

Complaint

70 F.T.C.

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As used in this Order, the word "person" shall include all members of the immediate family of the individual specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

Commissioner Elman dissented and has filed a dissenting opinion.

IN THE MATTER OF

S. DEAN SLOUGH TRADING AS
STATE CREDIT CONTROL BOARD

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

Docket 8661. Complaint, June 16, 1965—Decision, Nov. 16, 1966

Order requiring a Quincy, Ill., seller of debt collection forms to cease using forms which imply an official government connection, that the sender of the forms is a third party collector, and that delinquent accounts are turned over to a State agency for collection.

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 S. Dean Slough, an individual, trading and doing business as State Credit Control Board, hereinafter referred to as the 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 S. Dean Slough is an individual trading and doing business as State Credit Control Board. His address is 1302 Royal Road, Quincy, Illinois.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of collection forms to dealers for resale to businessmen and to businessmen directly. Respondent is also engaged in the operation of a remailing service with respect to such forms.

PAR. 3. In the course and conduct of his aforesaid business, re-

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spondent now causes, and for some time last past has caused, his said forms, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent's forms are designed and intended to be used, and are used, by businessmen and others to whom they are sold for the purpose of inducing the payment of alleged delinquent accounts, with the aid and assistance of the respondent as hereinafter set forth.

Respondent's forms are of two types: (1) those which are designed to accompany a statement of account made by the creditor under his own name; and (2) those which are designed to be inserted in envelopes provided by the respondent, which envelopes show a return address in the capital city of one of the States of the United States.

Among the forms of the first type is one which contains the following statement: "Unless we hear from you within Ten Days with payment, we shall turn your account in for collection to, STATE CREDIT CONTROL BOARD."

All of the forms of the second type bear the letterhead of "State Credit Control Board" together with a post office box number in the capital city of one of the States of the United States. A user of this type of form fills in the appropriate data in the spaces provided, including the name and address of the alleged debtor or other addressee, together with the amount of the alleged indebtedness, and sends the completed form to respondent's agent in the capital city of the appropriate State. Respondent's agent then mails the form from that location.

Among and illustrative of respondent's forms, although not all inclusive thereof, are the following:

CREDIT PROTECTION	Referred to file of County Agent
An Independent Collection Service	_____
[Encircling a seal of Justice]	County of _____

STATE CREDIT CONTROL BOARD
P.O. Box 1626 - Springfield, Illinois 62700

Creditor _____ Address _____ _____	FOR COUNTY AGENT USE ONLY IF APPLICABLE Date Serving Writ _____ Writ Returnable _____
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Amount Claimed _____ Date of Judgment _____
 Name of Court Judge _____
 Collection Charges _____ Date Sheriff's Notice _____
 M _____ Date _____

You have been notified that the above claim has been handed to us for immediate attention by the above named creditor.

This claim is a legal and just obligation and we have guaranteed to collect or he will *prosecute*.

We are withholding action in this matter for ten days, giving you ample time to communicate with *your creditor*.

If you fail to get in touch with *your creditor* within the time limit, it will be evident that this claim is not only a just one, but that you are attempting to avoid payment of a legal obligation.

He shall then order legal proceedings brought against you involving judgment, levy or garnishment forthwith.

Very truly yours,
 /s/ E. Dean Slough
 E. Dean Slough
 District Director

CORRESPONDING ATTORNEYS THROUGHOUT THE UNITED STATES

CREDIT PROTECTION
 An Independent Collection Service
 [Encircling a seal of Justice]

Referred to file of County Agent

 County of _____

STATE CREDIT CONTROL BOARD
 P.O. Box 1626 - Springfield, Illinois 62700
 Notice to Employer

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To.....

Gentlemen:

It may become necessary to Garnishee your Employee, M.....
 Said party is indebted
 to of

Should he be compelled to Garnishee said Employee, it will be compulsory to make you a party to the suit. However, we desire to save you all unnecessary trouble, annoyance and expense of such proceedings and therefore trust you will bring influence to bear, causing said Employee to adjust said claim at once, direct with the Creditor.

We assure you the Creditor will be fair and accept reasonable payments, within the Debtor's means.

We hope that suit will not be necessary. However, if he is compelled to Garnishee said Employee, a complete disclosure may be demanded, compelling you to bring all books, records and vouchers into court for examination and evidence.

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This notice is sent you as a courtesy. We desire to protect your interests, and trust our action will be appreciated.

All communications in this matter should be addressed direct to Creditor.

Yours Truly,

STATE CREDIT CONTROL BOARD

Certified Statement of Account

I hereby certify that I have examined the record in the matter of the above mentioned claim, and have found the account to be true and correct to the best of my knowledge and belief.

Creditor
Address
Date 196 Amt

FINAL NOTICE
BEFORE ENTERING SUIT

Creditor Name Address
Debtor

TO THE ABOVE NAMED DEBTOR:

FIRST: Take notice that the above named creditor claims that you are indebted to him in the sum of \$

SECOND: Although duly demanded, the same has not been paid.

THIRD: Now therefore, unless you remit to

on or before the day of A.D., 19
for payment of said claim, or make provision for adjustment thereof, suit may be brought for the total amount with interest together with the costs and disbursements of the action.

