service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

UNITED STATES ASSOCIATION OF CREDIT BUREAUS, INC., ET AL.

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

Docket 7043. Complaint, Jan. 15, 1958—Decision, June 8, 1961

Order requiring a collection agency at Oak Forest, Ill., to cease representing falsely, by use of its misleading trade name, that it was an "association" and "credit bureau", and, by use of the words "United States" and official-looking insignia, that it was connected with the United States Government; misrepresenting the organization of its business, services rendered its clients, and commissions retained; and using "skip-tracing" material which represented falsely that it was to the addressees' financial advantage to provide requested information concerning debtors.

Before *Mr. John B. Poindexter*, hearing examiner.

Mr. Harold A. Kennedy and *Mr. Thomas F. Howder* for the Commission.

Hopkins, Sutter, Owen, Mulroy & Wentz, of Chicago, Ill., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

The Federal Trade Commission issued its complaint against the above-named respondents on January 15, 1958, charging them with engaging in unfair and deceptive acts and practices and unfair methods of competition in violation of said Act. Hearings were held before a hearing examiner of the Commission and testimony and other evidence in support of and in opposition to the allegations of the complaint were received into the record. In an initial decision filed on July 29, 1960, the hearing examiner found that certain of the complaint's allegations were sustained by the evidence and that others were not so supported.

The Commission having considered the cross-appeals filed from the initial decision and the entire record in this proceeding, and having ruled on said appeals, and having determined that the initial decision should be vacated and set aside, the Commission further finds that this proceeding is in the public interest and now makes

its findings as to the facts, conclusions drawn therefrom and order, which together with the accompanying opinion, shall be in lieu of those contained in said initial decision.

FINDINGS AS TO THE FACTS

1. The respondent, United States Association of Credit Bureaus, Inc., is a corporation organized and doing business under the laws of the state of Illinois with its office and principal place of business located at 4809 West 159th Street, Oak Forest, Illinois.

Individual respondents, John W. Burns and Harold E. Holder, are president and secretary-treasurer respectively of the corporate respondent. They, together with the wife of Harold E. Holder, own all of the stock in respondent corporation. Mr. Burns exercises prime responsibility in formulating and directing the acts, policies and practices of the corporate respondent while Mr. Holder is engaged principally in personnel work.

2. The respondents are engaged in the business of collecting delinquent accounts for business concerns and professional men located in various parts of the United States. The respondents' customers are secured principally through solicitors employed on a commission basis who call on such customers in the various states. The respondents furnish their solicitors with contract forms sometimes called "listing sheets" which provide for the listing of each delinquent account by a creditor customer. The contract forms bearing the name and last known address of each debtor, the amount of each delinquent account and the date incurred are forwarded by the solicitors to respondents at their place of business in Oak Forest, Illinois.

3. In the operation of their business, respondents transmit checks or money orders, letters, contracts, forms and other written instruments through the United States mails from their place of business in the State of Illinois to customers in various other states of the United States. Respondents also transmit through the United States mails across state lines, letters, forms and various commercial documents to debtors of their customers and receive letters, money, checks or money orders and other written instruments from said debtors located in the various states. Thus, respondents are engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business, respondents use and feature the corporate name United States Association of Credit Bureaus, Inc. Through the use of said name, respondents represent, directly and by implication that the corporate respondent is

an association of credit bureaus, that is an organization composed of members banded together for the primary purpose of collecting and disseminating all available information as to the credit worthiness of an individual who has obtained, or who desires to obtain, credit. Such representation by respondents is false, misleading and deceptive. The corporate respondent is neither an association nor a credit bureau but is essentially a single business enterprise with its activities being limited primarily to the collection of delinquent accounts by mail.

