

Complaint

72 F.T.C.

IN THE MATTER OF  
FEDERATED BUREAU OF INSTALLMENT CREDIT, INC.,  
ET AL.

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

*Docket 8700. Complaint, July 29, 1966—Decision, Sept. 7, 1967.*

Order requiring a Blue Island, Ill., collection agency to cease misrepresenting its status, place of business, and using legal-appearing documents.

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 Federated Bureau of Installment Credit, Inc., a corporation, and William E. Dykstra, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Federated Bureau of Installment Credit, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 12669 South Western Avenue, Blue Island, Illinois.

Respondent William E. Dykstra is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of operating a collection agency, under the name Federated Bureau of Installment Credit, Inc.

Respondents solicit and receive accounts for collection from business and professional people located in Illinois and other States. In carrying out their aforesaid collection business, respondents have engaged, and are now engaged, in extensive commercial intercourse in commerce among and between the various States of the United States, including the transmission and receipt of monies, checks, collection letters, forms, contracts and other written instruments.

In carrying out their aforesaid collection business, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals engaged in the business of collecting alleged delinquent accounts.

PAR. 4. Through the use of the word "Federated" as a part of their trade name, said respondents represented and now represent, directly or by implication, that the corporate respondent is an organization having members.

PAR. 5. In truth and in fact, the corporate respondent has no members, but, on the contrary, the sole business of respondents is the operation of a collection agency from a single office located in Blue Island, Illinois.

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

PAR. 6. Respondents, in the course and conduct of their aforesaid business, and for the purpose of inducing individuals, firms and corporations to assign accounts to the respondents for collection, as well as aiding in making collections from debtors, have made certain statements and representations, directly or by implication, with respect to their business. Typical, but not all inclusive of such statements and representations, are the following:

1. Nation-wide collections and corresponding attorneys.
2. Donald N. Adams, Collection Department.
3. P. Lawson, Manager, Collection Department.
4. Copy—Legal Forwarding Department Investigator.
5. P. Nelson, Investigation Department.
6. B. Peters, Collection Department.
7. C. L. Ingrahm, Legal Forwarding Department.
8. C. Roberts, Auditing Department.
9. L. D. Todd, Manager, Legal Forwarding Department.
10. P. Lawson, Pre-Trial Department.
11. Regional Office.

PAR. 7. By and through the use of the aforesaid statements and representations set forth in Paragraph Six hereof, and others of similar import and meaning but not expressly set out herein, respondents represented, and now represent, directly or by implication, that:

1. The business of the respondents is nationwide in scope and that they have nationwide corresponding attorneys and collectors directly affiliated and connected with them.

2. The business of respondents is departmentalized and they employ a large staff of employees.

3. That the corporate respondents' Blue Island office is a regional office of Federated Bureau of Installment Credit, Inc.

PAR. 8. In truth and in fact:

1. The business of the respondents is not nationwide in scope and does not have nationwide corresponding attorneys or collectors directly affiliated and connected with them.

2. The business of the respondents is a small one, with no departments, one office and only a few employees to assist the individual respondent.

3. Respondents' Blue Island office is not a regional office of Federated Bureau of Installment Credit, Inc., and such office is the sole place of business of respondents.

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

PAR. 9. In the course and conduct of their collection business, and for the purpose of inducing the payment of alleged delinquent accounts, respondents transmit and mail, and cause to be transmitted and mailed, to alleged delinquent debtors, various form letters, demands for payment, requests for information, and other printed material.

Typical and illustrative of respondents' forms, but not all inclusive thereof, is the following:\*

PAR. 10. By and through the use of the aforesaid form and the statements and representations set forth therein and others of similar import and meaning but not expressly set out herein, respondents represented, and now represent, directly or by implication, that said "Final Demand" document in form and content is an official document duly issued or approved by a court of law.

PAR. 11. In truth and in fact, said "Final Demand" form is not an official document duly issued or approved by a court of law, but on the contrary is wholly private in its origin.

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

\*The form "Final Demand Prior to Suit Process" omitted in printing.

PAR. 12. The use by respondents of the foregoing false, misleading and deceptive representations and practices has had, and now has, the tendency and capacity to mislead a substantial number of creditors and debtors into the erroneous and mistaken belief that such representations were, and are, true, and into the assignment of accounts to it for collection and in the collection of monies from debtors because of such mistaken and erroneous belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

*Mr. John T. Walker*, supporting the complaint.

*Mr. William A. Cain*, of Chicago, Ill., for respondents.

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

APRIL 6, 1967

This is a proceeding under Section 5 of the Federal Trade Commission Act against a collection agency and the officer who formulates, directs, and controls its acts and practices. The complaint alleges unfair methods of competition as well as deceptive acts, in commerce. The alleged misrepresentations fall in three categories, as follows:

Use of the word "Federated" in the corporate name, allegedly implying a federation of members (or affiliates).

Misrepresentations generally, by implication, in letters and notices (mostly to debtors).

Simulation of court forms in Final Demand forms (sent to debtors).

There is a defense of discontinuance as to most of the representations, including those in the Final Demand forms or notices, but not, of course, as to the use of "Federated" in the corporate name.

If the use of the name "Federated" is deceptive there is a question as to whether or not the corporate name can still be lawfully used if supplemented by appropriate qualifications, or otherwise qualified.

Finally, should it be found that any cease and desist order should issue herein, there is the question as to whether the individual respondent officer is to be named individually in the order, or only in his capacity as an officer.

A prehearing conference was held herein and, due to the excellent cooperation of counsel on both sides, stipulations between them of production of documents and free disclosure, it was possible to try this case in a single day.<sup>1</sup> Both sides submitted proposed findings of fact, although respondents' proposed findings are rather brief and not in the usual form. Both sides submitted written discussion on the law or legal argument.

Any pending motion which has not been disposed of in this proceeding is to be deemed disposed of in accordance with and consistently with the present decision.

#### FINDINGS OF FACT

The following are the findings of fact herein, supplemented by such findings as may be made in the course of the discussion immediately following the present formal findings. All proposed findings of fact not found herein are disallowed.

1. Respondent Federated Bureau of Installment Credit, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 12669 South Western Avenue, Blue Island, Illinois.

(Admitted in answer by omission to deny. Further admitted at prehearing conference (R. 4-5).)

Respondent William E. Dykstra is an individual and an officer of the corporate respondent. His address is the same as that of the corporate respondent.

(Admitted in answer by omission to deny.)

He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. He (with his wife) owns the majority of the corporate stock. He derives most of his personal income through the corporation.

(Admitted at the prehearing conference (R. 5, 7), reserving, however, the question of his individual liability. See discussion under INDIVIDUAL LIABILITY, pp. 579-585, *infra*.)

2. Respondents are now, and for some time last past have been, engaged in the business of operating a collection agency, under the name Federated Bureau of Installment Credit, Inc.

(Admitted in answer by omission to deny. Also admitted by stipulation at the prehearing conference (R. 8).)

3. Respondents solicit and receive accounts for collection from business and professional people located in Illinois and other

<sup>1</sup> The only witness was the respondent officer.

States. In carrying out their aforesaid collection business, respondents have engaged, and are now engaging, in extensive commercial intercourse in commerce among and between the various States of the United States, including the transmission and receipt of monies, checks, collection letters, forms, contracts, and other instruments.

(Admitted in the answer by omission to deny, and by stipulation at the prehearing conference (R. 9-10).)

The other States referred to in the immediately preceding paragraph are a large number of States, including such States as California, Texas, Louisiana, and New York.

(Stipulated by counsel on both sides (R. 9).)

In carrying out their aforesaid collection business, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

(Admitted in answer by omission to deny and by stipulation at prehearing conference (R. 9-10).)

4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms, and individuals engaged in the business of collecting alleged delinquent accounts.

