
IN THE MATTER OF
PARENTS' MAGAZINE ENTERPRISES, INC., ET AL.
ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 8652. Complaint, Nov. 25, 1964—Decision, Dec. 3, 1965

Order requiring a New York City publisher, to cease misrepresenting in letters and notices disseminated to delinquent customers that delinquent accounts are turned over to an independent, bona fide collection agency.

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 Parents' Magazine Enterprises, Inc., a corporation, Parents' Home Service Institute, Inc., a corporation, and Edward A. Sand and G. Theodore Zignone, individually and as officers of each of said corporations, and Allison R. Leininger, individually and as an officer of Parents' Magazine Enterprises, Inc., and Eugene J. Foley, individually and as an officer of Parents' Home Service Institute, Inc., 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Parents' Magazine Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 52 Vanderbilt Avenue in the city of New York, State of New York. Prior to July, 1962, said respondent was known as The Parents Institute, Inc.

Respondent Parent's Home Service Institute, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 52 Vanderbilt Avenue in the city of New York, State of New York. It is a wholly owned subsidiary of respondent Parents' Magazine Enterprises, Inc.

Respondents Edward A. Sand and G. Theodore Zignone are individuals and officers of each of said corporations. Respondent Allison R. Leininger is an individual and an officer of Parents' Magazine Enterprises, Inc. Respondent Eugene J. Foley is an individual and an officer of Parents' Home Service Institute, Inc.

Respondents Edward A. Sand, G. Theodore Zignone and Allison R. Leininger formulate, direct and control the acts and practices of respondent Parents' Magazine Enterprises, Inc., including the acts and practices hereinafter set forth.

Repondents Edward A. Sand, G. Theodore Zignone and Eugene J. Foley formulate, direct and control the acts and practices of respondent Parents' Home Service Institute, Inc., including the acts and practices hereinafter set forth.

The address of the individual respondents is the same as that of the corporate respondents.

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PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of magazines, publications and other merchandise to the general public by and through the United States mails.

PAR. 3. In the course and conduct of their business, respondents now cause and for some time last past have caused said magazines, publications and other merchandise, when sold, to be shipped from their places of business and sources of supply in the State of New York to purchasers thereof located in the various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in said magazines, publications and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents offer for sale certain magazines, publications and other merchandise through the United States mails. Said magazines, publications and other merchandise are distributed and payment made therefor through the United States mails.

For the purpose of inducing the payment of purportedly delinquent accounts that have arisen from the aforesaid transactions, respondents have made certain statements and representations in letters and notices disseminated through the United States mails to purportedly delinquent customers.

Typical, but not all inclusive of such statements and representations are the following:

(a) On respondents' letterheads:

PAYMENT IS NOW PAST DUE

Your PAST DUE Account has again been brought to my attention for review. Before we take any drastic measures to enforce collection, I believe you should be advised on how serious it is to withhold payment on an account and what effect it may have on your credit. * * *

If we received a request from any credit company or credit bureau concerning your paying habits we have to report that you are not paying your account with us as you agreed. Such a reply may result in further credit being withheld from you by others. Furthermore, we may request our attorney to take any steps against you which he believes are necessary to collect this balance. * * *

Your account, long past due, remains unpaid.

Considering the arrears on your account, we think it well to write you that when payment is not received in time, we must refer all unpaid balances to a collection agency. * * *

Your account will be held open for the next ten days to await your payment before steps are taken to protect our interest.

Avoid any action by the Collection Agency, which may prove embarrassing

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and costly to you, by sending us payment of your unpaid balance in the enclosed envelope NOW—BEFORE YOU FORGET!!!

(b) On the following letterhead:

THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.,
NEW YORK 18, N. Y.

Re: Claim of PARENTS' HOME SERVICE INSTITUTE, INC.

Your account has been referred to us because of your failure to comply with several requests for payment. * * *

Unless we receive payment from you within *ten* days, our client's attorney may have to take legal action on your account to secure a judgement against you. * * *

Unless we receive your remittance by return mail, your account may be referred by our client to their lawyer for proceedings against you. * * *

Such action may incur charges for court costs, disbursements and interest, all to be added to the total balance you now owe. * * *

PAR. 5. By and through the use of the aforesaid statements, representations and practices, and others of similar import not specifically set out herein, respondents have represented directly and by implication that:

A. If payment is not made, the delinquent customer's name is transmitted to a bona fide credit reporting agency.

B. If payment is not made, the customer's general or public credit rating will be adversely affected.

C. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," is a separate bona fide collection and credit reporting agency located in New York City.

D. Respondents have turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," the delinquent account of the customer for collection and other purposes.

