

IN THE MATTER OF

MITCHELL S. MOHR TRADING AS NATIONAL RESEARCH
COMPANY AND SYDNEY FLOERSHEIM TRADING AS
S. FLOERSHEIM SALES COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6236. Complaint, Oct. 11, 1954—Decision, June 1, 1956*

Order requiring two individuals engaged in selling printed mailing forms for use of collection agencies and merchants in obtaining information concerning debtors, to cease using on printed forms, mailed from Washington, D. C., the terms "Claims Office," "Reverification Office," and "United States Credit Control Bureau," and particularly the words "United States" and the picture of an eagle similar to that on the United States seal, representing falsely thereby that their requests for information came from an agency of the United States Government; to cease stating falsely in said "Claims Office" and "United States Credit Control Bureau" forms that certain amounts of money were "collectible" and "due" the addressee; and to cease representing falsely through use on other printed forms of the terms "Cigarette and Tobacco Research Bureau" and "National Gasoline Research Bureau," together with the nature of the inquiries on the forms, that they represented research projects.

Mr. Michael J. Vitale for the Commission.

Mr. Murray M. Chotiner, of Beverly Hills, Calif., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

THE COMPLAINT

The Respondents herein are charged with violating the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices in commerce, through the dissemination of deceptive printed forms designed to entice defaulting debtors to furnish certain information about themselves.

The complaint, which was issued on October 11, 1954, alleges that the respondents, through the use on certain printed forms of the terms "Claims Office," "Reverification Office" and "United States Credit Control Bureau," and particularly through the use of the words "United States" and a picturization of an eagle similar in design to that appearing on the seal of the United States Government, represent and imply to those to whom such forms are mailed that the requests for information contained therein emanate from an agency of the United States Government. Such implication, it is alleged, is enhanced by the fact that respondents mail such forms in

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Washington, D. C. In addition, it is alleged that respondents insert in their "Claims Office" and "United States Credit Control Bureau" forms the statement that certain amounts of money are "collectible" and "due," thereby representing that the amounts so inserted in the forms are due and owing to the persons to whom the forms are mailed, and that by furnishing the information requested thereon, they will be entitled to receive such sums.

The above-described representations are alleged to be false, in that the so-called "Claims Office," "Reverification Office" and "United States Credit Control Bureau" are not agencies of the United States Government, and further, that there is no money due to the persons to whom the forms are sent.

The complaint further alleges that Respondents have also disseminated, in like manner, certain other printed forms wherein their use of the terms "Cigarette and Tobacco Research Bureau" and "National Gasoline Research Bureau," together with the nature of the inquiries made through such forms, serves to represent, and to place in the hands of purchasers of such forms instrumentalities by and through which such purchasers may represent, that research projects are being carried on for the purpose of ascertaining the brand of cigarettes smoked by the addressee of such printed form, and other information respecting cigarettes in the first instance, and to ascertain the brand of gasoline used by the addressee and other information respecting his use of gasoline, in the second instance. It is further alleged that such representations are enhanced by the fact that respondents cause the cigarette forms to be mailed in Richmond, Virginia, an important center of the cigarette industry, and the gasoline forms to be mailed in Oklahoma City, Oklahoma, a center of the gasoline industry.

These cigarette and gasoline forms are alleged to be misleading in that the respondents are not now, and never have been, engaged in a research project concerning cigarettes or gasoline.

The complaint concludes that the sole object of Respondents' various printed forms is to obtain information by subterfuge.

THE ANSWER

On November 12, 1954, respondents submitted their answer to the complaint herein, admitting that they are, and have been, engaged in the business of selling in commerce the printed forms described in the complaint, to collection agents, merchants, and others. Respondents also admit the use of various trade names in the conduct of their business, and their mailing of the forms in question in Washington, D. C., Richmond, Virginia, and Oklahoma City, Oklahoma. Respondents assert, however, that the forms designated as "Claims Office,"

"United States Credit Control Bureau" and "National Gasoline Research Bureau" were discontinued prior to the issuance of the complaint.

Specifically, respondents allege that the words "United States" which they use on some of their forms are also commonly used by numerous firms and businesses located in Washington, D. C. and elsewhere as part of their respective firm names, and are so widely used that they do not represent that such firms are agencies of the United States Government.

