

Complaint

96 F.T.C.

IN THE MATTER OF  
EQUIFAX INC.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED  
VIOLATION OF THE FAIR CREDIT REPORTING ACT AND SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 8954. Complaint, Feb. 21, 1974—Final Order, Dec. 15, 1980*

This order requires, among other things, an Atlanta, Ga. consumer credit reporting firm to cease misrepresenting the identity of its investigative personnel; improperly providing its customers with updated consumer report information; and rewarding or punishing its employees on the basis of the amount of adverse information collected and included in their reports on consumers. The order further requires that the company cease failing to make statutorily required disclosures to consumers requesting information concerning their credit status; provide such consumers with all the information in its files; and reinvestigate any disputed item of information promptly.

*Appearances*

For the Commission: *Robert W. Russell, Virginia M. Conway and David G. Grimes, Jr.*

For the respondent: *Willis B. Snell, Francis M. Gregory, Jr., Michael L. Denger and Shelley Zena Green, Sutherland, Asbill & Brennan, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fair Credit Reporting Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Retail Credit Company, a corporation, hereinafter referred to as respondent, has 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:

DEFINITIONS

PARAGRAPH 1. For the purpose of this Complaint the following definitions apply:

(a) "consumer reporting agency"—any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating

consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) "investigative personnel"—individuals, including, but not necessarily limited to, respondent's Field Inspectors, Field Representatives, Fee Inspectors and Claims Inspectors, engaged in the preparation of consumer reports and other reports.

(c) "consumer report"—any written, oral, or other communication of any information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, (2) employment purposes, or (3) other purposes authorized under Section 604 of the Fair Credit Reporting Act.

(d) "investigative consumer report"—a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such item of information.

(e) "claims report"—a report containing information prepared for an insurance company on an insured for the purpose of determining the validity of a claim for a benefit filed under an existing insurance policy and/or utilized in the negotiation of a settlement of said claim.

(f) "medical information"—information or records obtained directly or indirectly from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(g) "adverse information"—negative or derogatory information which may have, or may reasonably be expected to have, an unfavorable bearing on a consumer's eligibility or qualification for a benefit such as insurance, including information which may result or which may reasonably be expected to result in a denial of or increased cost for such benefit.

PAR. 2. Respondent is a corporation, organized existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1600 Peachtree St., N.W., Atlanta, Georgia.

PAR. 3. Respondent is a consumer reporting agency as defined herein, with approximately 300 branch offices and 1500 other offices

located in every State of the United States. Respondent, the nation's largest company in the consumer reporting industry, is engaged in the business of obtaining, maintaining and selling information about consumers to over 84,000 business customers. Respondent employs approximately 8500 investigative personnel who interview approximately 200,000 individuals daily and prepare about 35 million reports per year. Through its nationwide network of offices, respondent has the capacity to provide information on 98 percent of the population of the United States. Its revenues for 1972 are listed at 195 million dollars, resulting in gross income of over 17 million dollars.

PAR. 4. In the ordinary course and conduct of its business, as aforesaid, respondent causes and for some time in the past has caused reports, including consumer reports, investigative consumer reports and claims reports, as defined herein, to be distributed through the mail from its branch offices and other offices located in all fifty states and the District of Columbia, to its customers located in various other States of the United States.

Therefore, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in the aforesaid products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

#### COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Four above, are incorporated by reference as if fully set forth herein verbatim:

PAR. 5. In the ordinary course and conduct of its business, as aforesaid, respondent, through its investigative personnel, prepares reports, including consumer reports, investigative consumer reports and claims reports, by interviewing the consumer and others telephonically or in person. In these interviews, respondent's investigative personnel, in certain instances, represent, directly or by implication, that:

1. they are agents or employees of the company to which the consumer has applied for a benefit, such as insurance; and/or
2. the information furnished by the consumer or others during interview, will be used exclusively by the company to which the consumer has applied for a benefit, such as insurance.