(Admitted in answer by omission to deny and by stipulation at prehearing conference (R. 10).)

#### *"Federated"*

5. Through the use of the word "Federated" as part of the trade name of corporate respondents, and so using the word in conducting their business, said respondents represented, and now represent, to a substantial segment of the public,<sup>2</sup> that the corporate respondent is an organization having members, or affiliates constituting members thereof. This is so, although it is also found that the use of the word "Federated" in the corporate name and respondents' business may also mean, to a substantial segment of the public, nothing more than an arbitrary name to distinguish one corporation or business from another.

(This finding is based on the examiner's own reading of the corporate name. There were no witnesses on this question.)

6. In truth and in fact the corporate respondent has no members, or member affiliates, but, on the contrary, the sole business of

<sup>2</sup> The examiner does not regard the use of the name "Federated" as deceptive—that is, substantially deceptive—to debtors, as contrasted with creditors.

respondents is the operation of a collection agency from a single office located in Blue Island, Illinois.

Accordingly, the use of the word "Federated" in the corporate name, as set forth in paragraph 5 hereof, was and is false, misleading, and deceptive. The alternative meaning, of being only an arbitrary name to distinguish one corporation or business from another, serves only to confuse and does not cure the deception. However, it may make possible the continued use of the corporate name with proper qualifications.

(The conclusion in the second paragraph, immediately above, is the examiner's. There were no witnesses on the question. See discussion herein under FEDERATED, p. 585 ff., permitting qualification of "Federated.")

#### *Misrepresentations Generally*

7. Respondents, in the course and conduct of their aforesaid business, and for the purpose of promoting their business, have made certain statements and representations, directly or by implication, with respect to their business. Such statements and representations include the following:

1. Nation-wide collections and corresponding attorneys.
2. Donald N. Adams, Collection Department.
3. P. Lawson, Manager, Collection Department.
4. Copy—Legal Forwarding Department Investigator.
5. P. Nelson, Investigation Department.
6. B. Peters, Collection Department.
7. C. L. Ingrahm, Legal Forwarding Department.
8. C. Roberts, Auditing Department.
9. L. D. Todd, Manager, Legal Forwarding Department.
10. P. Lawson, Pre-Trial Department.
11. Regional Office.

(Admitted by stipulation at prehearing conference (R. 16, 18). This is Par. Six of complaint, omitting the alleged purpose.)

The purpose in making the foregoing statements and representations has not been quite as alleged in the complaint, but has been mostly in aiding in obtaining collection from debtors, rather than obtaining accounts from creditors. More specifically the purpose in respect to each of the statements and representations has been as follows:

As to No. 1 ("Nation-wide collections and corresponding attorneys"), this has, indeed, been a representation to creditors, being part of respondents' letterhead, appearing on letters sent to creditors, *i.e.*, clients. (See CX 13, 16, 19, 24, 25, 26.)

As to No. 2 through No. 10 ("Donald N. Adams, Collection Department," etc.), these representations collectively have been for the sole purpose of aiding in collecting accounts from debtors. Each of the representations appears as a signature or subscription on a form obviously intended for a debtor (CX 7, 8, 9, 10, 20, 21, 22). (The examiner, however, does not regard these representations to debtors as being substantial representations or of sufficient consequence or public interest to warrant a cease and desist order.)

An examination of the record shows that three of these representations also appear as signatures or subscriptions to letters or papers sent by respondents to creditors, actually existing clients of theirs. These are No. 2 ("Adams, Collection Department," CX 18), No. 8 ("C. Roberts, Auditing Department," CX 17, 19), and No. 10 ("P. Lawson, Pre-Trial Department," or Pre-Legal, CX 13). This proof of the making of only these few representations to creditor-clients is regarded as nonsubstantial in sustaining the allegation of the complaint that representations No. 2 through No. 10 were made for the purpose of inducing concerns to assign accounts to respondent for collection.

No. 11 ("Regional Office"), indicating respondents' sole office is a regional office, is a representation made to both creditors and debtors, usually appearing as part of a caption. (As to debtors see CX 4, 21, 22, and 23. As to creditors see CX 16, 17, 19, 24, 25, 26.) This representation has been discontinued except for CX 4 to the debtor, which is simply a notice of assignment to respondents of the debt.

The proper names, such as Donald N. Adams, P. Lawson, etc., are concededly fictitious, but complaint counsel has not challenged this practice. (R. 128-29.) Moreover, there is testimony (Dykstra, R. 128-29) that fictitious names are necessary to protect the senders of dunning letters or notices from physical violence by irate debtors or recipients. The same testimony is that fictitious names serve as a coding device to trace answers not setting forth a file number and to make possible an evaluation of the effectiveness of different forms. Complaint counsel recognized the purpose (R. 128, 1. 16-18).

8. By and through the use of the aforesaid statements and representations set forth in paragraph 7 hereof, and others of similar import and meaning, respondents have represented, directly or by implication, as follows:

I. The business of the respondents is nationwide in scope and respondents have nationwide corresponding attorneys and collectors. There is no representation, however, that respondents, as

contended by complaint counsel, had "attorneys and collectors directly affiliated and connected with them."

(This relates to No. 1 of the representations and statements set forth above.)

II. The business of respondents is departmentalized—in the sense of containing full-fledged departments as generally and ordinarily understood, and containing all of the various departments above enumerated; and respondents employ a large staff of employees.

(This summarizes the combined meaning of all the statements and representations No. 2 through No. 10 above, made to debtors, as found above.)

III. The corporate respondents' Blue Island office is a regional office of Federated Bureau of Installment Credit, Inc.

(This is representation No. 11, now discontinued except as to one form sent to debtors, as noted above.)

9. The truth and fact may be stated as set forth immediately following:

I. The business of respondents is indeed nationwide in scope, as demonstrated by their undisputed nationwide collections and collection activity (if not by very large dollar volume) and by respondents' full and substantial involvement in interstate commerce, also undisputed.

(The nationwide character of respondents' business is conceded by complaint counsel in an operating sense, by reason of respondents' nationwide collections with the aid of attorneys, collectors, and account solicitors, retained in other States. However, it is not conceded as to business "structure," a term stressed by complaint counsel, by, for instance, having various offices throughout the country instead of only one in a single State, and by directly employing on a permanent basis attorneys, collectors, or business solicitors throughout the country (R. 26, 27). Respondent Dykstra testified that respondents have been doing their business in at least 50 States, and even in foreign countries (R. 131).)

Moreover, respondents do have corresponding attorneys and collectors, as is also conceded. It is true that said attorneys and collectors are not directly affiliated and connected with respondents, but, as already found, there has been no representation that they are directly affiliated and connected.

(The examiner declines to find, as proposed by complaint counsel, that respondents represent that they have "attorneys and collectors directly affiliated and connected with them." This is the representation made essentially to creditor-clients. The examiner rules that the words "corresponding attorneys" mean just what they say, and

no more—as attested to by dictionary definition, by recognized manuals of “corresponding attorneys,” and by the understanding of lawyers, creditors, and the public, certainly the commercial public, generally. The examiner rules that the words here imply nothing about direct affiliation or direct connection with respondents’ collection agency and its collecting lawyers. If the word “Federated” in the corporate name, used together with “corresponding attorneys,” tends to imply anything to the contrary, this may be corrected by qualifying the corporate name.)<sup>3</sup>

II. The business of respondents is a small one<sup>4</sup> having no departments in number and structure justifying respondents’ representations herein, and having only a few employees. This lack of departments in a realistic sense may be distinguished from a certain amount of departmentalization, *i.e.*, of collection efforts, as is inevitable in a business of this sort.

(However, as already indicated herein, respondents’ representations of having departments, No. 2 through No. 10, are not regarded as substantial misrepresentations (particularly as contrasted with departmentalization) to debtors or presumed debtors, to whom these representations have been essentially addressed.)