Respondents also allege that the picturization of an eagle on private documents has become so widely used that it does not imply that such forms belong to the United States Government. In addition, they assert that the eagle used on the seal of the United States Government differs from the eagle used by them in at least thirteen respects; for instance, the head of the United States eagle faces left, that of respondents' eagle faces right; the beak of the United States eagle is pointed sideways, that of respondents' eagle is pointed upwards; the beak of the United States eagle is closed, that of respondents' eagle is open; and the left talon of the United States Eagle holds an olive branch, while that of respondents' eagle rests on a portion of a shield. Respondents allege that because of such differences, their use of the eagle is not deceptive.

Respondents in their answer explain that the "Cigarette and tobacco Research Bureau" forms were used to obtain information for vending-machine companies for the purpose of determining the feasibility of using such research information commercially. Respondents admit that the "Claims Office," "Reverification Office" and "United States Credit Control Bureau" are not agencies of the United States Government. They further admit that no money is due to those persons to whom such forms are sent, but assert instead that the addressees owe to respondents' customers the sums appearing on the forms and that the major portion of the business of the National Research Company is to sell forms and service for the purpose of obtaining information concerning debtors for the respondents' customers. Respondents admit that some of the persons receiving such forms may have been misled or deceived, but they contend that the number of such persons is comparatively small when compared with the total number of persons receiving the forms.

As an affirmative defense, respondents allege, first, on the basis of information and belief, that the only persons to whom such forms are mailed are debtors who have defaulted on obligations owing to respondents' customers. Secondly, they allege that the number of defaulting debtors and the amount of money owed by them has

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become so great that considerable losses are being sustained by merchants, to the extent that it is seriously affecting commerce and sound business conditions; that such losses are all to the prejudice and injury of the public in that such losses are passed on by the merchants, in many instances, directly to the buying public in the form of increased prices; wherefore respondents pray that the complaint against them be dismissed.

RESPONDENTS' IDENTITY AND ACTIVITIES IN COMMERCE

The record shows, and respondents admit, that respondent Mitchell S. Mohr is an individual trading and doing business under the name of National Research Company, with his office and principal place of business at 452 Washington Building, Washington, D. C.; that respondent Sydney Floersheim is an individual trading and doing business under the name of S. Floersheim Sales Company, with his office and principal place of business at 7319 Beverly Boulevard, Los Angeles, California; and that respondent Floersheim is the exclusive sales agency for respondent Mohr. Both respondents are now, and for more than one year last past have been, engaged under their respective trade names in the business of selling in substantial volume in commerce certain printed mailing forms, which are designed and intended to be used, and are used, by collection agencies, merchants and others to whom they are sold for the purpose of obtaining, with the aid and assistance of respondents, information concerning the purchasers' debtors.

RESPONDENTS' FORMS

The printed forms sold by respondents are of six types, as follows:

1. The "Claims Office" form, consisting of a single sheet, perforated to permit easy detachment of the lower portion. This form is designed to be forwarded to the addressees in an envelope provided by respondents, enclosing a return envelope addressed to "Claims Office, 100 Barr Building, Washington, D. C."
2. The "Reverification Office" form, consisting of a printed card perforated on the left side. The return envelope enclosed with this form is addressed to "Reverification Office, 422 Washington Building, Washington, D. C."
3. The "Credit Control Bureau" forms, consisting of two types of card. The return envelope accompanying this form is addressed to "United States Credit Control Bureau, 422 Washington Building, Washington, D. C."
4. "New Employment Status Questionnaire," consisting of a printed card perforated on the left side. The return envelope in this instance

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bears the address, "Office of Employment Reclassification, 2017 S Street, N.W., Washington, D. C."

5. The "Disbursements Office" forms, consisting of a single sheet perforated near the center and bottom to permit easy detachment of both portions. The return envelope for this form is addressed to "Disbursements Office, 300 Calvert Street, N.W., Washington, D. C."

6. The "Cigarette" and "Gasoline" forms, consisting of double post-cards perforated to permit easy separation. The detachable portions of these cards are addressed, respectively, to "Cigarette and Tobacco Research Bureau, 1 No. 6th Street, Richmond, Virginia" and "National Gasoline Research Bureau, 601 Leonhardt Building, Oklahoma City, Oklahoma."

