

or any other change in the corporations which may affect compliance obligations arising out of the 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

TRANS-AMERICAN COLLECTIONS, INC., ET AL.

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

Docket 8901. Complaint Oct. 16, 1972—Decision, Sept. 26, 1973.*

Consent order requiring a Bloomington, Illinois, seller of debt collection services, among other things to cease using materials which simulate telegraphic communications; using materials which misrepresent the nature, content or purpose of any communication; threatening debt collection suits, not in good faith; failing to include a notice to the effect that communications are only a reminder notice and that respondent, Trans-American, cannot accept monies nor will it take any action regarding this claim; and furnishing to others means and instrumentalities of misrepresentation or deception.

Appearances

For the Commission: *Leroy M. Yarnoff, Frederick D. Clements and Thomas S. Westhoff.*

For the respondents: *Wald, Harkrader & Ross, Washington, D.C. and Glickfield & Graves, Marion, Indiana.*

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-American Collections, Inc., a corporation, and Wayne E. Martin and Eleanor G. Martin, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect

*The complaint is reported as amended by the administrative law judge's order of January 9, 1973.

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thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Trans-American Collections, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1206 North Towanda Plaza, Bloomington, Illinois.

Respondents Wayne E. Martin and Eleanor G. Martin are individuals and are officers of the said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale and sale of a service for the collection of alleged debts. This service consists of the preparation and mailing by the respondents of a series of form notices and letters to alleged debtors.

Respondents sell their service through commissioned salesmen in various States of the United States. Creditor-purchasers of the service are provided with a book of serialized coupons, one coupon per account to be serviced, for which they pay a flat-rate fee in advance, which rate is determined by the number of accounts to be serviced. To initiate the service the creditor fills in one of the coupons with information concerning the alleged debtor and debt and himself and mails it to the respondents who then cause a series of form notices and letters to be mailed to the alleged debtor at regular intervals over a period of about ninety days. Two basic styles of forms are used in this series: (1) that which is titled TELEGRAM; and (2) that which bears the letterhead of Trans-American Collections, Inc.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now, and for some time last 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 collecting of alleged delinquent accounts. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the payment of alleged delinquent accounts, the respondents mail or cause to be mailed, and have mailed

or caused to be mailed, to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative, but not 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, and to which is affixed a metered stamp depicting a spread eagle. The word TELEGRAM is printed in large black type over the window.

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

Photocopies of some such forms described in subparagraphs 1 and 2 of this Paragraph are annexed to and made part of this complaint.

PAR. 5. By and through the use of the envelopes and forms described in subparagraphs 1 and 2 of Paragraph Four, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication to those to whom said forms are mailed that:

1. The communication is a telegraphic communication of the type usually termed to be a telegram.

PAR. 6. In truth and in fact:

1. The communication is not a telegraphic communication of the type usually termed to be a telegram. Rather, it is a printed form letter, mailed to alleged debtors, which form by its color and appearance, styling, printing and format simulates a telegraphic communication and which, by virtue of said simulation, misleads the recipient as to its content and import, purpose, and urgency.

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

PAR. 7. In the course and conduct of their aforesaid business, and for the purpose of inducing the payment of alleged delinquent accounts, the respondents mail or cause to be mailed, and 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:

* * * TRANS-AMERICAN COLLECTIONS, INC. SERVING ALL COUNTRIES
OF NORTH AMERICA * * *

* * * * *

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* * * INTERNATIONALLY FAMOUS FOR COLLECTING PAST DUE
ACCOUNTS * * *

* * * * *
* * * Collection Division * * *
* * * Claims Division * * *
* * * Claims Department * * *
* * * * *

* * * This is a courtesy notice to inform you that your delinquent account with the above named creditor has been referred to this agency for collection. Your creditor requests that you be allowed ten 10 days to settle this account before they begin collection procedures * * * It is the intention of the creditor to exhaust every legal means to collect this account. These procedures may be extremely costly to the debtor. You may avoid such additional costs and impairment of your credit rating only by making prompt settlement now * * *.