(Mr. Dykstra’s version of having departments is found in the record (R. 108–113). The list of “departments” with payrolls produced by respondents (CX 1, R. 69) turns up only four “departments”—Collection, Investigating, Legal Forwarding, and Auditing, of which the latter two “departments” appear to be quite minor judging by payroll figures. This contrasts with the full number of departments represented to debtors. But, to repeat, the examiner finds there is no substantial misrepresentation.)

Accordingly, the statements and representations No. 1 through No. 10, as set forth in paragraphs 7 and 8 hereof, are, most of them, not false, misleading, and deceptive. They are false, misleading and deceptive only as follows:

I. No. 1, the representation by respondents of “Nation-wide

<sup>3</sup> See also *Nation-wide Collections, and Corresponding Attorneys*, p. 592, *infra*.

<sup>4</sup> Respondents have in all only one small office location. On one floor there is office space of 21’ x 70’, on another floor office space of 10’ x 14’ and 12’ x 16’ (Dykstra, R. 110). So-called departments such as the Collection Department (R. 110), the Legal Forwarding Department (R. 110), and the Investigation Department (R. 112) do not have a separate room, or separate quarters. In a typical year there were 15 employees, apart from respondent Dykstra, president, and the vice president (CX 1, Dykstra, R. 107). The highest amount, \$3,680, was paid to the head of the “Collection Department,” with about \$2,000 paid to the next highest employee therein. Two employees of the “Investigating Department” each received an average of a little over \$2,000. One employee each in the “Auditing Department” and the “Legal Forwarding Department” received a little over \$1,000. All other employees received small amounts, some less than \$100 each (CX 1). Mr. Dykstra testified that employees moved around from one “department” to another (R. 110).

collections and corresponding attorneys," is *not* a misrepresentation and is not false, misleading, and deceptive.

(Respondents, it may be noted here, no longer use the expression "corresponding attorneys" but, instead have been using the words "attorney forwarding" (CX 6, R. 74,5).)

II. No. 2 through No. 10, the representations by respondents, essentially to debtors, that respondents' business has departments and that they employ a large staff of employees are not misrepresentations of substance in this case, although they are not entirely correct statements.<sup>5</sup> Moreover, they do not in any event warrant, in the public interest, the issuance of a cease and desist order.

(This finding, or conclusion, shall not be deemed to bar any future charges based on representations No. 2 through No. 10 not alleged in the present complaint.)

III. No. 11, the representation that respondents' one and only office—in Blue Island, Illinois—is a regional office is patently a substantial representation, at least as to creditors.

(However, entry of a cease and desist order thereon is subject to the defense of discontinuance.)

*"Final Demand" Form*

10. In the course and conduct of their business and for the purpose of inducing the payment of alleged delinquent accounts, the respondents in the past have used a certain form entitled, in Old English type, *Final Demand Prior to Suit Process* addressed to the debtor. A copy of one type of this form is made part of the complaint, although somewhat illegible and not offered in evidence. A copy of another type, very similar in all respects except that it is reduced in size and is more smartly printed, was offered and received in evidence as CX 15, and has been treated by counsel on both sides as typical, or as the form, or principal form, here in question.

The following is a facsimile copy of CX 15:

Federated Bureau of Installment Credit  
12669 S. Western Ave.      PHONE FULTON 8-4550      Blue Island, Ill.  
Final Demand Prior to Suit Process

Claim of Creditor:  
versus Debtor:

Dated, this \_\_\_\_\_ day of \_\_\_\_\_

in the Year of Our Lord, One Thousand

Nine Hundred and \_\_\_\_\_

To the above named Debtor Take Notice, that the above named Creditor claims

<sup>5</sup> See subheading Departments, pp. 592-593, *infra*.

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Initial Decision

an indebtedness from you of ...../100 Dollars; payment has been duly demanded, the above amount remaining unpaid and the same is now due and owing.

Unless you SATISFACTORILY EXPLAIN why said claim is unpaid and MAKE ARRANGEMENTS FOR SETTLEMENT thereof, action will be necessary, thereby adding expenses to the amount of said claim in the form of Court Costs, Attorney's Fees and Service Charges.

THIS DEMAND is made for the purpose of giving you a final opportunity to pay and to lay a foundation for action on said claim if the same is not paid. To Debtor: To settle this matter without further procedure and added expense remit the full amount of this claim direct to this office within Ten Days from above date.

IMPORTANT: Your Account has been assigned to this office for collection. ALL PAYMENTS MUST COME DIRECT TO OUR REGIONAL OFFICE, in the City of Blue Island, County of Cook and State of Illinois. USE THE ENCLOSED ENVELOPE.

Federated Bureau of Installment Credit, Inc.  
Per Attorney in Fact.

COPY - LEGAL  
FWDNG. DEPT.  
INVESTIGATOR

D.F.N.

The reverse side (half of it) is entitled "Final Notice Prior to Suit Process," in Old English type. It has a caption "Matter of ....., Creditor, versus ....., Debtor." At the bottom there is the corporate name and address.

(Respondents, in paragraph 5 of their answer, on page 3, admit, without expressly admitting anything further, that the form annexed to the complaint is or was "typical and illustrative of respondents' forms." The admittedly similar form CX 15 was received in evidence after respondents' counsel admitted that it had been used by respondents, although not for some time (R. 83, 1. 15, 16).)

The form "Final Demand Prior to Suit Process" (either type) has not been in use by respondents since about the end of 1964, the use thereof having been discontinued shortly after a visit by a representative of the Federal Trade Commission (Dykstra, R. 118; conceded by complaint counsel's memorandum of March 21, 1967, p. 3).

11. By and through the use of the aforesaid Final Demand "form and the statements and representations set forth therein" (complaint, Par. Ten) respondents did *not* represent (nor, of course, do they now represent) "that said Final Demand document in form and content is an official document duly issued or approved by a court of law" (complaint, Par. Ten). Accordingly, complaint

counsel's Proposed Finding 11, following the wording of the complaint, must be disallowed.

Actually, there is *nothing* in the "content" of the document implying that it is a court document (or a court approved document), which seems to be the gravamen of the charge in the complaint.

(The most that can plausibly be argued as to "form," the other element mentioned in the complaint, is that in general appearance, *i.e.*, without reading the document, it may look something like a court summons or similar process, although, as a matter of fact, it looks much more like a typical law stationer's form, such as is used to satisfy any legal requirement of formal demand prior to suit. As to "content," the other element mentioned in the complaint, or "statements and representations set forth," there is nothing in the text or content of the form, not even considering the Old English type therein, stating or implying that it is "an official document duly issued or approved by a court of law." Moreover, the form does have some possible lawful approval insofar as formal notice may be required before commencing suit, or some public policy sanction to avoid litigation and its expense whenever possible, which might have the general approval of the court. Finally, there is no showing in this case that the form was served personally, which is the usual way of serving a summons or similar process, and which might serve to prove a representation that the form is a court document or court approved.)<sup>6</sup>

12. In truth and in fact, said Final Demand form is, to be sure, not an official document duly issued by a court of law, or approved by a court of law, in the sense contemplated by the complaint, but it is wholly private in its origin. However, this does not mean that the form is without warrant of law or that it is completely outside the approval of courts of law which may be implied from general lawfulness.

(Actually, complaint counsel assumed the burden only of showing that the form was not "issued" by a court, not that it was not "approved" by a court, or not indirectly approved. This is brought out in the record (R. 129, 1. 14):

Q. In using the form CX 15, you didn't go to any court to get that issued, you just sent that out yourself, isn't that correct?

A. That is correct.

<sup>6</sup> See discussion under "Final Demand" forms, p. 593, distinguishing *Rushing v. F.T.C.*, 320 F. 2d 280, where the there pertinent forms were sent by creditors who did not sue, and not sent by a collection agency.