The return envelopes and the detachable portions of the double cards all provide that return postage will be paid by the addressees. Respondents have established mailing addresses at the various locations in Washington, D. C., Richmond, Virginia and Oklahoma City, Oklahoma.

Each of these forms sets out questions which, if answered, will provide information considered to be of value in the collection of accounts owed or alleged to be owed by the addressee. The purchasers of said forms fill in, in the spaces provided, the name of the alleged debtor and other appropriate data, including, on the "Claims Office" and "Credit Control Bureau" forms, the amount of the alleged indebtedness, and send the forms in bulk to respondents' agents at the appropriate mailing address, whereupon respondents' agents at that location mail the forms to the addressees. If the addressee completes the form and returns it, respondents' agents forward the form to respondents in Los Angeles, California. There the forms are processed and either the completed forms or the information thereon are forwarded to the purchasers of the forms. Respondents detach the upper portion of the "Disbursements Office" form, insert the amount of ten cents, sign the check, and return it to the addressee.

FORMS IMPLYING CONNECTION WITH THE UNITED STATES GOVERNMENT

Respondents, by their use on three forms of the respective terms "Claims Office," "Reverification Office" and "United States Credit Control Bureau," and particularly their use of the words "United States" as part of the latter term, together with the format and phraseology of each of these three forms, represent, and place in the hands of their customers instrumentalities whereby they may represent and imply to the recipients thereof, that the requests for information contained therein are made by an agency of the United States

Government. This implication is enhanced by the further fact that such forms are mailed by respondents from Washington, D. C.

Respondents contend in their defense of their use of the words "United States" that these words are used as a part of so many trade names throughout the country that they carry no implication of connection with the United States Government. Such contention appears to overlook the basic fact that the words "United States," however used, connote some connection with the Government of the United States. The question, of course, of whether actual deception results from the use of those words as part of a trade name must be determined on the merits of each individual case. In the present instance, the inference of Government connection resulting from respondents' use of the words "United States" on its printed collection forms is enhanced by the use thereon of the picturization of an eagle resembling the eagle appearing on the Great Seal of the United States, and by the fact that such forms bear a Washington, D. C. return address and are mailed by respondents from the Nation's Capital.

Respondents further contend that the picturization of an eagle on their forms is not deceptive, first, because such picturization on private documents has become so widely used that it does not imply any connection with the United States Government. Second, they contend, in substance, that thirteen differences between their eagle and the eagle appearing on the Great Seal of the United States prevent deception. Both of these contentions are refuted by the facts.

The American eagle has, throughout the life of this nation, been employed as a symbol of Governmental power and authority, and its picturization on any document has the tendency, therefore, to suggest the governmental authority of the United States. When an eagle is used on a private document, its tendency to suggest such governmental authority may be increased or lessened by the manner and form in which it appears thereon. In the present case, respondents' eagle is used in such a manner as to increase its tendency toward deception rather than to lessen it. Furthermore, although the thirteen differences in design between respondents' eagle and that on the Great Seal of the United States do exist, these differences do not eliminate the tendency toward deception resulting from respondents' use of an eagle on their forms.

In this connection it should be observed that the eagle appearing on the Great Seal of the United States is not the only picturization of an eagle officially used by the United States Government. Judicial notice is taken of the fact that at least four different eagle designs are officially used by the United States Government on its coinage, all of which differ materially from that appearing on the Great Seal of the

United States. In order, therefore, to eliminate the capacity and tendency toward deception inherent in respondents' use of an eagle on their forms, it would be necessary for the public at large to have specialized knowledge of the picturizations of eagles appearing, not only on the Great Seal of the United States, but on silver dollars, half-dollars and quarters, and of all the respects in which such designs differ from each other and from respondents' eagle.

We are compelled to conclude that all of these factors including the fictitious names of non-existent offices from which the forms purport to emanate, the use of the words "United States" as part of one such name, the phraseology of each form, the use of an eagle thereon, and the Washington, D. C. return address and mailing, tend, in conjunction one with another, to foster the erroneous belief and perpetrate the deception that respondents' fictitious offices are a part of the United States Government. We are likewise compelled to conclude that respondents have exploited such belief and consequent deception for the purpose of inducing the recipients of their forms to furnish information about their personal affairs.