PAR. 6. In truth and in fact:

1. respondent's investigative personnel are not agents or employees of the company to which the consumer has applied for a benefit; and/or
2. the information furnished by the consumer or others during an interview, will not be used exclusively by the company to which the consumer has applied for a benefit. The information is added to respondent's files for future reference in connection with any subsequent requests by other customers for reports on the consumer, who is the subject of the interview.

The practice by respondent's investigative personnel of failing to disclose both their identity and/or the full use to be made of the information obtained during the interviews, leads consumers and others into the false and mistaken belief that they are providing information directly to the agent or employee of a company which will use the information exclusively in determining the consumer's eligibility for a benefit. Some of those interviewed would have elected to provide information directly to said company rather than to respondent had the true identity of the interviewer, or the fact that the information obtained is to be added to respondent's files for future reference, been known.

Therefore, the representations set forth in Paragraph Five above, were and are unfair, false, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act.

PAR. 7. In the ordinary course and conduct of its business, as aforesaid, respondent's investigative personnel, in the preparation of certain reports such as claims reports, employ an interview technique whereby they interview consumers and others and represent, directly or by implication, that the investigation is for a specific purpose, such as a "routine credit check" or other similarly unrelated purpose.

PAR. 8. In truth and in fact, the purpose of the investigation is often other than as represented. For example, in certain instances, the purpose of the investigation is an evaluation of the consumer's claim for loss or injury under the terms of an existing insurance policy and the purpose of the interview is to observe the consumer's physical appearance, movements, or mental or physical capabilities. Such a claim for loss or injury is of high significance to the consumer. The use of the interview technique, as aforesaid, results in information being gathered under false pretenses.

Furthermore, information gathered in this way will be retained in respondent's files for possible use in reports for other customers.

Therefore, the practice set forth in Paragraph Seven above, wa

and is unfair, false, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act.

PAR. 9. In the ordinary course and conduct of its business, as aforesaid, respondent, by and through its reports, its promotional literature and other means, represents, directly or by implication, to its customers, that its reports are compiled from information obtained through in-person interviews with the consumer who is the subject of the report, or his friends, neighbors, or associates; from direct observation of the consumer's home, neighborhood, or other physical surroundings; or through interviews with the "sources" indicated on the reports. Typical and illustrative of these representations, but not all inclusive thereof, are the following statements found in respondent's actual reports:

- (1) the consumer presents a "healthy appearance with no obvious [sic] impairments or apparent tensions";
- (2) the consumer's "residence seems small and inadequate"; and
- (3) the consumer "had a white gauze bandage tacked over his eye to shield it from the light".

The representations as to the manner in which the information in the reports is gathered, i.e., through in-person interviews with the consumer who is the subject of the reports, or his friends, neighbors, or associates; from direct observation of the consumer's home, neighborhood, or other physical surroundings, or through interviews with the "sources" indicated on the reports, are relied upon by users, such as insurance companies, in evaluating the validity or accuracy of the information in the reports. Moreover, in certain instances, users rely upon the information in the reports to determine the consumer's eligibility for a benefit, such as insurance, or to increase the rate for, or to cancel the consumer's insurance coverage.

PAR. 10. In truth and in fact, in certain instances:

- (1) the consumer who is the subject of the report, or the consumer's friends, neighbors or associates are interviewed only telephonically, rather than in person, as represented;
- (2) the consumer's home, neighborhood or other physical surroundings are not observed directly as represented; and
- (3) all "sources" listed on respondent's reports are not interviewed, as represented, either in person or telephonically.

Users would not give as much weight to or rely as heavily on the information in the reports in making a decision as to the consumer's eligibility for a benefit such as insurance had the manner in which

the reports were prepared been truthfully and factually represented. In fact, in certain instances, users would not reject a consumer's application for a benefit such as insurance or increase the rate for or cancel the consumer's insurance coverage, had the manner in which the information was gathered been truthfully and factually represented.