Accordingly, the statements and representations in respect to respondents' Final Demand form, as set forth in paragraphs 10 and 11 hereof, have not been proved to be false, misleading, and deceptive, as alleged in the complaint.

(The charge that the Final Demand form is deceptive is also, of course, subject to the defense of discontinuance.)

13. Accordingly, the only substantial misrepresentations by respondents found herein are the following two:

Use of the name "Federated."

Use of the description "Regional Office."

The use by respondents of the said false, misleading, and deceptive representations, and practices in making such representations, has had the tendency and capacity to mislead a substantial number of creditors into the erroneous and mistaken belief that the representations have been true, and into the assignment of accounts to respondents for collection because of such mistaken and erroneous belief.

The examiner declines to find, as alleged in Par. Twelve of the complaint and requested in complaint counsel's Proposed Finding 13, that the use of the foregoing representations or misrepresentations—and others—and the practices involved therein, has had an unlawful effect in the collection of monies from debtors. The examiner finds that the said representations and practices have been unsubstantial and inconsequential in respect to debtors, or presumed debtors, as distinguished from creditors who may be induced to retain respondents as a collection agency due to the representations and practices.

(The distinction here made between creditors and debtors does not change the general finding of misrepresentation but simply clarifies the issues. The examiner distinguishes the present case, where a collection agency makes organizational representations, from cases where such representations are made by creditors directly, and the creditors may have no intention to commence action.)

#### CONCLUSION

The aforesaid acts and practices of respondents,<sup>7</sup> more particularly their use of the word "Federated" in the corporate name, and their use of the representation "Regional Office," as found herein, were, and are, all to the prejudice and injury of the public and of respondents' competitors; and constituted, and now constitute, unfair methods of competition in commerce and unfair

<sup>7</sup> As to respondent Dykstra see INDIVIDUAL LIABILITY, pp. 579-585, *infra*.

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

(Although it appears that the representation "Regional Office" is used now only on one form, and that form is addressed to debtors, not creditors, it is, for one thing, tied up very closely with the representation "Federated" and warrants the same "Conclusion" as here reached on the use of "Federated.")

#### Discontinuance

As already indicated, respondents have discontinued certain of their representations or misrepresentations, but the legal result is not too significant for the purposes of withholding a cease and desist order covering the discontinued practices.

Toward the end of 1964, or perhaps closer to the middle of that year, respondents discontinued the following representations, as already noted:

Corresponding attorneys. (Not found to be misrepresentation.)

Regional Office. (Except for CX 4, to debtors.)

Final Notice form. (Not found to be misrepresentation.)

Since neither "Corresponding attorneys" or "Final Notice" form have been found to be a misrepresentation, a defense of discontinuance is unnecessary as to these two representations. This leaves over only the "Regional Office" representation.

But since all three representations were discontinued only after a Commission representative called on respondents there is doubt as to whether the defense of discontinuance would be available even if all three were actual misrepresentations.<sup>8</sup> The doubt therefore applies, of course, to "Regional Office," since it has definitely been found to be a misrepresentation.

Moreover, the representation "Regional Office" has not been fully discontinued, since it still is used on CX 4, a notice of assignment. Although CX 4 is addressed to the debtor, and its representation is therefore regarded by the examiner as unsubstantial in respect to the debtor or inconsequential as a matter of public interest, it does evidence a disposition of respondents, carelessly or otherwise, to cling to, or to fall back easily into, general use of the representation of having a regional office, although they have no such thing. It is also too closely tied in with the fully continued use of the name "Federated."

Accordingly, the defense of discontinuance is not sustained.

<sup>8</sup> *In the Matter of Bakers of Washington, Inc.*, F.T.C. Docket No. 8309, Dec. 3, 1964 [66 F.T.C. 1222], citing *Coro, Inc. v. F.T.C.*, 338 F.2d 149 (1st Cir. 1964).

For the purpose of fuller documentation herein, the facts as to discontinuance will be set forth in greater detail as follows:

*"Regional Office" and "Corresponding Attorneys."*—Both these representations were discontinued, and are no longer in use (Dykstra, R. 116). Instead of "Corresponding Attorneys"—*i.e.*, in "Nation-wide collections and corresponding attorneys"—respondents now use "Attorney Forwarding" (Dykstra, R. 116, 1. 8-10). They also, with one exception (CX 4), no longer use the representation "Regional Office" (Dykstra, R. 116, 1. 1-7). Mr. Dykstra made the decision to discontinue (Dykstra, R. 116, 1. 21). He did so at "Mr. Cain's suggestion that that apparently was what the Commission wanted and at his suggestion" (R. 116, 1. 12), Mr. Cain being respondents' attorney herein.

*"Final Demand" Form.*—CX 15, the Final Demand form, was similarly discontinued by respondent Dykstra (R. 116-17) on Mr. Cain's suggestion "[r]ight after it was brought to our attention that it might be objectionable" (Dykstra, R. 117, 1. 18). He stated that this was: "Before the end of '64" (R. 118, 1. 5). It was replaced (Dykstra, R. 118) by a form letter (CX 10) eliminating the features of the Final Demand form which have met with objection. Mr. Dykstra reaffirmed that he discontinued the Final Demand form in order to comply again with what he thought the Commission wanted (R. 119, 1. 2-3).

*In General.*—According to interrogatory statements by Mr. Cain, in which Mr. Dykstra acquiesced, discontinuance took place after a Mr. Nemes of the Chicago Office of the Federal Trade Commission called upon Mr. Dykstra (R. 133, 1. 21) and Mr. Cain discussed the Federal Trade Commission "guide lines" for "collection agencies" with him (R. 133, 1. 9-12).

#### Individual Liability

It is the examiner's conclusion—particularly in view of the restraint imposed herein on the use of the name "Federated," coupled with the facility with which respondent Dykstra, the dominant figure in the corporation, might change the form of his engaging in the collection business—that said respondent Dykstra should be named individually in the order to cease and desist from using this name "Federated"<sup>9</sup> and also from using the description "Regional Office," which is somewhat closely related.

*Joint Liability with Corporation.*—Joint liability of respondent Dykstra with the corporate respondent is indicated in all the formal Findings of Fact herein which expressly refer to the

<sup>9</sup> That is, unless properly qualified.

representations and conduct of the "respondents," i.e., both respondent Dykstra individually and the respondent corporation.

*Initiation of "Federated" Name by Dykstra.*—Respondent Dykstra himself (together with Marian L. Dykstra, presumably his wife, and listed in the papers at the same address as his) initiated the use of "Federated" in the corporate name by signing the corporate papers proposing the corporate name and leading to the creation of the corporation in 1952 (RX 1 B, 1 E). In addition, respondent Dykstra, as president of the corporation (RX 1 L), was the person who filed papers amending the purposes of the corporation in 1955, leaving unamended the Federated name. There is obviously no certification of legality under the Federal Trade Commission Act as to the use of the Federated name by the issuance of the corporate charter by the State of Illinois. Respondents' counsel's argument to the contrary must be rejected.

*"Regional Office" Supplements "Federated" Misrepresentation.*—So far as concerns the representation "Regional Office," also found to be deceptive herein, this representation is an obvious extension or supplement to the use of the misrepresentation "Federated" in the corporate name, and is therefore one of the acts and practices of the corporate respondent which respondent Dykstra admittedly formulates and controls. Thus, if he is individually responsible for "Federated" he is similarly responsible for "Regional Office."

*Individual Control, Etc., Admitted.*—As already found herein, respondent Dykstra:

formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. He (with his wife) owns the majority of the corporate stock. He derives most of his personal income through the corporation.

(Finding of Fact 1, par. 3 thereof, *supra*. Admitted at the prehearing conference (R. 5, 7) reserving, however, the question of individual liability.)