FORMS IMPLYING AN EMPLOYMENT SURVEY

Respondents, by their use on one form of the term "New Employment Status Questionnaire" and the inquiries made thereon, represent, and place in the hands of their customers an instrument whereby they may represent and imply to the recipients thereof, that a general survey is being made to determine the change of employment status of employees generally and the reason therefor.

In fact, no such general survey is being made. The sole purpose of such form is to locate the recipient and obtain from him information as to his present employment status, which information respondents forward to those of their customers who have purchased this form, and who allege the recipients of such forms to be their delinquent debtors.

FORMS IMPLYING TO THE RECIPIENT THEREOF THAT MONEY IS DUE HIM

Respondents, in their "Claims Office" and "United States Credit Control Bureau" forms, have represented, by the use therein of the statement that a specific sum of money is "collectible" and "due," that such sum is due and owing to the recipient of the form, and may be collected by him by filling in the information concerning his personal affairs requested thereon, and returning the completed form, by mail or in person, to such "Claims Office" or "United States Credit Control Bureau." In fact, no money is due the recipient of such forms. The sum of money inserted by respondents on these forms is actually the

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amount of the recipient's indebtedness to respondents' customer who has purchased the forms, and the words "collectible" and "due" are obviously and intentionally used in an ambiguous manner, in order to create in the mind of the recipient the false impression that that sum of money is actually payable to him from an undisclosed source, thereby inducing him to furnish the information requested.

Respondents, by their use on one form of the term "Disbursement Office," and the nature of that form, which resembles a blank check, represent, and place in the hands of their customers an instrument whereby they may represent and imply to the recipients thereof, that money is due to them from an undisclosed source, and will be paid to them upon the receipt by the "Disbursement Office" of the information requested on the reverse side of such form. In fact, however, no money is due to the recipient, and the sole purpose of the form is to elicit information relative to the recipient's personal affairs. The fact that, upon receiving the completed form respondents do send the recipient a check for the sum of ten cents does not eliminate the element of deception inherent in such form, nor justify respondents' statement that an amount of money is due and owing to the recipient. As stated by the court in the case of *National Service Bureau, et al. v. F.T.C.*, 200 F. 2d 362.

"* * * in the context of 'deposited' and 'a check'; ten cents is not a 'sum of money' or even 'a small sum of money'; * * * 'a small sum of money' in this context is, at least, a substantial number of dollars. A check for ten cents may net the debtor less than nothing, since some banks charge ten cents for depositing a check * * *."

It is obvious that these forms are intended solely to deceive the recipients thereof, and that the attached questionnaires are only a "gimmick" to aid in the subterfuge.

FORMS IMPLYING CONNECTION WITH A CURRENT RESEARCH PROJECT

Respondents, by their use on two forms of the respective terms "Cigarette and Tobacco Research Bureau" and "National Gasoline Research Bureau," together with the nature of the inquiries made thereon, represent, and place in the hands of their customers instrumentalities whereby they may represent and imply to the recipients thereof, that research projects are currently being conducted for the purpose of ascertaining the brand of cigarettes smoked by the recipient of such forms and other information respecting cigarettes, or the brand of gasoline used by him and other information respecting his use of gasoline. This implication is enhanced by the fact that the "Cigarette" forms are mailed at Richmond, Virginia, an important

center of the cigarette industry, and the "Gasoline" forms from Oklahoma City, Oklahoma, a center of the gasoline industry.

In fact, no such research projects are being conducted, and the "Cigarette and Tobacco Research Bureau" and "National Gasoline Research Bureau" do not exist except as fictitious names. The sole purpose of the forms bearing these designations is to obtain the address and other information relating to the personal affairs of persons alleged to be delinquent debtors of the customers to whom respondents sell these forms. Respondents' sole purpose in printing these forms is to sell them to others for use in obtaining information concerning alleged delinquent debtors, and respondents have used their mailing of these forms from known centers of the cigarette and gasoline industries as a selling point to facilitate their sale of such forms. When the recipient of a "Cigarette" form fills in the information requested thereon and returns the completed form to the "Cigarette and Tobacco Research Bureau," respondents send him a pack of twenty of the brand of cigarettes he has designated thereon as the one he smokes. This fact in no way detracts from the magnitude of the deception perpetrated by respondents through the use of this form.