* * * We are recommending that the claimant exhaust every legal means to liquidate this claim * * *

* * * Attention Debtor.

You have failed to discharge the debt directed to us for collection by the above-named creditor. The ten-day courtesy period has expired. Therefore, we are recommending that proceedings be instituted if settlement of this account is not made if liability warrants such action. Expenses incidental to such litigation may be chargeable to the debtor, including court costs, legal fees, and such other charges as the suit may entail * * *

* * * You have received the benefit of earlier notices from this office but have failed to discharge your debt to the above named creditor. We are, therefore, recommending that the creditor file suit to recover the full amount of his claim if obligation warrants this action. If you have no valid defense a judgment may be rendered against you. Any judgment rendered may be collected by seizure of your assets, attachment of automobile or other personal property with sale at public auction to the highest bidder. Processing of a claim to the lawsuit stage may be commenced in one week. We, therefore, advise you to avoid these costly penalties by making payment to your creditor immediately * * *

* * * If full settlement is not made within 48 hours upon receipt of this Dispatch, we recommend that you consult your attorney at once to determine legal consequences * * *

* * * You are further notified that claimant requests that Trans-American Collections, Inc. resume procedures to liquidate claim involved, in order to satisfy the liability set forth above. If employed, we request verification as to employers

name and address. If incorporated or self-employed, name of firm and banking institution with whom you do business * * *

* * * Notice is hereby given that we shall recommend that our client advance court costs and immediately enter suit in favor of credit grantor according to law, if the amount owed warrants this action * * *

* * * You are hereby requested to liquidate claim at claimants office * * * within 5 days after the delivery hereof * * * or protest liability of claim on file. Failure to comply may result in commencement of litigation by creditor if claim warrants such action, with ultimate seizure of property, including monies, automobile, credits, and bank deposits, now in your possession. If claimant receives an amount sufficient to satisfy the liability set forth herein, prior to the time of protest as scheduled, you may apply for, and with consent of claimant your appearance will not be required * * *

* * * Your refusal or neglect to satisfy the above liability at claimants claim office, compels us to notify you, that if claimant obtains judgment, you may present assets exempt from levy and protest the validity of claim immediately by calling * * * within 48 hours upon receipt of this final notice. All statements will be recorded * * *

* * * Final—72 hour—notice * * * We wish to put you on notice that your payment of this claim must be received by the creditor at once. You are further notified legal proceedings by the creditor following judgment may compel you to bring all financial records to court for examination. A writ of execution may be issued and may be satisfied by a levy on your automobile or other personal property, real estate, bank accounts, chattels, goods and accounts receivable. A public auction of the aforementioned property may be held after public advertising of same and usual sales process is conducted by sheriff. Court costs, sheriff fees, judgments, and all other expenses relative to these proceedings may be assessed against the debtor. Litigation is expensive. Remit payment direct to creditor now to avoid these costs * * *

PAR. 8. By and through the use of the aforesaid statements and representations, including the use of the word "collections" in the corporate name, and others of similar import and meaning not expressly set out herein, the respondents have represented, and are now representing, directly or by implication:

1. (a) That the said corporate respondent is a collection agency;
- (b) that delinquent debtors' accounts are referred to corporate respondent by creditors for collection; and
- (c) that corporate respondent is prepared to institute, or cause to be instituted, legal proceedings in the collection of delinquent debts.
2. That legal action with respect to an allegedly delinquent account has been or is about to be initiated.

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3. That if payment is not made, the alleged debtor's general or public credit rating will be adversely affected.

PAR. 9. In truth and in fact :

1. (a) The said corporate respondent is not a collection agency ;
- (b) delinquent debtors' accounts are not referred to corporate respondent by creditors for collection ; and
- (c) corporate respondent does not and cannot institute legal proceedings for the collection of delinquent accounts.

On the contrary, respondents sole business is the preparation and mailing of form letters and notices to alleged debtors, exhorting them to pay their alleged creditors.

2. Legal action with respect to the allegedly delinquent account has not been, or is it about to be, initiated. On the contrary, while respondents' service is being used, it is virtually certain that no legal proceedings are being initiated.