*Dykstra the President.*—Respondent Dykstra has been the president of the corporation and, it is reasonably safe to infer, has probably been president from the inception thereof to date. The record shows not only that he started the corporation, but that he was its president at least when the corporate papers were amended in 1955, and the record also shows that he was its president in 1964 (CX 1). Since there is no evidence or suggestion that he has ceased to be president, there is a presumption of continuation

as president, particularly considering that this is a small, closely held corporation, so that it is reasonably safe to conclude that Dykstra is president today. Being president of a corporation is, to be sure, no special evidence of control (which is admitted here in any event) nor, certainly of itself, any warrant for holding the officer individually liable. However, it is part of the entire picture and may be considered with all the other facts in connection with determining individual liability.

*Major Source of Dykstra's Income.*—The fact that respondent Dykstra (with his wife) owns the majority of the corporate stock and, perhaps more importantly, the fact that Dykstra derives most of his personal income from the corporation, are, as the examiner feels obliged to conclude, in the event that respondent Dykstra finds that he cannot “live” in his collection business without the unrestricted use of the name “Federated,” an inducement and temptation to him to change the form of the collection agency enterprise by operating the business individually, or perhaps, through himself or others, even under another corporate name still including “Federated” as part of the name or as a supplement thereto.

*Dykstra's Personal Discontinuance.*—The fact that respondent Dykstra controls the acts and practices of the corporation, as admitted by respondents, is vividly reinforced and illustrated in respect to discontinuance of certain of the representations in this case. As pointed out by complaint counsel, in their argument, and supplementary memorandum, and as fully documented in the discussion entitled *Discontinuance, supra*, it was respondent Dykstra personally who, after the contact by a Federal Trade Commission representative, discontinued the various representations which, it was thought, the Commission did not like—“Corresponding attorneys,” “Regional Office” (except CX 4), and the “Final Notice” form.

*Discontinued Only as to Lesser Matters.*—The examiner recognizes that respondent Dykstra's acts of discontinuance represent some evidence of good faith in complying with the law or, more accurately, what he testified was thought to be the Commission's desire. But these acts of discontinuance or indicia of good faith never got to such an ultra-basic and truly important issue as excising or severely qualifying “Federated” in the corporate name. (To be sure, there is no evidence or suggestion in the record as to whether this matter was brought to respondents' attention or whether they thought it was a matter the Commission desired to be corrected.)

Moreover, in relation to the somewhat related or somewhat comparable representation of "Regional Office," seeming to imply a number of other offices connected with the represented federated setup, it is significant that there was not full discontinuance, but that the representation is still continued in CX 4, the notice of assignment form sent to the debtor.

Thus it seems fair to state that discontinuance by respondent Dykstra was in respect to relatively lesser representations, not in respect to the major representations in this case, *i.e.*, that respondents represent a federation of collection agencies, and that they have various offices (by reason of representing that they have a regional office). Thus Dykstra's conduct in effectuating what discontinuance there was in this case is not too great an indication that he can be depended on not to try individually to frustrate a cease and desist order directed only against the corporation.

*His Discontinuance Was Equivocal.*—Moreover, respondent Dykstra, not only discontinued but also added representations. As pointed out by complaint counsel, Dykstra added to respondents' various forms the emblem of what looks like the typical American eagle, sitting atop of a globe, over which is printed the corporate name with its by-line (CX 6, 7, 8, 9, etc.). Although the examiner is not called upon to rule, and definitely does not rule, that this represents that respondents are connected with the United States Government (see Guide 3, of *Guides Against Debt Collection Deception*, 1965), it is not a reassuring factor in respect to Dykstra's dependability as to truly conforming with a Commission order, rather than subverting it directly or indirectly.

*"Special Circumstances."*—Accordingly, the examiner finds and concludes that there are "special circumstances" in this case, even apart from the nature of this one-man or two-man corporation operating a relatively small business, easily convertible or adaptable to other legal structures, including an individual operation under a trade name. These "special circumstances" warrant a conclusion that there is a reasonable likelihood that respondent Dykstra, if not named individually in the cease and desist order issued herein, which imposes drastic qualifications if the name "Federated" is continued to be used, may in effect circumscribe the provisions of the cease and desist order.

*Examiner's Exercise of Judgment.*—The examiner bases the above conclusion on what he regards as adequate findings of fact based on evidence and on the provision in his order prohibiting the use of the name "Federated" unless severely qualified. The con-

clusion is also definitely supported by the evaluation and judgment of the examiner—based on the evidence and the order, if not also on the examiner's personal observation at the hearing and study of argument—as to the normal possibilities or probabilities in respect to the future disposition of respondent Dykstra possibly to resort to evasion of the order, particularly by *lawful* means.

Here, for instance, it is obvious from the statements of respondents' counsel<sup>10</sup> in respondents' Proposed Findings, etc. (pp. 4-5), that respondents regard the present complaint as part of an attack by the Commission on collection agencies in general, as tending to deprive creditors of an adequate chance of collecting their debts, since few lawyers allegedly will take collection cases against small debtors, and as favoring the "skip" and the "dead-beat." The examiner refers to this not by way of passing on whether or not respondents have a substantial justification for making the argument, but in order to bring out that this attitude and frame of mind does not auger well as to good faith compliance by Mr. Dykstra with the spirit and terms of the cease and desist order appended hereto imposing drastic restrictions on use of the name "Federated," which he initiated—unless he is named.

Actually, it is the examiner's belief, although it is not necessary for him so to rule, that the problem of whether or not individual liability should be imposed on the officer of a corporation is analogous, if only to a limited extent, to the problem presented to a judge in passing sentence on a guilty defendant. The difference, of course, is that the problem is not punishment or guilt, but simply the likelihood of evasion of a cease and desist order.

The leading case on the individual liability of corporate officers is:

*Federal Trade Commission v. Standard Education Society*, 302 U.S. 112 (1937).

This case upheld an order of the Commission imposing individual liability on corporate officers on a finding that another "corporation was organized by the individual respondents for the purpose of evading any order" (p. 119). The court stated:

Since *circumstances*, disclosed by the Commission's finding and the testimony, are such that further efforts of these individual respondents to *evade* orders of the Commission *might be* anticipated, it was proper for the Commission to include them in its cease and desist order.<sup>11</sup>

<sup>10</sup> The name of said counsel also appears on the 1955 papers to amend the corporate name (RX 1 L).

<sup>11</sup> All emphasized words in this legal discussion on "Individual Liability" represent the examiner's emphasis.

There are other cases, some of them with a less clear showing, clearly establishing the proposition that the Commission has authority to enter an order to cease and desist against officers, directors, and stockholders of a corporation where necessary for the purpose of effectively prohibiting unfair trade practices and particularly to prevent evasion of a cease and desist order against the corporation:

*Coro, Inc. v. F.T.C.*, 338 F. 2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965).

*Pati-Port, Inc. v. F.T.C.*, 313 F. 2d 103, 105 (4th Cir. 1963).

*Surf Sales Company v. F.T.C.*, 259 F. 2d 744 (7th Cir. 1958).

*Standard Distributors, Inc. v. F.T.C.*, 211 F. 2d 7, 14-16 (2d Cir. 1954).

*Consumer Sales Corp. v. F.T.C.*, 198 F. 2d 404, 407-08 (2d Cir. 1952), *cert. denied*, 344 U.S. 912 (1953).

As above indicated, the examiner finds ample special circumstances or special reasons for imposing individual liability in the present case, which he regards as being within the established authorities.

In cases decided against the individual liability of corporate officers, the reason is the lack of special circumstances or of special reasons for imposing individual liability. Several of these cases will now be quickly reviewed, with short quotations from each, as well as emphasis on what are regarded by the examiner as some of the key words.