5. In the course and conduct of their business, respondents use and feature the name "United States" in connection with an insignia on certain of their advertising and correspondence composed of a facsimile of the American eagle and a shield, the upper portion of which contains stars on a dark background, and the lower portion of which bears the legend

U.S.A.
of
C.B.

upon a red background. The record established that through the use of the name "United States" and through the use of said insignia, respondents represent, directly or by implication, that they are in some manner connected with, or an agency of the United States government. Said representations are false, misleading and deceptive. Respondents are in no way connected or associated with any branch, arm or agency of the United States Government.

6. In the course and conduct of their business and for the purpose of inducing individuals, firms and corporations to enter into contracts with them, respondents have represented, directly and by implication, that their business is organized into separate functional divisions; that they employ local representatives, regional investigators, correspondents and lawyers on their personnel staff in various states; that personal calls are made on debtors to collect delinquent accounts; that if no collections are made on a specific account there will be no charge thereon; that their commission fee is based on the percentage collected with the maximum rate never in excess of fifty per cent; and that they furnish credit reports to parties who have assigned accounts to them.

7. The aforesaid representations by the respondents are false, misleading and deceptive. The respondents' business is not organized into separate functional divisions since with the possible exception of their skip-tracing operation, all other of respondents' collection functions are handled interchangeably by correspondents, typists and other clerical help at respondents' office in Oak Forest,

Illinois. The respondents do not have a personnel staff outside their office in Oak Forest, other than solicitors whose only function is to solicit accounts for collection. Nor do the respondents make personal calls on debtors to collect accounts as they confine their collection efforts primarily to the use of the mails. Respondents charge a listing fee on certain accounts on which they have made no collection. Fifty per cent of the amount collected is not the maximum commission rate in many instances as respondents charge a listing fee on certain accounts which is deducted from the proceeds of an account on which respondents have charged a fifty per cent commission. Respondents do not issue credit reports as that term is normally understood.

8. In the course and conduct of their business, respondents have used and have caused the use of printed "skip-tracing" forms, cards, and other material designed to obtain information relating to delinquent debtors. Respondents' procedure has been to purchase the forms from various firms, fill in the name and address of the debtor, return the form to the firm from which it was obtained and after the completed form was returned to that firm by the addressee, the form was forwarded to the respondents. Respondents' transmittal of said forms through the United States mails across state lines constituted acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The aforesaid forms represent that it is to the addressee's financial advantage to furnish the requested information. In truth and in fact the amount of the financial advantage given in return is not sufficient to justify any reference to it. The truth is that the sole purpose of the form is to locate a debtor and collect a debt. Therefore, the representation as to financial advantage is found to be false, misleading and deceptive. Said forms deceive recipients respecting the purpose for which the information is being requested and will be used.

Although respondents have discontinued the use of the aforesaid forms, one such form was in use subsequent to the issuance of the complaint herein. There has been no change in the competitive situation nor are there any unusual circumstances which warrant a conclusion that in the absence of an order, respondents will not resume the use of said forms.

9. The use by respondents of the aforesaid skip-tracing material has the capacity and tendency to mislead a substantial number of debtors and others into the erroneous belief that such representation found in paragraph 8 thereof is true and to induce them because

of such erroneous and mistaken belief to furnish information which they would not have otherwise provided.

The use by respondents of the false, misleading and deceptive representations found in paragraphs 4, 5, 6 and 7 hereof has had and now has the tendency and capacity to mislead creditors into the erroneous and mistaken belief that such representations are true, and into signing a substantial number of assignment contracts with respondents because of such mistaken and erroneous belief.

CONCLUSION

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents. The aforesaid acts and practices of respondents, as herein 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, United States Association of Credit Bureaus, Inc., a corporation, and its officers, and respondents, John W. Burns and Harold E. Holder, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of accounts for collection, or the collection of, or attempts to collect accounts, or to obtain information concerning delinquent debtors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "association" or "credit bureaus", or any other term of similar import or meaning in the corporate name or in any other manner to designate, describe or refer to respondents' business, or otherwise representing, directly or by implication, that respondents' business is an association or a credit bureau.