Therefore, the representations set forth in Paragraph Nine above, were and are unfair, false, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. In the ordinary course and conduct of its business, as aforesaid, respondent obtains from insurance companies photocopies of statements signed by consumers authorizing the release of medical information to those insurance companies, but which are silent as to the release of said information to anyone else, including respondent. With these photocopies, respondent obtains medical information from consumers' doctors, clinics or other medical facilities, forwards the information to the named insurance companies, and retains a copy of such information in its files.

PAR. 12. In connection with the above practice, respondent represents, directly or by implication, to physicians or other medical personnel, that the information is being obtained for the exclusive use of the named insurance company to which the consumer executed the authorization. Moreover, consumers executing the authorizations for release of confidential medical information believe that the information will be obtained and used by the named insurance company exclusively.

PAR. 13. In truth and in fact, in certain instances, the information is not obtained for the exclusive use of the insurance company to which the consumer executed the authorization. A copy of the medical information is retained in respondent's files and has been, in certain instances, used in the preparation of subsequent reports for other customers. Some consumers would not have authorized the release of such confidential information had they known it would be obtained and utilized by a third party such as a consumer reporting agency.

Therefore, the acts and practices set forth in Paragraphs Eleven and Twelve above, were and are unfair, misleading and deceptive in violation of Section 5 of the Federal Trade Commission Act.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute unfair methods of competition in commerce and unfair or deceptive

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

## COUNT II

Alleging violations of the Fair Credit Reporting Act and of the Federal Trade Commission Act, the allegations of Paragraphs One through Three are incorporated by reference as if fully set forth herein verbatim:

PAR. 15. Respondent in the ordinary course and conduct of its business as aforesaid is now, and subsequent to April 25, 1971 has been, engaged in the preparation, offering for sale, sale and distribution of information on consumers, including consumer reports and investigative consumer reports, as defined herein.

PAR. 16. In the ordinary course and conduct of its business, as aforesaid, respondent provides its customers what it terms a "Voluntary Follow-Up Service". Through this and other similar services, respondent, periodically and on an unsolicited basis, submits to customers such as insurance companies, adverse information about consumers upon whom previous consumer reports have been furnished. At the time said information is furnished, respondent has no reason to believe that it will be used in connection with a business transaction such as the underwriting of insurance. Rather, this additional information is submitted to customers to demonstrate the value or utility of respondent's reporting service.

PAR. 17. By and through the use of the aforesaid practice, respondent has furnished, and is furnishing, consumer reports and investigative consumer reports, as those terms are defined herein, to persons whom it has no reason to believe intend to use the information for one of the permissible purposes set out in Section 604 of the Fair Credit Reporting Act, and respondent thereby was and is in violation of that Section of the Act.

PAR. 18. In the ordinary course and conduct of its business, as aforesaid, respondent, in certain instances, reports to its customers the existence of items of adverse information, as defined herein, which antedate the consumer report by more than seven years. Typical and illustrative of the practice described herein, but not all inclusive thereof, are the following:

1. The inclusion of the following notice in some of its consumer reports:

compliance with the Fair Credit Reporting Act no additional information can be

reported from this former employer covering employment experience prior to seven years ago.

2. The furnishing of photocopies of motor vehicle reports reflecting masked out or obliterated driving violations which antedate the report by more than seven years, but which indicate the existence of said obsolete violations.

PAR. 19. By and through the use of the aforesaid practices, respondent has reported and is reporting the existence of items of obsolete adverse information in violation of Section 605 of the Fair Credit Reporting Act.

PAR. 20. In the ordinary course and conduct of its business, as aforesaid, respondent employs certain procedures in the preparation of consumer reports and investigative consumer reports, as defined herein, which do not assure the maximum possible accuracy of the information concerning the individuals about whom the reports relate. Typical and illustrative of such procedures, but not all inclusive thereof, are the following:

(1) a salary/production system which requires or compels its investigative personnel, as defined herein, to complete or prepare an unreasonable number of consumer reports or investigative consumer reports, or to average an unreasonable number of said completed reports per day or other period;

(2) quotas for adverse information, as defined herein, which require or compel its investigative personnel to complete or prepare a certain proportion of consumer reports or investigative consumer reports, containing negative or derogatory information about the consumers who are the subject of the reports; and

(3) paying or "crediting" an investigator for a reinvestigation conducted pursuant to Section 611 of the Fair Credit Reporting Act only if the reinvestigation proves that the investigator was accurate in his initial investigation.