3. If payment is not made, the alleged debtor's general or public credit rating is not adversely affected.

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 aforesaid 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, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that the said communication is a telegram, an emergency communication, or one of similar concern containing urgent matter. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, 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 into 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 in commerce, and unfair and deceptive

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acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Urgent Message

TELEGRAM 1:05 P.M.

July 27, 1971.

Pay to—

RF: Amount of claim, \$27.00

Notice is hereby given that we shall recommend our client advance court costs and immediately, according to law, enter suit in favor of claimant, if recommended by legal council and the legality of claim warrants this action. It is imperative that you settle this claim within the next 72 hours. Important to you, that claimant receive full settlement in time allowed. It makes no difference to us whether you pay voluntarily or under compulsion. If claimants legal counsel accepts our recommendation to commence litigation, and if legal action has been filed, you may be subject to court costs even upon full remittance. Do not remit to Trans-American Collections, Inc. or their mailing addresses at 333 North Michigan Ave., Chicago, 1505 E. 17th St., Santa Ana, Ca., 303 W. 42nd St., New York City, 1225 Post St., San Francisco, Ca., 636 W. Broadway, Vancouver 9, B.C.

[Postal Meter FRANK]

BPO947 BLGTM.IL.B1701

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its

rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Trans-American Collections, 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 1206 North Towanda Plaza, Bloomington, Illinois.

Respondents Wayne E. Martin and Eleanor G. Martin are officers of said corporation. They formulate, direct and control the policies, acts and practices of the said corporation, and their business address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Trans-American Collections, Inc., a corporation, its successors and assigns, and its officers, and Wayne E. Martin and Eleanor G. Martin, individually and as officers 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 inducing or attempting to induce, the payment of delinquent accounts in 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 appear to be, or simulate, telegraphic communications;

2. Using, or placing in the hands of others for use, envelopes, letters, forms, or any other materials which misrepresent the nature, contents, or purpose of any communication;

3. Representing directly or by implication that:

(a) Respondents are prepared to institute or cause to be instituted, legal proceedings in the collection of delinquent debts.

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

(c) Nonpayment of the delinquent account will adversely affect the credit rating of the debtor.

Provided, however, That it shall be a defense in any enforcement

proceeding initiated under this Paragraph 3 for the respondents to establish that such representations are factually correct.

4. Failing clearly and conspicuously to disclose in each letter, form or notice to delinquent, or alleged delinquent, debtors the following statement:

This communication is only a reminder notice. Trans-American Collections, Inc., cannot accept monies nor will it take any action, legal or otherwise, regarding this claim.

This statement shall be made in prominent type, of a size no smaller than the basic body copy in the letter, form or notice, and in red ink to contrast with the text of the letter to be printed or written in black or blue ink, or in black and blue ink, or in black or blue ink if the text of the letter is printed or written in red.

The respondents may use the term "collections" in their corporate name.

5. Making any statement or statements in any letter, form or notice to delinquent, or alleged delinquent, debtors which is/are inconsistent with, negate/s or contradict/s, the affirmative disclosure required by Paragraph 4.

6. Placing in the hands of others the means and instrumentalities to represent any of the matter prohibited in Paragraph 3 or which fail to comply with the requirements of Paragraphs 4 or 5 of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating 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, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of delinquent accounts, 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 with obligations arising out of the 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, signed by the respondents, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

ALL STATES LINCOLN-MERCURY, INC., TRADING AS CROSS
ROADS LINCOLN-MERCURY, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE FEDERAL
TRADE COMMISSION AND THE TRUTH IN LENDING ACTS*Docket C-2460. Complaint, Sept. 27, 1973—Decision, Sept. 27, 1973.*

Consent order requiring a Cleveland, Ohio, retailer of new and used automobiles, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

*Appearances*For the Commission: *Vivian L. Solganik.*For the respondents: *Charles Hyman, of Hyman, Zagrans & Carothers, Elyria, Ohio.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act, and Regulation Z, the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that All States Lincoln-Mercury, Inc., a corporation, d.b.a. Cross Roads Lincoln-Mercury, and Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum, individually and as officers of said corporation, hereinafter 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 All States Lincoln-Mercury, Inc., d.b.a. Cross Roads Lincoln-Mercury, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 9415 Broadway, in the city of Cleveland, State of Ohio.

