

Order

72 F.T.C.

IN THE MATTER OF

WILLIAM H. RORER, INC.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2 (a) OF THE CLAYTON ACT

Docket 8599. Complaint, Sept. 30, 1963—Decision, Aug. 21, 1967

Order modifying a cease and desist order issued May 9, 1966, 69 F.T.C. 667, pursuant to a decision of the U.S. Court of Appeals, Second Circuit, 374 F. 2d 622, March 20, 1967 (8 S. & D. 432), by limiting the application of the prohibition against price discrimination in pharmaceutical products to competing retail customers.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent having filed in the United States Court of Appeals for the Second Circuit a petition to review and set aside the order to cease and desist issued herein on May 9, 1966 [69 F.T.C. 667]; and the court on March 20, 1967 [8 S. & D. 432], having issued its opinion and on April 17, 1967, having entered its final decree modifying and, as modified, affirming and enforcing said order to cease and desist; and the time allowed for filing a petition for certiorari having expired and no such petition having been filed;

Now therefore, it is hereby ordered, That the aforesaid order of the Commission to cease and desist be, and it hereby is, modified in accordance with the said final decree of the court of appeals to read as follows:

It is ordered, That respondent William H. Rorer, Inc., a corporation, and its officers, representatives, agents and employees, directly, indirectly, or through any corporate or other device, in or in connection with the sale of prescription and nonprescription pharmaceutical products in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to some retailers at prices higher than the price charged to any other retailer who, in fact, competes in the resale and distribution of respondent's products with the retailer paying the higher prices.

It is further ordered, That, in addition to an apart from the provisions of the preceding paragraph, if respondent at any time after the effective date of this order institutes a price schedule whereby it charges a different price for its products to any person, group or class of its competing retail customers

on the basis or in the belief that such difference in price is justified by savings to the respondent in the cost of manufacture, sale or delivery to the members of such customer group or class, respondent shall

(a) promptly notify the Federal Trade Commission of the institution of such price schedules and submit to the Commission a written statement with necessary underlying data in support of the cost justification of such price discrimination; and

(b) adequately and regularly publicize to all retail customers that prices to some are higher than to others, together with reasons and details of the price differences or discounts.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this modified order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

MICHAEL J. MILLER ET AL. TRADING AS TRACER RESERVE
FUND

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

Docket 8724. Complaint, Dec. 27, 1966—Decision, Aug. 21, 1967

Order requiring a St. Louis, Missouri, operator of a debt collection business and his wife to cease misrepresenting the purpose of respondents' business, that any money or any other thing of value is being held for delinquent debtors, using any form which does not reveal true intent of asking for information, and misrepresenting that respondents maintain a Chicago office.

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 Michael J. Miller and Ida Miller, his wife, individuals trading and doing business as Tracer Reserve Fund, 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. Respondents Michael J. Miller and Ida Miller, his wife, are individuals trading and doing business under the name of Tracer Reserve Fund, with their office and principal place of business located at 4 North Eighth Street, St. Louis, Missouri. They formulate, control and direct the policies, acts and practices hereinafter set forth.

PAR. 2. In the course and conduct of their business, respondents are now, and for some time last past have been, receiving accounts for collection, and requests for the location of alleged delinquent debtors from persons, firms, and businesses, located both in and outside the State of Missouri.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the business of preparing and transmitting through the mails, a printed form and other material for use in locating alleged delinquent debtors. Respondents cause said printed form and other material including letters, checks, and documents to be transported from their place of business in the State of Missouri to a mailing address located at 2349 West Devon, Chicago, Illinois, from which address, said form and other material are mailed to addressees located in the various States of the United States. Respondents maintain, and at all times herein mentioned have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents frequently desire to obtain information as to the current address, place of employment, social security number and other pertinent information as to persons whose alleged delinquent accounts the respondents are seeking to collect. For this purpose respondents use, and have used, a certain printed form.

The form is designated "Tracer Reserve Fund" and consists of a single sheet of paper with printing thereon, by which recipient is told that "we are holding a small sum of money for you, upon the return of this form, and the information proves it is correct, we will send this money to you."