ADMISSIONS BY RESPONDENTS

Respondents, with respect to the printed forms hereinabove described, admitted in testimony in the record of this proceeding that they have received inquiries from recipients of one or another of such forms, who believed money was due them, or that the request for information contained in respondents' form was from a Government agency.

As to the "Cigarette" and "Gasoline" forms, respondents admit that these forms were sold to be used only in connection with the locating of delinquent debtors. There is testimony in the record to the effect that at the outset respondents intended to offer the information obtained by the use of these forms to purveyors of cigarette-vending machines, but, finding such disposition of the forms and information not feasible by reason of lack of purchasers, respondents, for the purpose of avoiding financial loss, diverted the forms to their present use. This fact, however, does not ameliorate the deception practiced by respondents, and is of no consequence in determining the questions here at issue.

PUBLIC INTEREST

Respondents in their answer offer, in effect, the affirmative defense that their forms are mailed only to defaulting debtors; that the losses to merchants by reason of defaulting debtors have become so great

that it is seriously affecting commerce and sound business conditions; that such losses are to the prejudice and injury of the public, since, in many instances, they are passed on to the buying public as increased prices; and, by implication, that therefore respondents' practice of misrepresentation and deception for the purpose of locating defaulting debtors on behalf of their creditors is in the interest of the public and consequently should not be considered a violation of the Federal Trade Commission Act.

This defense is without merit for the simple reason that two wrongs do not make a right. If respondents' interpretation of what is in the public interest were to be accepted, our courts would be forced to embrace a policy almost exactly parallel to that proclaimed by a well-known three-member body: "Fair is foul and foul is fair." Such an interpretation would result in confusion worse confounded. The stability of business cannot be sustained by falsehood. The laudable purpose of assisting merchants to recover financial losses sustained by reason of defaulting debtors does not justify the perpetration of deceit upon those debtors. These principles are traditionally fundamental in America jurisprudence, and have been enunciated repeatedly by our courts.

In *Silverman v. F.T.C.*, 145 F. 2d 751 (CCA-9, 1944), a case similar to the instant proceeding, the Court, in affirming the Commission's cease-and-desist order, stated:

"Petitioners' scheme is a cheap swindle and the argument that it is less so because it may in certain cases trap swindling debtors is not one pleasing to entertain."

In *Lester Rothschild v. F.T.C.*, 200 F. 2d 39 (CCA-7, 1952), the Court, in affirming another order of the Commission, said:

"The fact that acts and methods deemed deceptive are used to trap delinquent debtors does not prevent such acts and methods from being against the public interest. * * *"

In the case of *Dejay Stores, Inc., v. F.T.C.*, 200 F. 2d 865 (CCA-2, 1952), affirming the order of the Commission, the Court declared:

"* * * The Federal Trade Commission's conclusion that it is in the public interest to require that creditors should not use dishonest methods in collecting their debts is within its discretion. * * *"

The validity of these principles cannot be seriously questioned, and respondents' affirmative defense must in consonance therewith, be rejected as wholly fallacious.

CONCLUSION

Respondents' acts and practices as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive

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acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Accordingly,

It is ordered, That respondents Mitchell S. Mohr, individually and trading as National Research Company, and Sydney Floersheim, individually and trading as S. Floersheim Sales Company, or trading under any other name or trade designation, jointly or severally, their representatives, agents and employees, directly or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors, or the offering for sale, sale or distribution of forms, or other material, for use in obtaining information concerning delinquent debtors, 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, any form, questionnaire, or other material, printed or written, which represents, directly or by implication, that the purpose for which the information is requested is other than that of obtaining information concerning delinquent debtors;

2. Representing, or placing in the hands of others any means of representing, directly or by implication, that money is being held for or is due, persons concerning whom information is sought, or is collectible by such persons, unless money is in fact due and collectible by such persons and the amount of such money is accurately stated;

3. Using the terms "Claims Office," "Reverification Office," or "United States Credit Control Bureau," or the picturization of an eagle, or any other word or phrase, or picturization of similar import to designate, describe or refer to respondents' business; or otherwise representing, directly or by implication, that requests for information concerning delinquent debtors are from the United States Government or any agency or branch thereof, or that their business is in any way connected with the United States Government;