Respondents Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the advertising, offering for sale, and sale of new and used automobiles to the public.

PAR. 3. In the course and conduct of their business as aforesaid respondents have caused, and are now causing, advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, to be placed in various media for the purposes of aiding, promoting or assisting, directly or indirectly, in the credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, of respondents' said automobiles.

PAR. 4. Subsequent to July 1, 1969, in certain of the advertisements referred in Paragraph Three hereof, the respondents have represented, in connection with an extension of consumer credit, the amount of an installment payment, the number of installments and the period of repayment, the amount of downpayment required, and the amount of the finance charge expressed as an annual percentage rate, without disclosing all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

- 1) The cash price.
- 2) The deferred payment price, or the sum of the payments of the item advertised.

PAR. 5. Subsequent to July 1, 1969, certain of the advertisements referred in Paragraph Three hereof stated the rate of financial charge expressed as an annual percentage rate without using the term "annual percentage rate," as required by Section 226.10(d)(1) of Regulation Z.

PAR. 6. Subsequent to July 1, 1969, certain of the advertisements referred to in Paragraph Three hereof used the term annual percentage rate without printing such term more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

PAR. 7. By causing to be placed for publication the advertisements referred to in Paragraphs Four, Five and Six hereof, respondents failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of that Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

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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 Cleveland 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 thirty (30) 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 All States Lincoln-Mercury, Inc., d.b.a. Cross Roads Lincoln-Mercury, 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 9415 Broadway, in the city of Cleveland, State of Ohio.

Respondents Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents All States Lincoln-Mercury, Inc., a corporation, d.b.a. Cross Roads Lincoln-Mercury, its successors and assigns, and its officers, and Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the arrangement, extension, or advertisement of consumer credit in connection with the sales of automobiles or other products or services, as "advertisement" and "consumer credit" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) do forthwith cease and desist from:

(1) Causing to be disseminated to the public in any manner whatsoever, any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, which advertisement states the amount of downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless it states all of the following items in the manner and form as required by Section 226.10(d)(2) of Regulation Z:

- (a) The cash price or the amount of the loan, as applicable;
- (b) The amount of the downpayment required or that no downpayment is required, as applicable;
- (c) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if credit is extended;
- (d) The amount of the finance charge expressed as an annual percentage rate; and
- (e) The deferred payment price or the sum of the payments, as applicable.

(2) Failing in any consumer credit transaction of advertisement to state the rate of finance charge expressed as an annual percentage rate without using the term "annual percentage rate," are required by Section 226.10(d)(1) of Regulation Z.

(3) Failing in any consumer credit transaction or advertisement to use the term annual percentage rate unless such term is printed more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

(4) Failing in any consumer credit transaction or advertisement to make all the disclosures, determined in accordance with

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Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit, or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale, resultant 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 this order.

It is further ordered, That individual respondents named herein each promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall show each 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 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 contained herein.

IN THE MATTER OF

PEPSICO, INC.

Docket 8903. Interlocutory Order, Sept. 28, 1973.

Order (1) vacating ruling of law judge denying complaint counsel's request to offer into record subpoenaed data, once received, of third-party soft drink concentrate companies; (2) allowing complaint counsel to offer corrected sales data of Crush International, Inc., so as to give complete picture of market shares; (3) directing General Counsel to submit proposed orders containing an agreement to settle third-party subpoena enforcement actions to the D.C. District Court for approval; (4) remanding case for further proceedings in accordance with Commission's order; and (5) with respect

to procedural ruling, the law judge must promptly notify the Commission when the law judge certifies a motion for enforcement of subpoena but later rules the information is not needed or will not be allowed into evidence.

Appearances

For the Commission: *Amy R. Richter, Stephen G. Stocker, Ira A. Nordlicht* and *James E. Egan*.