The form letter then sets out questions which, if answered, provide information considered to be of value, in the collection of accounts owed or alleged to be owed by the addressee, or in the location of witnesses. These printed forms are mailed under separate cover to a secretarial service mail drop, located in Chicago, Illinois, at 2349 W. Devon Avenue, from where they are then mailed out to the addressee. When replies are received by this

secretarial service mail drop, at 2349 W. Devon Avenue, Chicago, Illinois, they are then mailed in a separate cover to respondents at 1252 Mt. Olive Street, University City, Missouri.

PAR. 5. Through use of the mail drop address at 2349 W. Devon Avenue, Chicago, Illinois, respondents represent, directly or by implication, to addressees to whom the forms are mailed, that business offices are maintained in the city of Chicago, Illinois.

PAR. 6. The aforesaid representations and implications, that respondents maintain business offices in the city of Chicago, Illinois, are false, misleading and deceptive. In truth and in fact, respondents do not maintain business offices in the city of Chicago, Illinois, or in any place other than University City, Missouri. Said mail drop address is used to mislead persons, to whom form is sent, and to conceal respondents' correct business address.

The respondents check the returned forms for information, and then relay the pertinent information to the requesting party or parties.

Said form is designed to be forwarded to addressee in envelopes provided by respondents, in which is enclosed a return envelope addressed to "Tracer Reserve Fund, 2349 W. Devon Avenue, Chicago (45), Illinois."

PAR. 7. The printed form used by respondents is as follows:

Tracer Reserve Fund
2349 W. Devon
Chicago (45), Ill.

No.

If you are the right person, we are holding a small sum of money for you. Upon return of this form, and the information proves it is correct, we will send this money to you.

Inclosed you will find a stamped envelope for your reply.

We tried to locate you at this address: _____

HUSBAND'S NAME _____ EMPLOYED BY _____

ADDRESS _____

DEPT. _____ SOCIAL SEC. NO. _____

WHERE YOU LIVED PREVIOUSLY _____ PHONE NO. _____

WIFE'S NAME _____ EMPLOYED BY _____

ADDRESS _____

DEPT. _____ SOCIAL SEC. NO. _____

REFERENCE _____ ADDRESS _____ PHONE NO. _____

REFERENCE _____ ADDRESS _____ PHONE NO. _____

Please fill out correctly and return to us within Five (5) days.

Complaint

72 F.T.C.

THIS INFORMATION MUST BE PRINTED. IT IS IMPORTANT THAT WE HAVE THIS INFORMATION CORRECT IN ORDER THAT WE CAN DELIVER THIS CHECK TO THE RIGHT PERSON. WITHOUT DELAY.

Signed _____
Dated _____

PAR. 8. Through the use of the name "Tracer Reserve Fund," and the statement, "If you are the right person, we are holding a small sum of money for you. Upon the return of this form, and the information proves it is correct, we will send this money to you," and by other words on the said form, respondents represent, directly or by implication, to those to whom the form is mailed, that respondent has been named as a depository of a reasonably substantial sum of money to be delivered to the recipients of said form upon proper identification and by furnishing all of the requested information.

PAR. 9. In truth and in fact, respondents are not engaged in any fiduciary or other capacity to receive money for the persons to whom the forms are sent, and the only money sent them is in the sum of twenty-five cents via respondents' check. Respondents use this form to seek the information solely for the purpose of locating alleged delinquent debtors by subterfuge. This practice constitutes a scheme to mislead and conceal the purpose for which the information is sought.

Therefore, the aforesaid statements and representations set forth in Paragraphs Seven and Eight were, and are, false, misleading and deceptive.

PAR. 10. The use, as hereinabove set forth, of said form has had, and now has, the tendency and capacity to mislead and deceive persons to whom said form is sent into the erroneous and mistaken belief that the said representations and implications are true and to induce the recipients thereof to supply information which they otherwise would not have supplied.

PAR. 11. 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. J. Leon Williams and Mr. Alan M. Silbergeld for the Commission.

Mr. Michael J. Miller pro se.

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Initial Decision

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

JULY 7, 1967

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on December 27, 1966, alleging that the respondents engaged in unfair methods of competition and unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act. More specifically, the respondents were charged with using false and deceptive forms for the purpose of collecting delinquent accounts. A copy of the complaint was served upon the respondents, who filed an admission answer* waiving the right to a hearing and consenting to the issuance of the order attached to the complaint. Based upon the entire record consisting of the complaint, the respondents' admission answer and other matters of record, the hearing examiner makes the following findings of fact, conclusions drawn therefrom and issues the following order:

FINDINGS OF FACT

1. Respondents Michael J. Miller and Ida Miller, his wife, are individuals trading and doing business under the name of Tracer Reserve Fund, with their office and principal place of business located at 4 North Eighth Street, St. Louis, Missouri. They formulate, control and direct the policies, acts and practices hereinafter set forth.