4. Using the name "New Employment Status Questionnaire," or any other name of similar import to designate, describe or refer to Respondents' business; or otherwise representing directly or by implication that Respondents' business is that of gathering and furnishing information relative to employment;

5. Using the name "Disbursements Office," or any other name of similar import to designate, describe or refer to Respondents' business; or otherwise representing, directly or by implication, that money has been deposited with them for persons from whom information is requested, unless or until the money has in fact been so deposited, and then only when the amount so deposited is clearly and expressly stated;

6. Using the name "Cigarette and Tobacco Research Bureau," or "National Gasoline Research Bureau," or any other name of similar import to designate, describe or refer to Respondents' business; or otherwise representing, directly or by implication, that Respondents are a research bureau, or are engaged in research.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

This is an appeal by respondents from a decision and order of the hearing examiner directing respondents to cease and desist from engaging in unfair and deceptive acts and practices through the dissemination and use of "skip tracing" forms.

Respondents sold certain printed forms to creditors who are desirous of learning the whereabouts of defaulting debtors. The creditors fill in the proper data on the blanks, including particularly the last known address of the debtors, and return cards to the designated office of respondents, which office mails them to the individual debtors. If the debtor answers the communication, it is returned to the designated office which, in turn, sends it to respondents' office in Los Angeles, California. At that place, the answers are processed and the results forwarded to the purchasing creditors.

Respondents are not operating a collection agency; their efforts are restricted to locating the debtors so that the creditors have an opportunity to collect the debts due them. Of course, the debtor is not advised of these facts. The forms used are of such a character as to create in the mind of the debtor the notion that it is to his interest to answer the communication and furnish the required information.

Various types of forms are used, copies of which are in evidence. The return envelopes and the detachable portions of the double cards (which are the portions to be returned to the designated office) all provide that return postage will be paid by the addressee. Respondents have established mailing addresses in Washington, D. C., Richmond, Virginia, and Oklahoma City, Oklahoma.

Some of the printed forms sold by respondents may be described as follows:

(1) The "Claims Office" form:

This consists of a single sheet, perforated to permit easy detachment of the lower portion, which is designed to be returned in a return envelope addressed to "Claims Office, 100 Barr Building, Washington, D.C.". The upper portion of the form contains a picture of an eagle and the following: "Retain this form until \$..... is collected in full."

"The amount of Dollars is collectible."

"Identification of is needed by this office."

"Return the attached questionnaire immediately."

CLAIMS OFFICE

100 Barr Building

Washington, D. C.

Identification and Collection Department."

The portion to be returned contains blanks for the debtor to furnish certain information, such as his name, address, mother's maiden name, present employer's name (for verification of social security number), employer's address, bank reference, etc.

(2) "Reverification Office" form:

This is a printed card with blanks for information as to name and address, name and address of employer, marital status, social security number, etc. The return envelope enclosed is addressed to "Reverification Office, 422 Washington Building, Washington, D. C."

(3) "Credit Control Bureau" forms:

These forms have the words "United States" on them and also the usual blanks for the furnishing of information. The return envelope is addressed to "United States Credit Control Bureau, Washington, D. C."

(4) "New Employment Status" questionnaire:

This card seeks to obtain information as to the debtor from a new employer. The return envelope is addressed to the "Office of Employment Reclassification, 2017 S Street, N. W., Washington, D. C."

(5) "Disbursements Office" form:

This purports to be a check of Disbursements Office, 300 Calvert Street, N. W., Washington, D. C. payable to the debtor. The debtor is advised that if the check and the accompanying blank are returned with the required information, the check will be returned with the amount filled in and properly signed for the debtor to cash. It has been the practice of respondents to return the check payable in the amount of 10¢.

(6) The "Cigarette" form:

The return portion of this card is addressed to "Cigarette and Tobacco Research Bureau", One N. Sixth Street, Richmond, Virginia. It purports to be a questionnaire calling for the name and address of the debtor and also of his present employer and for other information, such as preferred brand of cigarettes, and whether smoking or vending machines are allowed on the premises. The card also contains the following:

"To determine what brand of cigarette or tobacco is being smoked by employed people during working hours, please fill out the attached card. If the questionnaire is properly filled out and returned immediately, your favorite brand of cigarette or tobacco will be sent you free of any charge."