2. Using the name "United States" in the corporate name or in any other manner, or an insignia so designed as to suggest government connection, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that they are an agency or branch of the United States government, or that their business is in any way connected with the United States government.

3. Representing, through the use of a corporate or other trade name, or in any other manner, that their business is other than that of a collection agency engaged in collecting past due accounts.

4. Representing, directly or by implication:

(a) That their business is organized into separate functional divisions for the collection of accounts;

(b) That they employ local representatives, regional investigators, correspondents or lawyers on their personnel staff in various states or throughout the world, or that they employ any one on their personnel staff except solicitors anywhere outside of the Chicago or Oak Forest, Illinois area;

(c) That they make personal calls on debtors to collect accounts;

(d) That no charges will be made for accounts unless they are collected;

(e) That the collection fee or commission is less than any amount actually to be charged or retained by respondents from accounts collected;

(f) That they furnish credit reports to parties who have assigned accounts to them.

5. Using, or causing to be used, any forms, cards, or other material, printed or written, for use in obtaining information concerning delinquent debtors, which represent, directly or by implication, that money or property is being held for, or is due, persons concerning whom the information is sought, or is collectible by such persons, unless money or property is in fact due and collectible by such persons and the amount of money or property is actually stated.

6. Using, or causing to be used, any forms, cards or other material, 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.

It is further ordered, That the respondents 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 the order to cease and desist.

Commissioner Elman not participating.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

The complaint in this matter charges respondents with misrepresentation in violation of the Federal Trade Commission Act in connection with their business of collecting delinquent accounts. In his initial decision, the hearing examiner found that certain of the charges were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. He found

that the remaining charges were not supported and ordered that they be dismissed. Both sides have appealed from this decision.

Considering first the appeal of counsel supporting the complaint, the first issue presented is whether the hearing examiner erred in finding that the name United States Association of Credit Bureaus, Inc., is not deceptive. The complaint alleges that this name is false, misleading and deceptive because respondents are neither an association nor a credit bureau, but are instead a collection agency. The hearing examiner correctly found that respondents' primary business is the collection of delinquent accounts. However, he found that respondents had five members at the time complaint issued and ruled in effect that since the evidence failed to establish that a credit bureau must perform the functions of credit reporting to the exclusion of collecting accounts, the allegations were not sustained.

Counsel supporting the complaint introduced the testimony of two experts in the field of credit reporting. These witnesses testified in substance that a credit bureau is any organization whose primary function and objective is to gather and disseminate information as to the credit worthiness of any individual who may be the subject of a credit inquiry. The information is gathered from numerous sources and constitutes a record of the subject's paying habits. It is recorded in bureau files which remain active and may reflect a good as well as bad credit standing. The information is disseminated to businesses which have extended credit or who wish to have some basis for either extending or rejecting an individual's credit.

Both witnesses testified that credit bureaus may and do offer a debt collection service. However, it is clear from their testimony that the collection function is entirely separate and distinct from the credit reporting function of these organizations and that in the absence of this latter function, no organization can be considered to be a credit bureau.

Except in rare instances, the gathering and dissemination of credit information by respondents is purely incidental to their primary function of collecting accounts. Moreover, it is clear that such information as they do obtain is not sufficient to be of benefit to those concerned with the extension of credit. Respondents obviously do not qualify as a credit bureau and we find that the use of that term in their name is misleading. Cf. In the Matter of *United States Retail Credit Association, Incorporated*, Docket No. 7488, (1960).

Of the five organizations named by the hearing examiner as being members of the corporate respondent at the time complaint issued, three were organized and became members within about three months

prior to the issuance of the complaint and subsequent to the completion of the investigation in this matter. All three were organized for collection purposes only, the stockholders of one being the individual respondents herein while the other two were organized by a friend of respondent Burns with the assistance of respondents' collection attorney.