PAR. 21. By and through the use of these aforesaid procedures, and others similar thereto, but not expressly set out herein, respondent imposes requirements and pressures upon its investigative personnel which are inconsistent with accurate reporting and which have the tendency and capacity to promote incomplete or inaccurate reports. Therefore, respondent has failed and is failing to adopt reasonable procedures to assure the maximum possible accuracy of the information concerning the individuals about whom the reports relate, as required by Section 607(b) of the Fair Credit Reporting Act.

PAR. 22. In the ordinary course and conduct of its business, as



aforesaid, respondent has been and is being requested by consumers, who properly identify themselves, to disclose information in its files on the consumers. In response to these requests, in certain instances, respondent fails to clearly and accurately disclose the nature and substance of all information (except medical information) in its files at the time of the request. Further, unless specifically requested by the consumer in each instance, respondent fails to disclose:

(1) the sources of the information (except investigative sources, which need not be disclosed); and

(2) the recipients of any consumer report on the consumer which it has furnished for employment purposes, within the two-year period preceding the request, and for any other purpose within the six-month period preceding the request.

PAR. 23. By and through the use of the practices described in Paragraph Twenty-Two above, respondent has violated and is violating the provisions of Section 609 of the Fair Credit Reporting Act.

PAR. 24. In the ordinary course and conduct of its business, as aforesaid, respondent, in certain instances, has failed to disclose the information in consumers' files pursuant to Section 609 of the Fair Credit Reporting Act when requested to do so by telephone, or has discouraged such disclosures. Further, respondent has refused and is refusing to make said disclosures at offices designated by respondent as "Sub-Offices", even when some of those offices are staffed by full-time office personnel and a person in a supervisory capacity. Rather, respondent makes disclosures only at offices designated by it as "Branch Offices".

PAR. 25. By and through the use of the practices described in Paragraph Twenty-Four above, respondent has violated and is violating the provisions of Section 610 of the Fair Credit Reporting Act.

PAR. 26. In the ordinary course and conduct of its business as aforesaid, respondent, in certain instances:

(1) fails to reinvestigate items of information, the completeness or accuracy of which is disputed by the consumer;

(2) fails to record the current status of disputed information and to promptly delete information which can no longer be verified;

(3) fails to clearly and conspicuously disclose to the consumer his right to request that respondent furnish notification that a previously reported item of information has been deleted or that respondent furnish a statement prepared by the consumer (or a clear and

accurate codification or summary thereof) to recipients of previous reports; and

(4) fails to provide said notifications to recipients of previous reports (within the past two years for employment purposes and the past six months for any other purpose) when specifically requested to do so by the consumer.

PAR. 27. By and through the use of the practices described in Paragraph Twenty-Six above, respondent has violated and is violating the provisions of Section 611 of the Fair Credit Reporting Act.

PAR. 28. In the ordinary course and conduct of its business as aforesaid, respondent retains file copies of the information contained in the consumer reports and claims reports which it prepares for its customers. Respondent incorporates all of said information into the same filing system, making no attempt to segregate the consumer report information from the claims report information. In the preparation of subsequent consumer reports and claims reports, respondent uses all of its file information interchangeably, including the use of claims report information in the preparation of consumer reports and the use of consumer report information in the preparation of claims reports.

However, with respect to said claims reports, respondent fails to observe the provisions of the Fair Credit Reporting Act which regulate the preparation and dissemination of information which is used or expected to be used in consumer reports.

PAR. 29. By and through the use of the practices described in Paragraph Twenty-Eight above, respondent has failed and is failing to comply with Sections 605, 607(b) and 614 of the Fair Credit Reporting Act with respect to the preparation of consumer reports, and Sections 604 and 607(a) of that Act with respect to the dissemination of consumer reports.