It was the practice of respondents to send a package of cigarettes as above indicated.

(7) The "Gasoline" form:

This form was substantially similar to the cigarette form. The return address was "National Gasoline Research Bureau, 601 Leonhardt Building, Oklahoma City, Oklahoma."

Respondents argue that the cards and letters involved were not deceptive; that, for example, the eagle pictured thereon was different in many respects from the one generally adopted as the emblem of the United States, and that the use of the words "United States" is not uncommon in names of private firms. Evidence was offered to show

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that 48 firms with the words "United States" and 55 firms with the word "Federal" with offices in Washington, D. C. are listed in the local telephone directory.

We think the evidence might well have been admitted. However, its exclusion was not prejudicial. It is a well-known fact that the use of such words in firm names and the display of an eagle are prevalent and in many cases would not be deceptive. Respondents' practices are to be considered in their entirety. The language used, the form of the cards, the various addresses, the whole purpose of the scheme, point clearly to the fact that it was designed to deceive. The plan was operated to get certain information from individuals who were deceived as to the purpose for which it was being secured.

Nor can it be said that public interest is lacking. Substantially every question raised here has already been decided by the courts. *Silverman v. FTC* (1944), 145 F. 2d 751; *Lester Rothschild v. FTC* (1952), 200 F. 2d 39; *Deejay Stores, Inc. v. FTC*, 200 F. 2d 865.

Commenting on previous decisions, respondents claim that changing conditions now make it desirable for the Commission to "make a new declaration of policy concerning the use of skip tracing forms."

We agree that debtors should pay their just debts and that creditors should not be denied any lawful means to collect them. Nevertheless, the various states, through exemption statutes and other laws, have put some limitation on collection procedures. The law involved here simply prohibits those practices in commerce which have a tendency and capacity to deceive.

The findings, conclusions and order of the hearing examiner are adopted as the findings, conclusions and order of the Commission.

Respondents' appeal is denied, and it is directed that an order issue in accordance herewith.

FINAL ORDER

The respondents in this proceeding having filed their appeal from the initial decision of the hearing examiner; and the matter having been considered on briefs and oral arguments of counsel; and the Commission having rendered its decision denying the appeal and adopting the initial decision as its own decision:

It is ordered, That the respondents, Mitchell S. Mohr and Sydney Floersheim, 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 contained in the aforesaid initial decision.

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IN THE MATTER OF
FOREMOST DAIRIES, INC.

Docket 6495. Order, June 4, 1956

Order holding that violation of sec. 7, Clayton Act, may also be violation of sec. 5, Federal Trade Commission Act, and reversing hearing examiner's ruling striking from the complaint allegations charging violation of sec. 5 through corporate acquisitions.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Raymond L. Hays, *Mr. Bernard M. Williamson* and *Mr. F. P. Favarella* for the Commission.

Camilier, McDonald & Bakke, and *Mr. Robert E. Freer*, of Washington, D. C., and *Milam, Lemaistre, Ramsey & Martin*, of Jacksonville, Fla., for respondent.

ORDER SUSTAINING APPEAL OF COUNSEL IN SUPPORT OF COMPLAINT
AND REVERSING RULING OF HEARING EXAMINER

This matter having come on to be heard by the Commission upon an appeal, filed by counsel in support of the complaint, from a ruling of the hearing examiner striking from the complaint certain allegations charging the respondent with having violated Section 5 of the Federal Trade Commission Act through the acquisition of a number of corporations and other concerns engaged in the processing and distribution of dairy products; and

It appearing that the basis of the ruling appealed from was the hearing examiner's view that Congress in treating the subject of corporate acquisitions in Section 7 of the Clayton Act, as amended, intended to and did preclude the application of Section 5 of the Federal Trade Commission Act to this field of activity; and

The Commission being of the opinion that the hearing examiner was in error in this respect and that facts indicating a violation of Section 7 of the Clayton Act, as amended, may also indicate a violation of Section 5 of the Federal Trade Commission Act, and, further, that practices not technically within the scope of a specific section of the Clayton Act may nevertheless constitute a violation of Section 5 of the Federal Trade Commission Act; and

The Commission being of the further opinion that in electing to charge the respondent in this case with violation of both Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act the Commission acted in the exercise of its admini-