For the respondent: *Edward Howrey, of Howrey, Simon, Baker and Murchison, Washington, D.C.; James Frangos and John Kirby, of Mudge, Rose, Guthrie & Alexander, New York, New York.*

ORDER RULING ON INTERLOCUTORY APPEALS AND OBJECTIONS TO PROPOSED SETTLEMENT OF SUBPOENA ENFORCEMENT SUITS

Before the Commission are three matters: (1) application by complaint counsel, filed September 13, 1973, for review of administrative law judge's ruling denying request to offer corrected sales data of Crush International, Inc., into the record; (2) request of complaint counsel, filed September 14, 1973, for review of administrative law judge's ruling denying request to offer subpoenaed data of other third-party soft drink concentrate companies once they are received; and (3) proposed settlement of third-party subpoena enforcement actions.

Upon request of complaint counsel the administrative law judge granted permission for them to file interlocutory appeals from his rulings.¹ Respondent has filed an opposition to said appeals. As to the proposed settlement of the subpoena enforcement actions, this matter was negotiated by the Commission's General Counsel with the third-party defendants. Counsel for PepsiCo was informed of the proposed settlement and has been invited to comment on its terms, which it has done by letter dated September 19, 1973. Complaint counsel has filed a reply to PepsiCo's comments.

I. PROPOSED SETTLEMENT OF THIRD PARTY SUBPOENA ENFORCEMENT ACTIONS

We will first take up the proposed settlement since disposition of that matter affects the outcome of the other matters.

On July 5, 1973, the administrative law judge certified in writing to the Commission a request by complaint counsel that court enforce-

¹ Although Rule 3.23(b) specifies that the hearing officer certify in writing that the matter meets certain criteria for interlocutory appeal, the law judge's "certification" here was given orally. However, it appears this was due to the exigencies of time and the requirement that the certification be made in writing will be waived in this case.

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ment of four subpoenas *duces tecum* be instituted against the chief executive officers of the Coca-Cola Company, the Seven-Up Company, Royal Crown Cola Company, and Cott Corporation. The law judge reported that the subpoenas had been issued at the request of complaint counsel and called for information "which will allow complaint counsel to establish market shares and concentration in the sale of soft drink concentrate and to establish respondent's rank among competitors." Also, they called for information relevant to an alleged trend towards vertical integration among leading manufacturers of soft drink concentrate manufacturers.

The administrative law judge further reported that following service of the subpoenas, the above-mentioned third parties filed motions to quash or in the alternative for protective orders granting so-called *Mississippi River* treatment (69 F.T.C. 1186-89) to the requested data. These motions were denied but the law judge entered a protective order for the information.² The law judge denied motions by the third parties for permission to file an interlocutory appeal and certified the request for court enforcement with the suggestion that the General Counsel be directed to seek such enforcement on an expedited basis.

Pursuant to the administrative law judge's certification, the Commission directed the General Counsel to seek court enforcement of the subpoenas on an expedited basis, and on September 5, 1973, the United States Department of Justice filed enforcement petitions on behalf of the Commission in the United States District Court for the District of Columbia (Civil Action Nos. 1700-73, 1701-73, and 1703-73) against three of the defaulting parties.³ Subsequently, the General Counsel and the parties negotiated a proposed settlement which has now been submitted to the Commission for its approval. As indicated, the Commission solicited the views of PepsiCo on the terms of the settlement.

The proposed settlement would take the form of a court order directing the third parties to submit the data called for in the original subpoenas. Also included in the court order would be provisions protecting against public disclosure of details of the third-parties' sales data. Only counsel for the Commission and their economist witnesses, PepsiCo's independent retained outside counsel and outside economist

² The protective order entered by the law judge would have permitted disclosure of the data to four officials of PepsiCo who were subsequently identified as PepsiCo's director of market research, manager of information analysis, senior vice president, and chairman of the board of Rheingold Corp.

³ No action was filed against the Cott Corporation, the fourth defaulting party. After receiving notice of the Commission's intent to seek court enforcement of the subpoena, Cott voluntarily agreed to turn the requested data over to complaint counsel.

