

Decision

IN THE MATTER OF

ANN J. WACKSMAN TRADING AS ALLIED INFORMATION
SERVICE, ETC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 7537. Complaint, July 14, 1959—Decision, June 30, 1960

Order requiring an individual in Washington, D.C., to cease obtaining current information of delinquent debtors through such subterfuges as representing falsely that debtor recipients of her questionnaires would receive a substantial sum of money after filling them out and returning them, and that an agency of the U.S. Government was requesting the information.

Mr. Michael J. Vitale for the Commission.

Jacobs & Jacobs, of Atlanta, Ga., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

THE PROCEEDINGS

The respondent herein is charged in the Commission's complaint issued on July 14, 1959, with violating the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices in interstate commerce, through the sale and dissemination of a deceptive printed form designed to entice defaulting debtors to furnish certain information about themselves.

The form states in substance that there is a sum of money on deposit for the recipient not in excess of \$1,000 and that upon receipt of the information requested on the form, the respondent will send such money registered in recipient's name to the address given. The form also sets forth questions which, if answered, provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee. Imprinted on the form is the picture of an eagle which appears beneath the caption "Deposit System Certificate."

The complaint also alleges in substance that the format of the form used is not only otherwise deceptive but that it imputes that information is sought by an agency or branch of the United States government, acting as a depository of a reasonably substantial sum of money to be delivered to the recipient of said form upon proper identification.

The allegations of the complaint further aver that the object of respondent's printed form is to obtain information by subterfuge, all to the prejudice and injury of the public.

The respondent, by her counsel Joseph Jacobs, interposed a formal written answer to the complaint dated August 24, 1959. This answer is essentially a general denial except that it admits the respondent is not connected with the United States government and asserts in substance that the use of such form is essentially in the public interest rather than a disservice to the public.

Pursuant to notice a hearing on the charges was held in Washington, D.C., on October 22, 1959, before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. At said hearing testimony and other evidence were offered in support of and in opposition to, the allegations of the complaint, the same being duly recorded and filed in the offices of the Commission. All parties were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard and to cross-examine witnesses.

Pursuant to leave granted by the undersigned, proposed findings of fact, conclusions of law and an order were filed by counsel supporting the complaint and counsel for respondent. No request for oral argument was made by any of the parties. Proposed findings which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as immaterial.

Upon consideration of the entire record herein and from his observation of the witnesses, the undersigned concludes this proceeding is in the public interest and makes the following:

FINDINGS OF FACT

I. The Business of Respondent and Interstate Commerce

1. Respondent, Ann J. Wacksman, is an individual trading and doing business as Allied Information Service and National Deposit System, with her office and principal place of business located at 527 Woodward Building, Washington, D.C. Respondent formulates, controls and directs the policies, acts and practices hereinafter set forth.

2. Respondent is now, and for some time last past has been, engaged in the business of selling a printed mailing form. Respondent causes said printed form, when sold, to be transported from her place of business in Washington, D.C. to purchasers thereof at their respective points of location in various other states of the United States. Respondent maintains a course of trade in said form in commerce as "commerce" is defined in the Federal Trade Commission Act.

II. The Unfair and Deceptive Practices

A. *The Printed Form Sold*

The printed form sold by respondent is designed and intended to be used and has been used by collection agencies, merchants and others to whom it is sold for the purpose of obtaining information concerning delinquent debtors with the aid and assistance of respondent. This form uses the name "National Deposit System" and contains rectangular holes on the card. The picture of an eagle appears beneath the caption "Deposit System Certificate." The form is designed to be forwarded to addressees in envelopes provided by the respondent in which are enclosed envelopes addressed to "National Deposit System, 527 Woodward Building, Washington 5, D.C., ATT: Department of Disbursements."

The form states that: "There is a sum of money on deposit for you not in excess of \$1,000. Complete the reverse side of this form in full so as to expedite prompt mailing of your disbursement to the address given registered in your name." The form then sets out questions which, if answered, provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee. The purchasers of respondent's printed form fill in the appropriate data in the spaces provided, including the name of the alleged debtors and their addresses and enclose said form in open window envelopes and deliver them to respondent at her office in Washington, D.C. The respondent then meter-mails the individual envelopes from her office in Washington, D.C. If the addressees complete the forms and mail them to respondent in Washington, D.C., a small brown envelope containing two pennies is sent to the persons filling in the form. Respondent then processes the forms and forwards them to the purchasers.

B. *The Representations Made*

Through the use on said form of the terms "National Deposit System Certificate," and also through the use of the picturization of an eagle, similar in design to that used on the seal of the United States Government, official looking building and the format and phraseology of said form, respondent represented, and placed in the hands of purchasers of the form, the means and instrumentalities whereby they represent and imply, to those to whom said form are mailed that the request for information is made by an agency or branch of the United States Government, acting as a depository of a reasonably substantial sum of money to be delivered to the recipients

of said form upon proper identification by furnishing all of the information requested. The fact that said forms are meter-mailed from Washington, D.C. enhances said implication.