In *Maryland Baking Company*, D. 6237, 52 F.T.C. 1679 (1956), the Federal Trade Commission refused to impose individual liability on a corporate officer, stating that there was "no showing, moreover, of any *special circumstances* which would indicate a likelihood that Joseph Shapiro would consider an evasion of the order against the corporation." (P. 1691.) The Commission also noted "the absence of some *special reason* for naming Joseph Shapiro personally" (p. 1691).

In *Kay Jewelry Stores, Inc.*, D. 6445, 54 F.T.C. 548 (1957), the Commission decided against holding a corporate officer individually liable, stating that "where there is no record evidence showing justification" and where there are "no *other circumstances* pointing to the necessity of \* \* \*" (p. 561) imposing individual liability, none should be imposed.

In *Lovable Company*, D. 8620 (June 29, 1965) [67 F.T.C. 1326], the Commission did not impose individual liability on a corporate officer, stating that "there must be something in the record sug-

gesting that he would be likely to engage in these practices in the future as an individual." (67 F.T.C. at 1336.)

There are also some Court of Appeal cases of interest:

In *Bascom Doyle v. F.T.C.*, 356 F. 2d 381 (5th Cir. 1966), the Court of Appeals set aside an order imposing individual liability on corporate officers, stating that in Commission cases, as distinguished from criminal or penal cases, "individuals have only been included in the orders, in *almost* all instances, when deemed necessary to *prevent evasion*" (p. 383), and "there seems to be little reason for including corporate officers as individuals in the orders unless there is a *possibility* of evasion." (P. 384.)

In *Flotill Products, Inc. v. F.T.C.*, 358 F. 2d 224, 233 (9th Cir. 1966),<sup>12</sup> the court, in denying individual liability and reversing the Commission on this point, relied on the examiner's finding that there was "no showing and *no suggestion* of any *special circumstances* which would indicate a likelihood that the individual respondents would consider an *evasion* of any order which may be entered herein against the corporation." (P. 233.) The court pointed out that the Commission "relied on no other fact than that the three individuals owned and controlled the corporation" (p. 233), *i.e.*, on the "alter ego" doctrine, as it was referred to by the court (p. 233).

The examiner regards the present case as distinguishable from *Flotill* not merely by reason of the special circumstances or special reasons indicating a substantial possibility, if not probability, of evasion, arising out of the severe restrictions herein placed on the use of the name "Federated" in the present case, but also by the substantial structure and the financial size of the Flotill corporation, making the converting of the business into an individual enterprise, or utilizing some other device, relatively difficult as compared with doing so in the case of the present small corporation.

#### "Federated"

Although the examiner is loath to strike down a corporate name that has been used quite a few years, nevertheless he must at least find, on his own examination of the corporate name, that the use of the word "Federated" therein is deceptive to a substantial segment of the public involved in the corporate respondents' activities—although not, to be sure, deceptive to all the public. The

<sup>12</sup> Petition for certiorari filed, but not in respect to individual liability, 34 U.S. Law Week 2541 (No. 668). Accordingly, complaint counsel's quotation from the Commission opinion is not relied on herein.

representation "Federated" is particularly deceptive to creditors, *i.e.*, respondents' clients or potential clients.

It is true, as pointed out by respondents' counsel, that there is no independent or separate proof in this case that "Federated" is deceptive, or that anybody was deceived by the word. However, there is no requirement that there be such proof.

It is not necessary for the Commission to call members of the public as witnesses to prove that a misrepresentation is misleading.

*Zenith Radio Corporation v. F.T.C.*, 143 F. 2d 29, 31 (7th Cir. 1944).

*Charles of the Ritz Distributors Corporation v. F.T.C.*, 143 F. 2d 676, 680 (2nd Cir. 1944).

It has long been established that the representations themselves are evidence of their falsity.

*Aronberg v. F.T.C.*, 132 F. 2d 165, 167, 168 (7th Cir. 1942).

Actual deception need not be shown in a Federal Trade Commission proceeding; a showing of capacity to deceive is sufficient.

*Perloff v. F.T.C.*, 150 F. 2d 757, 759 (3rd Cir. 1945).

Reference may also be made to the following cases:

*F.T.C. v. Algoma Lumber Co.*, 291 U.S. 67, 81 (1934).

*F.T.C. v. National Health Aids, Inc.*, 108 F. Supp. 340, 346, 347 (U.S.D.C. Md., 1952).

"Federation" is a familiar word to the American public. Every child in school reads about the Articles of Confederation, connected with the Confederate States of America. There is the American Federation of Labor, steeped both in history and current events. There are various federations encountered in daily life, such as the Federation of Churches, Federation of Philanthropies, and other Federations, all familiar in their fuller titles.

"Federated," accordingly, is an adjective which, as applied to an organization, easily means to an ordinary person that the organization in question is a federation, and that it has member units or affiliates.

The dictionary definitions are clear as to the essential meaning of the related words "federation," "federate," and "federated":

*Webster's New International Dictionary, Second Edition, Unabridged*, has the following definitions:

|                 |                                                                            |
|-----------------|----------------------------------------------------------------------------|
| federate        | United by compact or league.                                               |
| federate (verb) | To unite in a league or federation.                                        |
| Federation      | A uniting by league or covenant.<br>A union of societies or organizations. |

*Webster's Third International Dictionary, Unabridged*, has the following definitions:

|                  |                                                        |
|------------------|--------------------------------------------------------|
| federate (adj.)  | united by compact; forming an alliance; FED-<br>ERATED |
| federate (verb)  | to unite into a league or alliance or federation       |
| federated church | [defined in accord with above]                         |
| federation       | a union of societies or organizations                  |

*Black's Law Dictionary, Third Edition*, contains the following definition:

|                |                                                                                                         |
|----------------|---------------------------------------------------------------------------------------------------------|
| Federate State | An independent central organism * * * absorbing<br>* * * all the individual states associated together. |
|----------------|---------------------------------------------------------------------------------------------------------|

The Federal Trade Commission in 1961 decided a case, in respect to the use of the word "Association" in a corporate name, which is strikingly close to the use of the word "Federated" in the corporate name here. The Commission struck down the use of "Association." The case is:

*United States Association of Credit Bureaus, Inc.*, 58 F.T.C. 1044 (1961), D. 7043, slightly modified, as to points not pertinent to the immediate discussion, 299 F. 2d 220 (7th Cir. 1962).

In said *Association of Credit Bureaus* case, the corporation was engaged in the business of collecting delinquent accounts (p. 1045), as is the corporate respondent in the present case. The Commission held explicitly that the name "Association" was deceptive inasmuch as the corporation was only a single business enterprise, not an association of business enterprises. The opinion states (p. 1051):

It is obvious from this record that respondents are nothing more than a single business enterprise and are not an association as that term is understood, of either credit bureaus or any other business enterprises. Their use of the word "Association" in their name is clearly false and deceptive and the hearing examiner was in error in not so ruling.

It may be that, more strictly, the holding in the case is that the use of the name "Association" was deceptive in connection with the use of the additional wording "Credit Bureaus" in the plural, the use of which was also prohibited by the order. This could conceivably be used to distinguish the case from the one at bar where the pertinent designation is "Federated Bureau," in the singular.

However, the examiner regards the use in the cited case of the word "Bureaus" in the plural, contrasted with the use here of "Bureau" in the singular, as fully compensated for by the broader meaning of "Federated." This is because the word "Federated," as understood generally and as defined in leading dictionaries, as elucidated above, and as used together with "Bureau," conveys a definitely extended meaning. It points to and represents the existence of a federation of member units, held together in a

"Bureau," itself a rather expansive term amply able to fit in easily with this construction of an affiliation of various member units or the like.