This demand is made according to law for the purpose of laying a foundation for legal action if not paid before the above date.

Dated this day of , 19

CERTIFIED STATEMENT OF ACCOUNT

The above creditor hereby certifies that he has examined the matter in the above mentioned claim and has found the account to be true and correct to the best of his knowledge and belief.

Creditor

CREDIT PROTECTION

An Independent Collection Service
[Encircling a seal of Justice]

MAKE PAYMENTS DIRECT
TO CREDITOR

STATE CREDIT CONTROL BOARD
P.O. Box 1626, Springfield, Ill. 62700

County Agent
County of

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, the respondent represents, and places in the hands of others the means and instrumentalities by and through which they may represent, directly or by implication, that:

(a) A request for payment or other request regarding an allegedly delinquent account is being made by an agency of state government.

(b) A request for payment or other request regarding an allegedly delinquent account originates with a party other than the creditor.

(c) An allegedly delinquent account has been or is about to be referred to "State Credit Control Board" for collection.

(d) Legal action with respect to an allegedly delinquent account has been or is about to be initiated.

PAR. 6. In truth and in fact:

(a) The request for payment or other request regarding an allegedly delinquent account is not being made by an agency of state, federal or local government.

(b) The request for payment or other request regarding an allegedly delinquent account originates with the creditor.

(c) The allegedly delinquent account has not been, nor is it about to be referred to "State Credit Control Board" for collection.

(d) Legal action with respect to the allegedly delinquent account has not been, nor in many cases is it about to be, initiated.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. David J. Eden supporting the complaint.

Mr. Fredric T. Suss, Wash., D.C., for respondent.

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Initial Decision

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

JANUARY 19, 1966

The complaint herein alleges false representations in violation of Section 5 of the Federal Trade Commission Act. The alleged misrepresentations are contained in printed forms, prepared and sold by the respondent for the purpose of assisting creditors in the collection of debts. The forms, after being filled out by the creditors, are, most of them, then sent to respondent, who mails them to the debtors as coming from State Credit Control Board, his trade name.

Misrepresentation is predicated largely on the theory of placing in the hands of creditors, who are the direct or ultimate purchasers of the forms, the means and instrumentalities whereby the alleged misrepresentations may be made by them to the debtors.

The complaint contains no charge of unfair competition.

SUMMARY

Except for three preliminary small "slip" forms, each mailed out by the creditor directly, attached to a bill or statement, the forms with which this case is concerned are captioned or subscribed by STATE CREDIT CONTROL BOARD, respondent's trade name, as aforesaid. Moreover, when such a form is mailed to a debtor by respondent, acting in behalf of the creditor, it is mailed out in an envelope apparently carrying the State Credit Control Board name, and carrying a box number address in the capital city of the particular State in which the debtor is located, from which capital city it is mailed by respondent.

Each of the forms (except the preliminary "slip" forms) carefully and prominently instructs the debtor to deal only with the creditor directly and to make all payments to the creditor. Thus, although the forms purport to come from State Credit Control Board, all dealings or collections are designed to be strictly between the debtor and his creditor, who actually initiates the sending out of the form to the debtor, as already stated.

It is admitted and conceded that the accounts are not sent to the respondent for collection, even though respondent's trade name is used to attempt to obtain collection, and even though at least one of the preliminary slip forms expressly states that the account is to be sent to State Credit Control Board for collection.

As to respondent's use of the name State Credit Control Board, it may be said at once that the charge that this is a representation that a state agency is involved hardly presents a question of great difficulty. The present decision holds that alleged qualifying words (printed upside down beneath a symbol of Justice) do not cure the misrepresentation.—Respondent's defense of discontinuance (and lack of likelihood of resumption), which is limited to this representation, is disallowed by the decision herein. The claim, in large part, is that respondent now uses the name State's Credit Control Service, having changed his first name to State—which actually seems to disclose a stubborn intent to continue misrepresentation.

As to the allegation in the complaint that there is misrepresentation because the creditor represents, by the forms, or is enabled to represent, that the account has been sent in for collection, there is likewise little difficulty. For one thing, as already indicated, one of the three preliminary "slip" forms (to wit, the final one) used under this system states that the account has been sent in for collection to State Credit Control Board—although, concededly, it has not been sent in for collection. Accordingly, the decision holds that there is a misrepresentation that the account has been sent to respondent, or to State Credit Control Board, for collection. The cease and desist order expressly forbids this practice, entirely apart from the use of the name State Credit Control Board.

As to the allegation that, by additional wording in the forms, the creditor misrepresents that a legal action is about to be started if payment is not made, there is a measure of difficulty. This is so, perhaps, because of the question of how respondent, a seller of forms, can know what a particular creditor, at the time of using the forms, has in mind about possible legal action.

However, after due deliberation, the issue has been resolved by the consideration that the forms comprise a system which has as its very purpose the elimination of the necessity of immediate legal action (or referral to a collection agency) while the forms are in use by a creditor, and that the forms by their very wording, and the instructions which go with them, are eminently fitted for this purpose. Complaint counsel, however, adduced actual proof by testimony from a random sample of users of the forms that many of the creditors, indeed, as alleged in the complaint, were not about to commence legal action. The decision herein holds that misrepresentation has been proved, particularly considering the