C. The Falsity of the Representations

The aforesaid representations and implications were, and are, false, misleading and deceptive. In truth and in fact, respondent is not connected with the United States Government in any respect and is not engaged in any fiduciary or other capacity to receive money for the persons to whom the form is sent, and the only money sent them is two cents. Said form is used to obtain information concerning alleged delinquent debtors by subterfuge. This practice constitutes a scheme to mislead and conceal the purpose for which the information is sought.

The use, as hereinbefore set forth, of said form has had, and now has, the tendency and capacity to mislead persons to whom said form is sent into the erroneous and mistaken belief that the said representations and implications are true and to induce the recipient thereof to supply information which they otherwise would not have supplied.

CONTENTIONS AND CONCLUDING FINDINGS

1. It is the position of the respondent who purports to be a credit expert that the persons to whom such form is sent are not deserving of public protection by reason of their debt delinquency and that the practices used are justified means to the legitimate end to procure payment of debts by such persons. The argument which respondent makes here is one which, in the main, has been fully considered, both by the Commission and the courts, and has been found to be without merit. 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. *Silverman v. FTC*, 145 F. 2d 751; *Rothchild v. FTC*, 200 F. 2d 39; *National Service Bureau v. FTC*, 200 F. 2d 362; *Dejay Stores, Inc. v. FTC*, 200 F. 2d 865; and *National Research Company, etc.*, Docket No. 6236, June 1, 1956.

2. With regard to the use of an imprinted eagle on the form sold by the respondent, respondent's counsel points out that the government has no sole right or patent for its use. Nevertheless, the American eagle has, throughout the life of this nation, been employed as a symbol of government power and authority and its picturization on any document has the tendency, therefore, to suggest the

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government authority of the United States. When an eagle is used on private documents its tendency to suggest such government authority may be increased or lessened by the manner and form in which it appears thereon. In the present case respondent's eagle is used in such a manner as to increase its tendency towards deception rather than to lessen it. This is particularly so since the terminology "National Deposit System Certificate," is used and the enclosed envelopes in which the forms are to be returned are addressed to "National Deposit System, 527 Woodward Building, Washington 5, D.C., ATT: Department of Disbursements."

Furthermore, there is no merit to respondent's contention that the eagle used on its form to locate delinquent debtors is considerably different in at least twelve particulars than that used by the United States Government and is therefore not deceptive. In this connection it should be observed that the eagle appearing on the Great Seal of the United States is not the only eagle design officially used by the United States Government. Judicial notice is taken of the fact that at least four different eagle designs are officially used by the United States Government on its coinage, all of which differ materially than that appearing on the Great United States Seal. In order, therefore, to eliminate the tendency toward deception inherent in respondent's use of an eagle on its form, it would be necessary for the public at large to have specialized knowledge of the picturization of the eagle appearing not only on the Great Seal of the United States, but otherwise. Although the respondent made no direct representation of connection with the United States Government, the form and manner of use may reasonably impute such connection.

The hearing examiner is, therefore, compelled to conclude that all of the foregoing facts in combination constitute a deception for the purpose of inducing recipients of the form to furnish information about their personal affairs.

CONCLUSION OF LAW

It is concluded that the acts and practices of the respondent as hereinabove found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, Ann J. Wacksman, an individual, trading and doing business as Allied Information Service and Na-

tional Deposit System, or trading and doing business under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors, or the offering for sale, sale or distribution of forms or other materials, for use in obtaining information concerning delinquent debtors, or in the collection of, or attempting to collect accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the names "National Deposit System" and "Deposit System Certificate," or any other name of similar import to designate, describe, or refer to respondent's business.

2. Representing, directly or by implication, that money has been deposited with them for persons from whom information is requested unless or until the money has in fact been so deposited, and then only when the amount so deposited is clearly and expressly stated.

3. Representing, directly or by implication, that request for information concerning delinquent debtors is from the United States Government or any agency, or branch thereof, or that their business is in any way connected with the United States Government.

4. Using, or placing in the hands of others for use, any forms, questionnaires or other materials, printed or written, which do not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

OPINION OF THE COMMISSION

By KINTNER, *Chairman*:

The complaint in this matter charges respondent with having violated Section 5 of the Federal Trade Commission Act by using unfair and deceptive acts and practices in the sale and dissemination of printed mailing forms designed and intended to be used in obtaining information concerning delinquent debtors. The hearing examiner found that the charges were sustained by the evidence and ordered respondent to cease and desist from the practices found to be unlawful. From this decision respondent appeals.

One of the principal arguments advanced by respondent is that the Commission is without jurisdiction in this matter by reason of the enactment of Public Law 86-291 by Congress on September 21, 1959. This law imposes a penalty for the misuse of names, emblems, and insignia to indicate a Federal agency by those engaged in the

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business of collecting or aiding in the collection of private debts or obligations. Respondent contends that this later statute pre-empts from the Commission the authority to proceed against the practices prohibited therein.

First, it should be noted that respondent's contention properly can be addressed only to those portions of the initial decision and order dealing with representations of a connection with the Federal Government. In so far as the order proscribes false and misleading representations that respondent holds substantial sums of money for the person sought to be contacted in a fiduciary capacity Public Law 86-291 cannot be said to oust the Commission's jurisdiction in any respect, since that law deals only with representations of Federal connections.