2. In the course and conduct of their business, respondents are now, and for some time last past have been, receiving accounts for collection, and requests for the location of alleged delinquent debtors from persons, firms, and businesses, located both in and outside the State of Missouri.

3. Respondents are now, and for some time last past have been, engaged in the business of preparing and transmitting through the mails, a printed form and other material for use in locating alleged delinquent debtors. Respondents cause said printed form and other material including letters, checks, and documents to be transported from their place of business in the State of Missouri to a mailing address located at 2349 West Devon, Chicago, Illinois, from which address, said form and other material are mailed to

* Respondents' answer was filed May 23, 1967, the date the matter was set for hearing in St. Louis, Missouri. During the course of a prehearing conference held by the undersigned examiner prior to the opening of a formal hearing, respondents jointly executed their admission answer to the complaint.

addressees located in the various States of the United States. Respondents maintain, and at all times herein mentioned have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business, respondents frequently desire to obtain information as to the current address, place of employment, social security number and other pertinent information as to persons whose alleged delinquent accounts the respondents are seeking to collect. For this purpose respondents use, and have used, a certain printed form.

The form is designated "Tracer Reserve Fund" and consists of a single sheet of paper with printing thereon, by which recipient is told that "we are holding a small sum of money for you. Upon the return of this form, and the information proves it is correct, we will send this money to you."

The form letter then sets out questions which, if answered, provide information considered to be of value, in the collection of accounts owed or alleged to be owed by the addressee, or in the location of witnesses. These printed forms are mailed under separate cover to a secretarial service mail drop, located in Chicago, Illinois, at 2349 W. Devon Avenue, from where they are then mailed out to the addressee. When replies are received by this secretarial service mail drop, at 2349 W. Devon Avenue, Chicago, Illinois, they are then mailed in a separate cover to respondents at 1252 Mt. Olive Street, University City, Missouri.

5. Through use of the mail drop address at 2349 W. Devon Avenue, Chicago, Illinois, respondents represent, directly or by implication, to addressees to whom the forms are mailed, that business offices are maintained in the city of Chicago, Illinois.

6. The aforesaid representations and implications, that respondents maintain business offices in the city of Chicago, Illinois, are false, misleading and deceptive. In truth and in fact, respondents do not maintain business offices in the city of Chicago, Illinois, or in any place other than University City, Missouri. Said mail drop address is used to mislead persons, to whom form is sent, and to conceal respondents' correct business address.

The respondents check the returned forms for information, and then relay the pertinent information to the requesting party or parties.

Said form is designed to be forwarded to addressees in envelopes provided by respondents, in which is enclosed a return envelope addressed to "Tracer Reserve Fund, 2349 W. Devon Avenue, Chicago (45), Illinois."

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Initial Decision

7. The printed form used by respondents is as follows:

Tracer Reserve Fund
2349 W. Devon
Chicago (45), Ill.

No.

If you are the right person, we are holding a small sum of money for you. Upon return of this form, and the information proves it is correct, we will send this money to you.

Inclosed you will find a stamped envelope for your reply.

We tried to locate you at this address: _____

HUSBAND'S NAME _____ EMPLOYED BY _____

ADDRESS _____

DEPT. _____ SOCIAL SEC. NO. _____

WHERE YOU LIVED PREVIOUSLY _____ PHONE NO. _____

WIFE'S NAME _____ EMPLOYED BY _____

ADDRESS _____

DEPT. _____ SOCIAL SEC. NO. _____

REFERENCE _____ ADDRESS _____ PHONE NO. _____

REFERENCE _____ ADDRESS _____ PHONE NO. _____

Please fill out correctly and return to us within Five (5) days.

THIS INFORMATION MUST BE PRINTED. IT IS IMPORTANT THAT WE HAVE THIS INFORMATION CORRECT IN ORDER THAT WE CAN DELIVER THIS CHECK TO THE RIGHT PERSON. WITHOUT DELAY.