Another of the organizations entered into an agreement with the corporate respondent in October, 1955, whereby the latter agreed to provide guidance, assistance and instruction in the general conduct of a collection business. The evidence discloses that the sole owner of that business contacted respondents in 1955 seeking a job and ended up entering into the agreement. For a short time he operated a small collection business which was being liquidated at the time of the hearing in 1958.

The fifth company, Federated Credit Control Corporation, was organized by respondents Burns and Holder, who are the officers thereof, less than one month before complaint issued. Admittedly, they began soliciting accounts for collection under that name to avoid unfavorable consequences attendant upon the issuance of the complaint herein.

It is obvious from this record that respondents are nothing more than a single business enterprise and are not an association as that term is understood, of either credit bureaus or any other business enterprises. Their use of the word "Association" in their name is clearly false and deceptive and the hearing examiner was in error in not so ruling.

Counsel supporting the complaint has requested that the order include a provision which would prohibit the respondents from representing that their business is other than a collection agency. We have found that respondents have engaged in the practice of misrepresenting the nature of their business by the use of a corporate name which states that they are an association of credit bureaus. The courts have made it clear that the Commission is not limited to proscribing an unfair practice in the precise form found to have existed in the past but may frame its order broadly enough to prohibit the future use of the deceptive practice in any form.[1] We believe that the provision in the order as requested by counsel supporting the complaint is necessary to achieve that purpose.

Counsel supporting the complaint next contends that the hearing examiner erred in failing to find that respondents falsely represent that they are in some manner connected with, or an agency of, the United States Government. On this point, the hearing exam-

[1] *Consumer Sales Corp.* v. *Federal Trade Commission,* 198 F. 2d 404 [5 S & D 419] (2d Cir. 1952).

iner ruled in effect that the use of the name "United States" in connection with an insignia composed of a facsimile of the American eagle and a shield with stars on a blue background and bearing the legend "U.S.A. of C.B." on a red background, standing alone, is not sufficient to justify a finding of government connection. He rejected the testimony of respondents' former clients on this point, characterizing such testimony as mere vague statements of subjective impressions. We have examined the testimony of these witnesses and in our opinion, the hearing examiner failed to give proper weight thereto. An example of such testimony is that of M. E. Fisher, a creditor client, who, in answer to a question from the hearing examiner as to why he believed respondent corporation was connected with the government, testified:

The Witness: Well, because they used this assumed name of this "United States" or whatever the name of the company is.

Mr. Kennedy: Do you want to use an exhibit?

The Witness: The United States Association of Credit Bureaus. It led me to believe that they were connected with the United States some way in that.

Another witness, Geraldine Capinski, stated:

A. . . . But, just by looking at it, "United States Association", it made us both think that it had something to do with the government.

We do not regard such statements as being vague. In our view, this testimony, together with testimony of like effect by other client witnesses, constitutes reliable and probative evidence in support of this allegation. Moreover, this allegation is amply supported by the testimony of one of respondents' former solicitors, Blumenshein, whose testimony was apparently ignored by the hearing examiner. Blumenshein stated that at the outset of his employment he himself inquired of respondents' representative who trained him whether either the representative or respondents' organization was with the government. Moreover, he testified that possibly one or two customers a day asked him if he was a government representative. Since these inquiries were not prompted by oral representations, a reasonable inference is that they resulted from the literature bearing the corporate name and insignia which was used by Blumenshein in soliciting accounts.

It is undisputed that respondents are in no way connected or associated with any branch of the United States Government. Accordingly, we find that respondents' use of the name "United States" together with the insignia is false and misleading. Moreover, the evidence of record fully supports a finding that respondents' use of the name "United States", whether or not used with the insignia, has a tendency and capacity to mislead and deceive

creditors. The initial decision's dismissal of this charge was therefore erroneous.

The next issue raised by counsel supporting the complaint is whether the hearing examiner erred in failing to find that respondents falsely represented that their business is organized into separate functional divisions.