There is another Commission case involving the use of the word "Association," but without any reference to "Bureaus" or other constituent organization, which also tends to support this construction. The Commission in that case also struck down the use of the word "Association" in the corporate name. This case is:

*In the Matter of United States Retail Credit Association, Inc.*, 57 F.T.C. 1510 (1960), D. 7488, *aff'd* 300 F. 2d 212 (4th Cir. 1962).

In this *Retail Credit Association* case the corporation was engaged in selling collection forms and assisting in collecting accounts (p. 1518). It represented that the corporation was an association carrying on its business for members, which it was not (pp. 1518-19). To be sure it actively promoted its claim of having members, but respondent corporation here actively used the word "Federated" (p. 1517). The Commission had no hesitancy in striking down the use of the word "Association" (as well as "Credit Association") in the corporate name (p. 1520).

#### *Qualifying Words*

Respondents have submitted nothing, even by way of comment, in regard to the proposal in the complaint to prohibit absolutely the use of the word "Federated" in the corporate name, as represented to the public, or in regard to the continued proposal of complaint counsel to the same end.

However, the examiner is unable to agree with complaint counsel's insistence in his brief (pp. 6-7) that the use of the name "Federated" cannot be permitted even with qualification. The name has been found ambiguous by the hearing examiner, with one deceptive meaning, to be sure, but also one neutral meaning as just another corporate name (Finding of Fact 6, *supra*). Accordingly, it appears only reasonable that the ambiguity can be resolved by qualification, and the name "Federated," used by respondents for, presumably, some 15 years (RX 1 A), may continue to be used, *i.e.*, with suitable qualification.

The leading case in point is:

*F.T.C. v. Royal Milling Co.*, 288 U.S. 212, 217 (1933).

In that case the respondent corporation used the name Royal Milling Co., although the corporation was not engaged in manufacturing. The Commission directed it to cease and desist from using the name. The Supreme Court took a more tolerant view. In its opinion, it emphasized that trade names long in use are

"valuable business assets" (p. 217), and it stated that excision or absolute prohibition

should not be ordered if less drastic means will accomplish the same result. (P. 217.)

The case was remanded to be disposed of in conformity with the opinion (p. 218). A similar result is indicated here, in the case of a small business corporation.

Another leading case is:

*Jacob Siegel Co. v. F.T.C.*, 327 U.S. 608, 612, 613 (1946).

There the company used the trade name Alpacuna. The Commission held that this represented that the coats bearing this trade name contained the valuable fur known as vicuna, and it issued an order prohibiting the use of the trade name. The Court of Appeals was of the opinion that the *Royal Milling* case was no longer controlling, in view of the many cases establishing the Commissions' right to empower, although it did express the opinion that it thought excision or prohibition of the name to be too harsh a remedy.

The Supreme Court opinion in *Jacob Siegel Co.*, however, not only cited *Royal Milling* but quoted it to the effect that destruction of trade names "should not be ordered if less drastic means will accomplish the same result" (p. 612), as quoted above. It noted that the Commission had not given consideration to the possibilities of qualifying the corporate name (p. 613). It held that this should have been done, and, after reversing, remanded the case for further proceedings in conformity with the opinion.

It is of interest that the Federal Trade Commission later modified its cease and desist order, as recorded in 43 F.T.C. 256 (1946), D. 3403, so as to permit use of the trade name but only "if in immediate connection and conjunction therewith, wherever used, there appear words clearly and conspicuously designating all the constituent materials or fibers therein contained.

The only case relied on by complaint counsel herein is *Continental Wax Corporation v. F.T.C.*, 330 F. 2d 475, 479 (2nd Cir. 1964), which he quotes in part. This case relates to a trade name, to wit, "Continental Six Month Floor Wax." The Commission found that this trade name was a false representation that the wax would last as an effective floor covering for six months. The Commission gave consideration to whether or not the trade name could be qualified, and decided that this was not feasible.

The Court of Appeals, in affirming, fully recognized the authority and applicability of *Jacob Siegel, supra*. It stated that the

"Commission, adhering to the requirement imposed on it by the Supreme Court in *Jacob Siegel Co. v. F.T.C.* \* \* \* duly considered the possibility of not destroying petitioner's trade name through the use of qualifying words," but found that "such a remedy would not be feasible in this case" (p. 479).

The Court of Appeals correctly laid down the rule that qualifying words may cure deception caused by ambiguity in the trade name, as contrasted with the "clear and unambiguous false representation" in that case (p. 479). The Court of Appeals stated:

True, the use of qualifying language may often suffice to render harmless an otherwise deceptive trade name, but the effectiveness of qualifying language is usually limited to situations where the deception sought to be eliminated is created by an ambiguity in the trade name which permits a misleading inference to be drawn favorable to the trade-name product. In such a situation the deception can be conveniently cured by the sensible addition of qualifying words calculated to resolve this ambiguity and thus prevent the misleading interpretation which the trade name would otherwise permit. (P. 479.)

The examiner believes that respondents are entitled to consideration as to some possible lawful use of their corporate and trade name: First, the "Federated" name is definitely ambiguous, as fully pointed out heretofore and found—being deceptive in one respect, but not deceptive in the other—and thus comes within the permissive language of *Continental Wax*. Second, respondents have used the name for some fifteen years. Third, there is no proof whatever that the name "Federated" has been a dominant reason for their apparent success in obtaining clients in their interstate collection work. On the contrary, the presumption is that respondents, small operators, have obtained this success largely by their own efforts and ingenuity, and perhaps as the result of certain advantages, such as flexibility, in a small business operation.

The examiner has given considerable thought to possible methods of resolving the ambiguity in the name of the corporate respondent. In doing so he has been guided, of course, by the cases cited and partially quoted above. He has also been guided by the *Association of Credit Bureaus* case, relating to affiliates (bureaus), and *Retail Credit Association* case relating to claimed members—in both of which, of course, the name "Association" was stricken down.

It is the examiner's conclusion, after due deliberation, that the "Federated" name may be used in conjunction with the qualifying words "No Members or Affiliates," provided that these qualifying words be given reasonably comparable prominence to the "Federated" name.

This means that in the formal captions and subscriptions in respondents' letters and forms, or in other formal presentations of the "Federated" name in any material exposed to the public, the corporate name may properly be used as follows:

Federated Bureau of Installment Credit, Inc.

*(No Members or Affiliates)*

The stated use of these qualifying words assumes that they will be given emphasis at least equivalent to that indicated in the indentation. The emphasis should be much as if respondents definitely advertise with a degree of pride and independence their small business status. This type of emphasis accords with recognized advertising techniques regarded as being even helpful to a small concern, such as the use of the fairly common slogan, "Not Connected With Any Other Establishment."

It is also contemplated that respondents will use the qualifying words apart from formal presentation, *i.e.*, will use them whenever the "Federated" name, or any contraction thereof, is used. For example they may use the qualifying words in the text of ordinary correspondence or promotional material, to give examples. In such "informal" usage of the "Federated" name, the full presentation may properly be:

Federated Bureau of Installment Credit, Inc. (No Members or Affiliates),

or

Federated Bureau (No Members or Affiliates).

Although respondents may regard the method of qualification provided for herein as a harsh restriction, it seems to be as fair as can be provided for them in order to keep in compliance with the law. Moreover, the method is entirely feasible for them and practical.

The qualifying words can, presumably, be conveniently printed on their present forms and letterheads. If not, changes can be accomplished by new printings and new dies, the cost of which must be weighed against being prohibited from using the corporate name altogether. If the qualifying words are used in the text of correspondence, advertising, etc., their use is largely a matter of proper care or dictation on the part of respondents. The same is true of the words if used in the typed subscription to a letter, to take an example.

## In General

A few other matters will be discussed under this heading.