E. If payment is not made, the delinquent customer's account will be transferred to an outside attorney with instructions to institute suit or to take other legal steps to collect the outstanding amount due.

F. Letters and notices on the letterhead of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," have been prepared and mailed by said organization.

PAR. 6. In truth and in fact:

A. If payment is not made, the delinquent customer's name is not transmitted to a bona fide credit reporting agency.

B. If payment is not made, the customer's general or public credit rating is not adversely affected.

C. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," is not a separate bona fide collection or credit re-

porting agency. Said organization is a fictitious name utilized by respondents and others for the purpose of disseminating collection letters.

D. Respondents have not turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," the delinquent account of the customer for collection or any other purpose.

E. If payment is not made, the delinquent customer's account is not transferred to an outside attorney with instructions to institute suit or other legal steps to collect the outstanding amount due.

F. The letters and notices on the letterhead of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," have not been prepared or mailed by said organization. Said letters and notices have been prepared and mailed or caused to be mailed by respondents. Replies and responses to said letters and notices are forwarded unopened to respondents.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing 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 to respondents by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Terral A. Jordan supporting the complaint.

Lowenstein, Pitcher, Hotchkiss & Parr, New York, N.Y., by *Mr. James C. Sargent*, *Mr. Norman G. Sade*, and *Mr. John M. Hadlock* for respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

AUGUST 31, 1965

The Federal Trade Commission issued its complaint against respondents on November 25, 1964, charging them with violations of Section 5 of the Federal Trade Commission Act in that respond-

ents made various false and misleading statements in attempting to collect delinquent accounts. The respondents filed an answer in which they admitted certain allegations of the complaint and denied that they had violated Section 5 of the Federal Trade Commission Act and alleging certain defenses discussed hereinafter.

This matter is before the hearing examiner for final consideration on the complaint, answer, evidence and the proposed findings of fact and conclusions and memoranda and briefs filed by counsel for respondents and counsel supporting the complaint. Consideration has been given to the proposed findings of fact and conclusions submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusions drawn therefrom and issues the following order:

FINDINGS OF FACT

1. Respondent Parents' Magazine Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 52 Vanderbilt Avenue, in the city of New York, State of New York. Prior to July, 1962, said corporate respondent was known as and was one and the same corporate entity known as The Parents' Institute, Inc. (Stipulation of Facts, CX 27, p. 1).

2. Respondent Parents' Home Service Institute, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 52 Vanderbilt Avenue in the city of New York, State of New York. It is a wholly owned subsidiary of respondent Parents' Magazine Enterprises, Inc. Virtually all of the officers of respondent Parent's Home Service Institute, Inc., are officers and/or employees of respondent Parents' Magazine Enterprises, Inc. Respondent Parents' Home Service Institute, Inc., is operated as a subscription sales company by Parents' Magazine Enterprises, Inc., for its publications (Stipulation of Facts, CX 27, pp. 1, 2).

3. Respondent Edward A. Sand is the president and a member of the board of directors of Parents' Magazine Enterprises, Inc.; the president and a member of the board of directors of Parents' Home Service Institute, Inc., and exercises the usual functions and duties of his respective offices (CX 1). While he did not personally participate in the day-to-day operations, he was aware of the con-

tinuing use of the facilities of The Mail Order Credit Reporting Association, Inc., for many years (CX 1).

4. Respondent G. Theodore Zignone is the executive vice president and treasurer and a member of the board of directors of Parents' Magazine Enterprises, Inc., and a vice president and treasurer and a member of the board of directors of Parents' Home Service Institute, Inc. (CX 2). He was aware of and participated in the decision to utilize the facilities of The Mail Order Credit Reporting Association and was aware of its continued use (CX 2).

5. Respondent Allison R. Leninger is the chairman of the Executive committee, a member of the board of directors and advertising director of Parents' Magazine Enterprises, Inc. He has held the offices of president, executive vice president and vice president of Parents' Magazine Enterprises, Inc., and its predecessor Parents' Institute, Inc., and has been associated with said corporations for 32 years. He is a member of the board of directors but not an officer of Parents' Home Service Institute, Inc. From July 5, 1961 to March 25, 1963, he was executive vice president of Parents' Home Service Institute, Inc. (CX 3).

6. Respondent Eugene Foley has been an assistant vice president of Parents' Magazine Enterprises, Inc., since 1963 and a vice president and secretary of Parents' Home Service Institute, Inc., since 1962 (CX 4). From 1954 through 1962 he was engaged primarily in the operations of Family Publication Service, Inc., and Homemakers' Library League, Inc., in both of which corporations Parents' Magazine Enterprises, Inc., has an interest (CX 4).

7. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of magazines, publications and other merchandise to the general public by and through the United States mails (Amended Answer, Paragraph 2, Stipulation of Facts, CX 27, pp. 2, 3).

8. In the course and conduct of their business, respondents now cause and for some time last past have caused said magazines, publications and other merchandise, when sold, to be shipped from their places of business and sources of supply in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in said magazines, publications and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act (Amended Answer, Paragraphs 2 and 3, Stipulation of Facts, CX 27, pp. 2, 3).

9. In the course and conduct of their business, respondents offer for sale certain magazines, publications and other merchandise through the United States mails. Said magazines, publications and other merchandise are distributed and payment made therefor through the United States mails (Amended Answer, Paragraph 3, Stipulation of Facts, CX 27, p. 3).

10. For the purpose of inducing the payment of purportedly delinquent accounts that have arisen from the aforesaid transactions, respondents have made certain statements and representations in letters and notices disseminated through the United States mails to purportedly delinquent customers (Stipulation of Facts, CX 27, pp. 3-6). Typical, but not all inclusive of such statements and representations are the following:

(a) On respondents' letterheads:

Your PAST DUE account has again been brought to my attention for review. Before we take any drastic measures to enforce collection, I believe you should be advised on how serious it is to withhold payment of an account and what effect it may have on your credit. * * *

If we received a request from any credit company or credit bureau concerning your paying habits we would have to report that you are not paying your account with us as you agreed. Such a reply may result in further credit being withheld from you by others. Furthermore, we may request our attorney to take any steps against you which he believes are necessary to collect this balance. * * * (CX 11)

Your account, long past due, remains unpaid.

Considering the arrears on your account, we think it well to write you that when payment is not received in time, we must refer all unpaid balances to a collection agency. * * *

Your account will be held open for the next ten days to await your payment before steps are taken to protect our interests.

Avoid any action by the Collection Agency, which may prove embarrassing and costly to you, by sending us payment of your unpaid balance in the enclosed envelope NOW—BEFORE YOU FORGET!!! (CX 12)

(b) On the following letterhead:

THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.,
NEW YORK 18, N. Y.

Re: Claim of PARENTS' HOME SERVICE INSTITUTE, INC.

Your account has been referred to us because of your failure to comply with several requests for payment. * * *

Unless we receive payment from you within *ten* days, our client's attorney may have to take legal action on your account to secure a judgment against you. * * * (CX 14)

(Same letterhead in part reads)

Unless we receive your remittance by return mail, your account may be referred by our client to their lawyer for proceedings against you.

Such action may incur charges for court costs, disbursements and interest, all to be added to the total balance you now owe. * * * (CX 13; see also CX 8-18)

11. By and through the use of the aforesaid statements, representations and practices, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that:

A. If payment is not made, the delinquent customer's name is transmitted to a bona fide credit reporting agency.

B. If payment is not made, the customer's general or public credit rating may be adversely affected.

C. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," is a separate bona fide collection and credit reporting agency located in New York City.

D. Respondents have turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," the delinquent account of the customer for collection and other purposes.

E. If payment is not made, the delinquent customer's account will be transferred to an outside attorney with instructions to institute suit or to take other legal steps to collect the outstanding amount due.

F. Letters and notices on the letterhead of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," have been prepared and mailed by that organization.

12. In truth and in fact:

A. If payment is not made, the delinquent customer's name is not transmitted to a bona fide credit reporting agency (Amended Answer, paragraph 4).

B. If payment is not made, the customer's general or public credit rating is not adversely affected.

C. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," is not a separate bona fide collection or credit reporting agency. Said organization is a fictitious name utilized by respondents and others for the purpose of disseminating collection letters (Amended Answer, Paragraph 4, Stipulation of Facts, CX 19 A & B, CX 20 A-C, CX 21 A-D, CX 22 A-D, CX 23 A & B).

D. Respondents have not turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," the delinquent account of the customer for collection or for any other purpose (Stipulation of Facts, pp. 3, 4).

E. If payment is not made, the delinquent customer's account is not transferred to an outside attorney with instructions to institute suit or take other legal steps to collect the outstanding amount due (Amended Answer, Paragraph 4).

F. The letters and notices on the letterhead of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," have

not been prepared or mailed by said organization. Said letters and notices have been prepared and mailed or caused to be mailed by respondents. Replies and responses to said letters and notices are forwarded unopened to respondents (Amended Answer, Paragraph 4, Stipulation of Facts, pp. 4-6).

G. Therefore, the statements and representations as set forth in finding 10 hereof were and are false, misleading and deceptive.

13. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has the capacity and tendency to mislead members of the purchasing 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 to respondents by reason of said erroneous and mistaken belief.

14. In their proposed findings and memorandum brief, counsel for the respondents raised three points which merit discussion.

First, counsel for respondents urge that respondents never represented that The Mail Order Credit Reporting Association, Inc. was an independent and separate collection agency. The facts of record do not bear out respondents' contention. Counsel for respondents stipulated in the record, "The final letter of any selective series under the name of 'Parents' Home Service Institute, Inc.' usually refers to the fact that if payments were not received, the unpaid balance would be sent to a collection agency and is exemplified by CX 12." CX 12 reads, in part, "Considering the arrears on your account, we think it well to write you that when payment is not received in time, we must refer all unpaid balances to a collection agency * * * Avoid any action by the Collection Agency." Commission Exhibits 13 and 14 are follow-up letters on The Mail Order Credit Reporting Association, Inc. letterhead and constitute obvious representation that the delinquent claim has been transferred to a bona fide, separate collection agency.

Second, counsel for respondents urge that the use of The Mail Order Credit Reporting Association, Inc. was discontinued in December of 1963 prior to the issuance of the complaint in this matter and that, therefore, the issuance of an order would serve no purpose at this time. This contention must likewise be rejected. In issuing its complaint the Commission undoubtedly took into consideration the past history of the respondents and their advertising activities and the number of times these have been under scrutiny by the Commission. It appears clear that an order to cease and desist prohibiting the activities charged in the complaint is not only proper but necessary under the circumstances.

Third, respondents urge that none of the individuals named in the complaint should be included in any order to cease and desist and that the proceeding should be dismissed as to the individual respondents. This argument must likewise be rejected as to all respondents with the exception of the individual Allison R. Leininger. The evidence in the record makes it clear that the individual respondents Sand, Zignone and Foley were fully apprised of the activities charged in the complaint, and, while not being involved in such actions on a day-to-day basis, were well aware of their existence and condoned them and therefore must be held responsible for such actions (CX 1, 2 and 4). The record contains no evidence that the respondent Leininger participated in any of the acts or practices charged or was even aware of their existence. The record indicates that he was almost exclusively engaged in advertising and promotion of respondents' various publications (CX 3).

CONCLUSIONS

1. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.
2. The complaint should be dismissed as to the respondent Allison R. Leininger, named individually and as an officer of Parents' Magazine Enterprises, Inc.

ORDER TO CEASE AND DESIST

It is ordered, That respondent Parents' Magazine Enterprises, Inc., a corporation, and its officers and respondent Parents' Home Service Institute, Inc., a corporation, and its officers and respondents Edward A. Sand and G. Theodore Zignone, individually and as officers of each of said corporations, and Eugene J. Foley, individually and as an officer of Parents' Home Service Institute, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of magazines, publications or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. A customer's name will be or has been turned over to a bona fide credit reporting agency for failure to pay delinquent accounts: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents

to establish that where payment is not received the information of said delinquency is referred to a separate, bona fide credit reporting agency.

2. That the general or public credit rating of a customer whose account is delinquent will be adversely affected: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that where payment is not received the information of said delinquency is referred to a separate, bona fide credit reporting agency.

3. Delinquent accounts will be or have been turned over to a bona fide, separate collection agency: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such accounts are in fact turned over to such agencies.

4. Delinquent accounts will be turned over to an attorney to institute suit or other legal action to effect payment: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish such fact.

5. Delinquent accounts will be or have been turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." for collection or any other purpose.

6. "The MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." any other fictitious name, or any trade name owned in whole or in part by respondents or over which respondents exercise any direction or control is an independent, bona fide collection or credit reporting agency.

7. Letters, notices or other communications in connection with the collection of respondents' accounts which have been prepared or originated by respondents, have been prepared or originated by any other person, firm or corporation.

It is further ordered, That the complaint be dismissed as to the individual respondent Allison R. Leininger.

FINAL ORDER

Respondents and complaint counsel have withdrawn their notices of intent to appeal. The Commission has determined that the case should not be placed on its own docket for review and that pursuant to § 3.21 of the Commission's Rules of Practice the initial decision of the hearing examiner, filed August 31, 1965, the effective date of which has been stayed, should be adopted and issued as the decision of the Commission.

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

It is further ordered, That respondents Parents' Magazine Enterprises, Inc., Parents' Home Service Institute, Inc., Edward A. Sand, G. Theodore Zignone and Eugene J. Foley shall, within sixty (60) days after service of this order upon them, file with the Commission a report, in writing, setting forth the manner and form in which they have complied with the order to cease and desist contained in the initial decision.
