiliation with a new business or employment, for five (5) years following the effective date of this order. Such notice shall include the address of and a description of the business or employment with which each respondent is newly affiliated as well as a description of each respondent's duties and responsibilities in connection with that business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

XIII

It is further ordered, That respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

ATTACHMENT A

PERSONAL CREDIT INSURANCE AUTHORIZATION

YOUR APPLICATION FOR CREDIT HAS BEEN APPROVED IN THE AMOUNT OF _____.

CREDIT LIFE OR CREDIT ACCIDENT & HEALTH (DISABILITY) INSURANCE IS NOT REQUIRED IN CONNECTION WITH THIS EXTENSION OF CREDIT TO YOU AND YOUR DECISION WITH REGARD TO THE PERSONAL INSURANCE WILL NOT AFFECT THE TOTAL AMOUNT OF CREDIT WHICH HAS ALREADY BEEN APPROVED FOR YOU.

IF YOU ELECT CREDIT INSURANCE THESE PREMIUMS WILL BE ADDED TO THE AMOUNT OF CREDIT APPROVED FOR YOU.

Credit Life	$ ____ (For term of transaction)
Credit A & H (Disability)	$ ____ (For term of transaction)

I have received a fully completed and executed copy of this form. I have reviewed the amount financed options set forth below and understand that if I choose an amount financed option that includes any of the insurance coverages I am authorizing the creditor to pay the insurance premiums on my behalf. I have voluntarily chosen the following amount financed option:

Option 1	Option 2	Option 3	Option 4
Amount Financed Without Personal Credit Insurance	Amount Financed With Credit Life Only	Amount Financed With Credit A & H (Disability) Only	Amount Financed With Credit Life and A & H (Disability)
$ _____	$ _____	$ _____	$ _____

No. of Months	No. of Months	No. of Months	No. of Months
_____	_____	_____	_____
(Borrower)	(Borrower)	(Borrower)	(Borrower)
_____	_____	_____	_____
(Borrower)	(Borrower)		
_____	_____	_____	_____
(Date)	(Date)	(Date)	(Date)

ATTACHMENT B

Name of Creditor
Address of Creditor

Dear Customer:

As part of your current credit transaction with us charges were made for credit life insurance, credit disability insurance, auto medical payment insurance and auto club membership [mention as applicable], in the following amounts:

TYPE OF COVERAGE	AMOUNT CHARGED
Credit Life Insurance	$ _____
Credit Disability Insurance	$ _____
Auto Medical Payments Insurance	$ _____
Auto Club Membership	$ _____

Because many of our customers may not have been fully aware of the voluntary nature of this insurance coverage [and membership] at the time they purchased it, we are offering you the opportunity to cancel your insurance coverage [and membership]. If you decide to cancel your insurance [and/or membership], the company will credit your account with the balance of the premiums or fees due if your account is delinquent. If your account is current we will make a cash refund of the balance due. This amount will be based on a schedule which takes into account the remaining time period on your transaction and the protection which you have already received. If you cancel this insurance, your protection will end as of the date we receive your written notice of cancellation.

If you desire to cancel your insurance coverage [and/or membership], please complete the enclosed form and return it within two weeks in the enclosed envelope which requires no stamp. If you want your insurance [and membership] to remain in force, you need not return the enclosed form or take any other action in connection with this matter.

Sincerely,

ATTACHMENT C

From [Name of Borrower]:

To [Name of Creditor]:

At the time I entered into my credit transaction, I did not understand that credit insurance [and other benefits listed below] were voluntary. Please cancel the benefits

checked below and refund to me the applicable portion of the premium(s) and/or fee(s) shown on this form. I understand that the company reserves the right to credit my account with such refund if my account is in delinquent status.

CHECK COVERAGE TO BE CANCELLED

( ) cancel my credit life insurance [list
( ) cancel my credit disability insurance applicable
( ) cancel my auto medical payments insurance coverages]
( ) cancel my auto club membership

(NOTE: DO NOT SIGN OR RETURN THIS FORM IF YOU WANT YOUR BENEFITS TO REMAIN IN FORCE)

DATE _____ _____

Obligor