*"Nation-wide" Collections, and Corresponding Attorneys*

In holding that respondents herein have not misrepresented by using the word "Nation-wide," the examiner disagrees with complaint counsel's citation and quotation of the *Association of Credit Bureaus* case, *supra*, 58 F.T.C. 1044, 1054. In that case the misrepresentation was: "With our Nation Wide Associates, Affiliates, Bonded Attorneys, Collectors, Investigators, and Skip-Tracers, directed by *Nationally* Known Leaders \* \* \* ." (P. 1054, our emphasis.) Thus respondents there were advertising about "our" affiliates, associates, and attorneys, directed "nationally," so to speak.

Moreover, on one page of the brochure containing the foregoing representation, there was a United States map (p. 1054), with numerous dots in each of the States, headed by the statement "Points From Which You Can Have Personal Service on Your Accounts Thru Bonded Collectors and Investigators." This was, indeed, a representation of being "Nation-wide." Finally, the front page of the brochure bore a picture of respondents' office building, with the words "HOME OFFICE" in large letters. To compare the present case with that case, on the question of the representation of being "Nation-wide," or having nationwide "Corresponding Attorneys," is, in the examiner's opinion, like comparing black with white.

Secondly, it should be well noted that there is no holding in the *Association of Credit Bureaus* case against the use of the term "Corresponding Attorneys" as such, or any similar appellation as such. The holding the case was directed at the "Nation-wide" representation, *i.e.*, embracing associates, affiliates, bonded attorneys, collectors, investigators, etc., as listed in the quotation above. Thus the case is no precedent whatever for holding that the representation of having "Corresponding Attorneys" is false.

*Departments*

In holding that respondents have not misrepresented anything substantial to debtors by representing that they have a large number of full-fledged departments, the examiner disagrees again with complaint counsel's citation of the *Association of Credit Bureaus* case, *supra*, 58 F.T.C. 1044, 1053.

That case is absolutely explicit, both by statement of fact and conclusion, that the issue as to departments there raised was only in respect to such representations being made to creditors, *i.e.*,

for the purpose of obtaining "the assignment of accounts for collection and the solicitation thereof" (p. 1053). The examiner reiterates his holding that representations of this type make no difference to the debtor and may therefore be regarded as unsubstantial. Only three, apparently, of the alleged departments were included in representations to creditors in the case at bar, and, as heretofore held, by reason of their number and content, cannot be regarded as substantial. Moreover, in the present case, whether the representations as to departments were made to debtors or creditors, it would seem that such representations of having departments, instead of mere departmentalization of effort, should, even if not entirely accurate, not be held to be of sufficient substance so as to constitute unfair methods of competition.

*"Final Demand" Forms*

In holding that respondents' "Final Demand" forms are not deceptive, the examiner disagrees with complaint counsel's reliance on *Rushing v. F.T.C.*, 320 F. 2d 280, 283 (5th Cir. 1963). In that case the respondent creditor (not a collection agency or the like) sent out forms such as one entitled "FINAL NOTICE before GARNISHMENT." As to such forms, the court stated that respondent "has used forms simulating legal pleadings and has threatened garnishment, *although no court action was brought.*" (P. 282; our emphasis.) There was also testimony that debtors "were threatened with legal proceedings when they fell behind in their payments." (P. 282.)

It will be noted that the court did not refer to the garnishee notice as an official document, duly issued or approved by a court of law—which is the representation charged in the case at bar in respect to the "Final Demand" form. Certainly, a garnishee notice, which ordinarily presupposes a judgment against a debtor, is easily classified as purporting to be a legal document or pleading.

However, entirely apart from this, there can be little doubt that so far as concerns the issue of false representation in the *Rushing* case, the court was impressed, and apparently impressed the most, by the factor in that case that no action was ever brought, or apparently ever intended to be brought. Thus the case seems to be the familiar one of misrepresentation by a business concern trying to collect debts by itself and sending out what look like legal papers which threaten suit or garnishment even though the concern never intends to go to court.

*1964 a Typical Year*

Respondents' counsel, in his argument contained in respondents' Proposed Findings (p. 4), complains that a substantial part, if not most, of the proof is limited to the year 1964, and argues that there is therefore failure of proof. There are several answers to this:

First, respondents' counsel agreed to 1964 as a typical year (R. 107, 1. 22-23; R. 85, 1. 5-20). As appears by these citations, this reflected a plan suggested by the hearing examiner at the prehearing conference, *i.e.*, to select any one recent year as a typical year in order to save time and expense for both sides. Respondents' counsel has apparently forgotten about this, or has misunderstood the purpose of the procedure.

Secondly, misrepresentation by respondents in 1964 would be sufficient proof to warrant the order to cease and desist herein, short of proof of discontinuance, which does not exist as to the practices prohibited.

Thirdly, there is the usual presumption of continuance of a given state of facts to carry the proof beyond 1964.

*Public Interest*

At the prehearing conference, as well as at the hearing proper, and also by argument in respondents' Proposed Findings, respondents' counsel seems to be suggesting rather strongly the argument that there is a lack of public interest to support the prosecution of the present case—particularly as against a small collection agency whose gross accounts in 1964, for instance, total only \$220,000 and whose collections total only \$99,000 (R. 115, 1. 2-4). Respondents' counsel also indicated at the hearing that his clients could not afford to order the full transcript of the minutes in this case, and he actually ordered the minutes for only half a day of the hearing.

In view of the violations actually found herein, particularly as to use of the name "Federated," it is difficult to say that there is no public interest.

Apart from this, however, the question as to which business concerns, large or small, will be named as respondents in a Federal Trade Commission complaint is solely one for the discretion of the Commission in its administrative capacity. It may happen, of course, that the Commission does not know in advance the size, or relative size, of a particular concern charged with misrepresentation. Contrariwise, even apart from the known small

size of a concern, the Commission may believe that the issues are important enough to warrant commencement of a proceeding.

## ORDER

*It is ordered*, That the respondents Federated Bureau of Installment Credit, Inc., a corporation, and its officers, and William E. Dykstra, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the solicitation of accounts for collection, or the collection of, or attempts to collect accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Federated" or any other word or words of similar import or meaning, in or as part of respondents' trade or corporate name or otherwise representing, directly or by implication, that they are an association having members; or misrepresenting, in any manner, their trade or business status or the nature of respondents' enterprise—except that they may use the word "Federated" as part of the corporate name Federated Bureau of Installment Credit, Inc., or any contraction thereof: *Provided*, That said name or contraction thereof is used in conjunction with the qualification "(No Members or Affiliates)" having reasonably comparable prominence;<sup>13</sup>

2. Representing, directly or by implication, that respondents' Blue Island, Illinois, office is a regional office; or representing in any other manner that respondents have a place of business other than in Blue Island, Illinois.

## FINAL ORDER

This matter having come before the Commission on the cross-appeals of counsel for respondents and complaint counsel from the hearing examiner's initial decision, and on briefs and oral argument in support thereof and in opposition thereto; and

Respondents having agreed during the oral argument to be bound by the order proposed by the hearing examiner and an additional prohibition with regard to the use of documents which simulate those approved by a court of law or other official or legally constituted authority; and

The Commission having determined that the initial decision, with the exception of Findings 11 and 12 which have now become

<sup>13</sup> See p. 591 of this decision.

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moot in view of respondents' consent, should be adopted as the opinion of the Commission:

*It is ordered*, That the initial decision of the hearing examiner to the extent it is not inconsistent with this order be and it hereby is adopted as the decision of the Commission with the addition of the following provision in the order:

"3. Using CX 15 or any similar writing which simulates a legal document or which resembles or is represented to be a document authorized, issued or approved by a court of law or any other official or legally constituted or authorized authority;"

*It is further ordered*, That the appeals of counsel for respondents and complaint counsel to the extent they are not embodied in the above order, are denied:

*It is further ordered*, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order set forth herein.

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