The hearing examiner found that there was no evidence that respondents' solicitors had made the alleged representation and that no statement in respondents' brochure supported such an interpretation. Counsel supporting the complaint, however, points to the following language in a so-called "welcome" letter (Commission Exhibit 28) sent by respondents to new creditor clients: "Each account is being carefully studied and referred to the department we believe best suited to handle the particular case, depending upon the circumstances involved. Whether it be our Collection Division, our Tracing Division, our Credit Reporting Division, Analytical Division . . . local representatives, investigators, correspondents . . . depends upon the account itself and the reaction of the debtor after the initial contact." This letter is sent to a client after respondents receive from their solicitor a list of accounts that have been turned over for collection by that client.

The evidence establishes that with the possible exception of their skip-tracing function, respondents' business is not organized into separate functional divisions as represented in the letter. However, the hearing examiner ruled that since the letter was sent to the client after the accounts were assigned, it could not possibly have induced the assignment of those accounts. Thus, he concluded that said representation is harmless and may be considered as mere "puffing". However, the hearing examiner's conclusion overlooks the fact that the "welcome" letter is an integral part of respondents' collection business. The evidence shows that in many instances clients assign only a portion of their available delinquent accounts when contacted by respondents' solicitors. Hence, the "welcome" letter may be construed as soliciting such additional accounts as is evidenced by the following language: "And, too, I would like to point out right here at the outset that you may feel free to call upon us at any time for assistance in connection with your outstanding receivables." It is clear that the assignment of accounts for collection and the solicitation thereof are continuing propositions not limited to an initial contact by a solicitor. In our view, the "welcome" letter representation may well induce the assignment of further accounts. The hearing examiner's characterization

of the statement in the letter as "harmless" and "puffing" is in error as is his ruling on this point.

The next question raised in the appeal of counsel supporting the complaint relates to the examiner's ruling that the evidence fails to sustain a finding that respondents have ever represented that they employ local representatives on their personnel staff in various states.

Page 3 of respondents' brochure is headed with the statement "With our Nation Wide Associates, Affiliates, Bonded Attorneys, Collectors, Investigators, and Skip-Tracers, directed by Nationally Known Leaders in this field, we can convert your Losses into Recovered Principal and PROFIT". On page 4 of this brochure there appears a map of the United States with numerous dots in each of the states. The map is headed with the statement "Points From Which You Can Have Personal Service On Your Accounts Thru Bonded Collectors and Investigators". In addition, the front page of the brochure bears a picture of respondents' office building with the words "HOME OFFICE" depicted thereon in large letters. On the basis of our own examination of the brochure, we find it unnecessary to rule on the hearing examiner's rejection of the consumer testimony on this point.[2] We have no doubt that these statements do, and were intended to, convey the impression that respondents have offices throughout the country and that on the staff of these offices there are investigators, correspondents and lawyers employed by respondents for the purpose of collecting accounts.

It is admitted by respondents that except for their solicitors, all of their employees are located at respondents' only place of business in Oak Forest, Illinois. Also, the solicitors' function is limited solely to the soliciting of delinquent accounts from creditors and respondents' collection business is conducted almost entirely by mail. We find that the statements appearing in respondents' brochure are false and misleading and that the examiner erred in dismissing this charge.

The next issue for our consideration relates to the hearing examiner's finding that respondents misrepresented the amount or percentage of their collection fees. Both sides have appealed on this point, respondents contending that the finding is not supported by the evidence and counsel supporting the complaint arguing that the finding should be broadened.

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[2] *Mitchell S. Mohr* v. *Federal Trade Commission*, 272 F. 2d 401 (9th Cir. 1959), *cert. denied*, 362 U.S. 920 (1960); *E. F. Drew & Co., Inc.* v. *Federal Trade Commission*, 235 F. 2d 735 (2d Cir. 1956).