Signed _____

Dated _____

8. Through the use of the name "Tracer Reserve Fund," and the statement, "If you are the right person, we are holding a small sum of money for you. Upon the return of this form, and the information proves it is correct, we will send this money to you," and by other words on the said form, respondents represent, directly or by implication, to those to whom the form is mailed, that respondents have been named as a depository of a reasonably substantial sum of money to be delivered to the recipients of said form upon proper identification and by furnishing all of the requested information.

9. In truth and in fact, respondents are not engaged in any fiduciary or other capacity to receive money for the persons to whom the forms are sent, and the only money sent them is in the sum of twenty-five cents via respondents' check. Respondents use

this form to seek the information solely for the purpose of locating alleged delinquent debtors by subterfuge. This practice constitutes a scheme to mislead and conceal the purpose for which the information is sought.

Therefore, the aforesaid statements and representations set forth in Paragraphs 7 and 8 were, and are, false, misleading and deceptive.

10. The use, as hereinabove set forth, of said form has had, and now has, the tendency and capacity to mislead and deceive persons to whom said form is sent into the erroneous and mistaken belief that the said representations and implications are true and to induce the recipients thereof to supply information which they otherwise would not have supplied.

CONCLUSIONS

1. The aforesaid acts and practices of respondents, as herein found, 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 Federal Trade Commission has jurisdiction of and over respondents and of the subject matter of this proceeding.

3. The complaint herein states a cause of action and this proceeding is in the public interest.

4. The order, as hereinafter set forth, follows the form of the order contained in the complaint and is also the order agreed to by the parties.

After due consideration, the hearing examiner believes that such order is appropriate and may be entered.

ORDER

It is ordered, That respondents Michael J. Miller and Ida Miller, individuals trading and doing business as Tracer Reserve Fund, or under any other name or names, and respondents' 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 materials, for use in obtaining information concerning delinquent debtors, or in the collection of, or attempting to collect accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "Tracer Reserve Fund" or any other name of similar import to designate, describe or refer to respondents' business, or otherwise misrepresenting the purpose for which information is sought.

2. Representing, directly or by implication that money or any other thing of value has been deposited with respondents for persons from whom information is sought, unless or until the money or other thing of value has in fact been so deposited, and then only when the exact sum of money or the exact nature of the other thing of value, is clearly and expressly disclosed and described.

3. Using, or placing in the hands of others for use, any form, questionnaire, or other material printed or written, which does not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning alleged delinquent debtors.

4. Representing, directly or by implication, that respondents maintain business offices in Chicago, Illinois, or in any other city other than where business offices of respondents are actually maintained.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1967), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 21st day of August 1967, become the decision of the Commission.

It is further ordered, That respondents, Michael J. Miller and Ida Miller, individuals trading and doing business as Tracer Reserve Fund, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Complaint

72 F.T.C.

IN THE MATTER OF

BEST & CO. INC.*

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

*Docket 8669. Complaint,** November 1, 1965—Decision, September 7, 1967*

Order requiring a New York City corporation and its subsidiary, engaged in the sale at retail of wearing apparel and accessories, to cease knowingly inducing or receiving discriminatory promotional allowances from their suppliers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent herein, Best & Co., Inc., has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45), and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 645 Fifth Avenue, New York, New York.

PAR. 2. Respondent is principally engaged in the purchase, sale and distribution of retail merchandise, including wearing apparel and accessories such as, but not limited to, costume jewelry, handbags, footwear, umbrellas, gloves and timepieces. It sells to thousands of consumers through 21 retail outlets located in 10 States and the District of Columbia. Respondent's total net sales for its 1964 fiscal year amounted to nearly \$50 million.

PAR. 3. In the course and conduct of its business, respondent is, and has been for several years last past, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases products from suppliers located in various States of the United States, and in some cases causes such products to be shipped from such suppliers to itself across state lines. In other cases, in response to orders placed by respondent with suppliers for future delivery of products, such products are caused to be manufactured and to be transported across State lines to such suppliers for delivery to respondent. The products which respondent receives from its suppliers are shipped by respondent

* Beco Industries Corporation is the successor corporation.

** The name of respondent, as it appears in the complaint, erroneously contains a comma after the word "Co." See initial decision p. 529.