It is a well-settled principle of statutory construction that a general statute and a later specific statute should be read together and harmonized if possible and that the specific statute will prevail over the general only to the extent they are in conflict. *Purdy v. United States*, 146 F. Supp. 762 (D. Alaska, 1956); *Stevens v. Biddle*, 298 Fed. 209 (8th Cir. 1924); *in re Ayson*, 14 F. Supp. 488 (N.D. Ill. 1936); *Federal Trade Commission v. A.P.W. Paper Co., Inc.*, 328 U.S. 193 (1945). We find no provisions in Public Law 86-291 which are so repugnant to the provisions of Section 5 of the Federal Trade Commission Act that they cannot stand together. Moreover, legislation is presumed to be passed with deliberation and with a knowledge of all existing laws on the same subject. *Purdy v. United States*, *supra*; *In re Ayson*, *supra*. The facts and circumstances surrounding the passage of Public Law 86-291 are in accord with the presumption. The House Report accompanying the bill enacted into law quotes a letter from the Commission expressing its views on the proposed legislation which concludes with the following paragraph:

Ordinarily enforcement of such orders can only be had under Section 5(1) of the Federal Trade Commission Act in civil suits seeking penalties for violations. It is the Commission's view that S. 355 would be an effective auxiliary means of expeditiously eliminating the objectionable practices in the area where the materials indicate some Federal connections. Its enactment would not defeat the Commission's jurisdiction in the same field. [H.R. Rep. No. 874, 86th Cong., 1st Sess. 4 (1959)]

Congress, knowing of the Commission's activity in this field, did not indicate any intent to pre-empt the Commission's authority. To the contrary, we think the Congressional intent was to supplement

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the Commission's actions in this field. Respondent's contention in this respect must therefore be rejected.

The remaining issues raised by respondent's appeal have been considered and are rejected upon the authority of *Dejay Stores, Inc. v. Federal Trade Commission*, 200 F. 2d 865 (2d Cir. 1952); *Lester Rothschild v. Federal Trade Commission*, 200 F. 2d 39 (7th Cir. 1952); *National Service Bureau v. Federal Trade Commission*, 200 F. 2d 362 (D.C. Cir. 1952); *David Bernstein v. Federal Trade Commission*, 200 F. 2d 404 (9th Cir. 1952); and *National Clearance Bureau v. Federal Trade Commission*, 255 F. 2d 102 (3d Cir. 1958).

Although no appeal has been taken on the point, we note that in his initial decision the hearing examiner took "judicial notice" concerning the four different eagle designs that are officially used by the United States on its coinage. In our view, it was not necessary for the hearing examiner to take official notice of this fact as the evidence of record fully supports the allegation in the complaint. Accordingly, the initial decision will be modified by striking therefrom the second full paragraph of paragraph 2 of that part of the hearing examiner's initial decision headed "Contentions and Concluding Findings."

As so modified, the initial decision is adopted as the decision of the Commission. An appropriate order will be entered.

Commissioner Tait did not participate in the decision of this matter.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision; and

The Commission for the reasons stated in the accompanying opinion, having denied the aforementioned appeal, and having modified the initial decision to the extent necessary to conform to the views expressed in the said opinion:

It is ordered, That the initial decision of the hearing examiner, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent, Ann J. Wacksman, shall, within sixty (60) days after service upon her of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which she has complied with the order contained in said initial decision.

Commissioner Tait not participating.

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IN THE MATTER OF

THE PROCTER & GAMBLE COMPANY ET AL.

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

Docket 7542. Complaint, July 14, 1959—Decision, June 30, 1960

Consent order requiring a manufacturer and its wholly owned subsidiary, together constituting the leading producer in the United States of soap and detergent products, among other things, to cease entering into unlimited exclusive "free sampling" contracts with manufacturers of automatic washing and dishwashing machines to pack samples of its soaps, detergents, or bleaches in the appliances, and entering into similar free sampling agreements with distributors, demonstrators, and dealers, to whom they paid 75¢ or \$1.00 for using their products in a demonstration and for recommending only such product to the prospective purchaser; and to cease representing falsely in advertising that manufacturers of aforesaid appliances recommended and inserted free samples of respondents' detergents in their machines because they were better than competitive products, that they desired respondents' said products to be used exclusively in their machines, recommended them as the best in the market, and voluntarily selected them to be placed in their respective machines.

Mr. William J. Boyd, Jr. and Mr. Martin F. Connor for the Commission.

Mr. Frederick W. P. Lorenzen and Mr. Richard W. Barrett, of Royall, Koegel, Harris & Caskey, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on July 14, 1959, issued its complaint herein, charging the respondents The Procter & Gamble Company and The Procter & Gamble Distributing Company, corporations, with having violated the provisions of the Federal Trade Commission Act, and respondents were duly served with process.

On April 12, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by respondents, their counsel, and counsel supporting the complaint, under date of April 12, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in ac-