PAR. 30. The acts and practices set forth in Paragraphs Fifteen through Twenty-Nine, above, were and are in violation of the Fair Credit Reporting Act, and pursuant to Section 621(a) of that Act, said acts and practices constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act.

INITIAL DECISION BY THEODOR P. VON BRAND, ADMINISTRATIVE  
LAW JUDGE

NOVEMBER 11, 1977

## PRELIMINARY STATEMENT

This is a case under Section 5 of the Federal Trade Commission Act (FTCA) and the Fair Credit Reporting Act (FCRA). The Commission complaint, dated February 21, 1974, charges Equifax Inc., a consumer reporting agency, with violation of these statutes in connection with the preparation, dissemination and sale of consumer reports<sup>1</sup> and consumer investigative reports.<sup>2</sup> Respondent's answer denied the material allegations of the complaint.

Count I of the complaint, which contains the charges of Section 5, FTCA violations, involves allegations of deceptive and unfair acts. The charges are essentially the following: [3]

1. Respondent's investigative personnel, it is alleged, have misrepresented in certain instances, to consumers that they are the agents or employees of the companies to which the consumers have applied for benefits such as an insurance company and/or that the information furnished by the consumers or others during interviews will be used exclusively by the companies to which the consumers have applied for benefits. It is further alleged that some of those interviewed would have elected to provide the information directly to the companies from which benefits were sought rather than to respondent had they known the true identities of the interviewers or that such data would be added to respondent's files for future reference (Complaint, Pars. 5, 6).

2. It is alleged that respondent's investigative personnel have misrepresented the purposes of investigations by representations such as that a credit check was being conducted when, in fact, in certain instances, the purpose of the investigation was to evaluate a consumer claim for loss or injury under an insurance policy and the object of the interview was to observe the consumer's appearance

<sup>1</sup> "(d) The term 'consumer report' means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes . . . ." (Section 603(d) FCRA).

<sup>2</sup> "(e) The term 'investigative consumer report' means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information . . . ." (Section 603(e) FCRA).

and the consumer's mental or physical capacity in connection with such investigation (Complaint, Pars. 7, 8).

3. Respondent, it is alleged, has represented that interviews are conducted in person rather than on the telephone, that direct observation of the consumer's environment is conducted and that all sources of information listed are seen. The complaint charges that, in certain instances, interviews were conducted on the telephone rather than in person, that the consumer's environment was not directly observed, and the sources listed on the consumer report were not interviewed in person or on the telephone. The complaint alleges that users of such reports would not have given as much weight to the information provided by respondent had the manner in which such reports were prepared been truthfully and factually represented (Complaint, Pars. 9, 10). [4]

4. It is alleged that respondent, through the use of authorizations, for the release of medical information, obtained from insurance companies,<sup>3</sup> represents directly or by implication to medical personnel from which such information is sought that the data is secured for the exclusive use of such insurance companies. The complaint charges that consumers executed such authorizations on the basis of that belief. It is further alleged that, in truth and in fact, the information is not obtained for the exclusive use of the insurance company to which the authorization was executed but is retained by respondent and, in certain instances, is utilized in the preparation of subsequent reports for different customers of respondent. Some consumers, it is alleged, would not authorize the release of such confidential information if they knew it would be utilized by a third party such as a consumer reporting agency (Complaint, Pars. 11, 12, 13).

The Count II charges focusing specifically on the FCRA may be summarized as follows:

1. Respondent, it is alleged, furnishes information to persons which it has no reason to believe intend to use such data for one of the permissible purposes set out in Section 604, FCRA (Complaint, Pars. 16, 17).

2. Respondent, it is alleged, reports the existence of adverse obsolete information in violation of Section 605, FCRA (Complaint, Pars. 18, 19). [5]

3. Respondent's requirements and pressures on its investigative

<sup>3</sup> According to the complaint, the authorizations obtained by respondent from insurance companies are photocopies of originals signed by the consumers but are silent as to the release of such information to anyone other than the insurance companies, including the respondent.