It is undisputed that respondents represent that their maximum collection fee is fifty per cent. We agree with respondents that the evidence does not support a finding that respondents have charged a listing fee of fifty cents on the *same* account on which it has charged a fifty per cent commission. However, it is clear from the documentary evidence that respondents do charge a listing fee on accounts submitted to them for collection even though no collection was made thereon. Also, it is respondents' practice to deduct the listing fee for accounts on which no collections were effected from the proceeds obtained from those accounts which they have collected and on which they have charged a fifty per cent commission. In one instance of record, respondents remitted to the creditor only about twenty per cent of the amount collected on one account after deducting listing fees. Thus the evidence clearly supports a finding that respondents have engaged in the practice of misrepresenting the amount of their collection fees. Accordingly we do not find it necessary to rule on the request of counsel supporting the complaint for a finding that respondents have falsely represented the amount of the collection fees in certain other respects. The hearing examiner's order on this point, which we are adopting, is properly designed to prohibit future use of the illegal practice whether accomplished through listing fees or any other manner.

Respondents use and have caused the use of Skip-tracing forms designed to obtain information relating to delinquent debtors. The complaint alleges that through the use of such material, respondents have represented that it is to the addressee's financial advantage to respond to the questions asked on the form. It is further alleged that the amount of financial advantage given in return is insufficient to justify any reference to it and that the use of such forms has a tendency and capacity to mislead recipients into disclosing information they would not otherwise have supplied.

The evidence discloses that respondents used skip-tracing forms containing the alleged representation which they obtained from various skip-tracing organizations and that the financial advantage, if any, accruing to the addressee was insignificant. It is, of course, well settled that such forms are deceptive and the hearing examiner correctly ruled on this point. The record also discloses that in addition to such forms, respondents use forms which they themselves designed and prepared. The examiner found that respondents' forms do not represent that it is to the addressee's financial advantage to respond thereto, that therefore those forms are not covered by the complaint, and proceeded to rule that said forms are not in violation of the Federal Trade Commission Act.

Both sides have appealed. Respondents contend that since they did nothing more than purchase the services of professional skip-tracing organizations, they should not be subjected to a cease and desist order on the basis of those companies' forms. Also, they argue that their conduct with respect to the use of said forms does not constitute deceptive acts or practices in commerce. These same arguments were used by a collection agency in *National Clearance Bureau* v. *Federal Trade Commission*, 255 F. 2d 102 (3rd Cir. 1958) and were rejected by the court with the statement that they are so wholly lacking in merit as to require no detailed discussion.

Likewise, there is no substance in respondents' argument that they have discontinued the use of the professional forms. One such form was in use by respondents even after complaint issued. As found by the examiner, there are no unusual circumstances in connection with respondents' discontinuance of those forms nor is there any record basis for a conclusion that the practice charged has been surely stopped with no likelihood of resumption. Respondents' appeal on this issue is denied.

That respondents have used certain skip-tracer forms as alleged in the complaint in violation of the law is fully established. Thus, the hearing examiner's findings that other forms were not in violation of the Federal Trade Commission Act is beside the point. Moreover, the hearing examiner's order on this point obviously was fashioned to reflect his views as to the other forms. In our opinion, his order is not sufficiently broad to prevent the future use of the unfair practices in which respondents are found to have engaged, namely, obtaining information concerning delinquent debtors by deceit and inducing debtors and others to furnish information they would not otherwise have furnished had the true purpose of the request been disclosed. We have so indicated In the Matter of *Mitchell S. Mohr*, Docket No. 6236 (1958), and our modified order was sustained by the Court.[3] The order to be issued herein will conform to the requirements of the modified order in that case.

Respondents have appealed from the hearing examiner's ruling that they falsely represent that personal calls are made on debtors. As we have previously stated, page 4 of a brochure used by respondents in soliciting accounts, bears a map of the United States with dots spotted in each state. The map is headed in large letters with the statement "Points From Which You Can Have Personal Service On Your Accounts Thru Bonded Collectors And Investigators". The obvious interpretation of this claim is that bonded

[3] *Mitchell S. Mohr v. Federal Trade Commission, supra.*