
IN THE MATTER OF
MUTUAL CREDIT BUREAU, INC., ET AL.

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

Docket C-1595. Complaint, Oct. 10, 1969—Decision, Oct. 10, 1969

Consent order requiring a Cleveland, Ohio, debt collection agency to cease using the term "Credit Bureau" in its corporate name, misrepresenting that it operates a special audit division, using deceptive fee schedules, falsely guaranteeing its services, using deceptive form letters to obtain information on alleged debtors, misrepresenting the size and geographical extent of its business, and threatening legal action against allegedly delinquent debtors.

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 Mutual Credit Brueau, Inc., a corporation, and Kenneth G. Kirchenbauer, and Albert DiMarco, individually and as officers and directors 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. Mutual Credit Bureau, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2800 Euclid Avenue, in the city of Cleveland, State of Ohio.

Respondents Kenneth G. Kirchenbauer and Albert DiMarco are individuals and are officers and directors of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 of Mutual Credit Bureau, Inc.

Respondents solicit and receive accounts for collection from business, professional and other people located in Ohio and in 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, 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.

PAR. 4. Through the use of the words "Credit Bureau" as part of their corporate name, separately and in conjunction with other statements and representations said respondents represented, and now represent, directly or by implication, that the corporate respondent is engaged in gathering, recording and disseminating favorable as well as unfavorable information relative to the credit worthiness, financial responsibility, paying habits and character of individuals, firms, corporations, and any other legal entity

being considered for credit extension, so that a prospective creditor may be able to make a sound decision in the extension of credit.

PAR. 5. In truth and in fact, the corporate respondent is not engaged in gathering, recording and disseminating favorable information relative to the credit worthiness, financial responsibility, paying habits and character of individuals, firms, corporations and any other legal entity being considered for credit extension. In a limited number of instances, respondents may furnish a client upon request, unfavorable credit information about an alleged debtor when such information is contained in respondents' files, or will verify information furnished a client by a credit applicant when such information is contained in respondents' files.

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 in aiding in making collections from alleged debtors, have made certain statements and representations, directly or by implication, with respect to their business methods, fees, and the size and extent of their business.

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

1. Professional Audit System, and Professional Audit System, Division of Mutual Credit Bureau, Inc.
2. Complete Credit and Collection Service.
3. No Collection—No Charge, and No Collection—No Fee.
4. The Professional Audit System is Guaranteed.
5. Associate Offices Everywhere, and our associate.

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

1. Respondents audit accounts of creditors to determine if said accounts are in arrears.
2. The business of respondents has a separate "Professional Audit System" department; and they have a specially staffed, established and operated auditing division.
3. Respondents offer and perform all types of credit and collection services for clients or prospective clients.

4. Respondents make no charges or fees on any account they do not collect on behalf of their client.

5. Respondents "Professional Audit System" is guaranteed without qualification or limitation.

6. The business of respondents is nationwide in scope by being affiliated, associated or in some manner connected with collection agencies over the entire United States.

PAR. 8. In truth and in fact:

1. Respondents do not in a substantial number of instances audit accounts of creditors to determine if said accounts are in arrears.

2. The "Professional Audit System" is not a separate division of respondents' business, specially staffed, established and operated to audit accounts of creditors. On the contrary, the "Professional Audit System" is merely a precollection service which respondents sell to creditors to enable creditors to protect their goodwill while collecting or attempting to collect alleged delinquent accounts and involves the sending of form letters to alleged debtors by respondents requesting that payment be made directly to the creditor.

3. Respondents do not offer and perform all types of credit reporting and collection services; but, with minor additions, perform only routine collection functions.

4. Respondents do make charges on accounts they do not collect in instances where respondents utilize interest monies collected on some accounts to help defray the cost of attempting to collect uncollectable accounts, and respondents charge fifty percent (50%) as a fee on accounts forwarded to other collection agencies or attorneys. The said additional amounts are not set forth in fee schedules used by respondents.

5. Respondents "Professional Audit System" is not guaranteed without qualification or limitation, and the nature, extent, identity, and the manner in which respondents will perform is not clearly and conspicuously disclosed in immediate connection with the term "Guaranteed."

6. The business of respondents is not nationwide in scope and is not affiliated, associated or in any manner connected with collection agencies throughout the entire United States, but, on the contrary, respondents, through the purchase and use of a directory of collection agencies and attorneys, merely forward accounts out of State to collection agencies and attorneys listed in said directory.

Complaint

76 F.T.C.

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, and to third parties, various form letters, demands for payment, requests for information, and other printed material.

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

1. The above account is due and payable. We have full authority to make collection in any fashion that is allowable by the laws of the state.

2. Be advised. Our client has instructed this office to refer the matter to an attorney on _____ with instructions to start immediate legal proceedings and take any action necessary to enforce collection if payment in full is not received by _____.

3. Unless we receive your check or money order for \$_____ by _____ we are going to recommend our client return the matter to his attorney to institute other proceedings to enforce collection.

4. Prior to forwarding this account to our representative in your city for legal action, we are drawing on your account in the amount stated above.

It is suggested that if you wish to avoid presentment of this draft to your bank, you wire us to the effect that payment is being forwarded at once.

5. Mr./Mrs. _____ has applied for credit with one of our members and gave your name as a reference.

6. Would you kindly furnish us with information on the employee listed below.

PAR. 10. By and through the use of the aforesaid forms and the statements and representations set forth in Paragraph Nine 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. Respondents have been given authority by the creditor to initiate legal action to collect an alleged delinquent account.

2. Respondents have been instructed by the creditor to refer the alleged delinquent account to an attorney in order to institute legal proceedings to enforce collection of said account unless the alleged debtor pays in full by a certain, specified date.

3. Unless payment is received by respondents from an alleged debtor by a certain, specified date, respondents will recommend to the creditor that the creditor refer the alleged delinquent account to his attorney to institute legal proceedings to enforce collection.

4. Respondents will forward a sight draft to the alleged debtor's bank and that respondents will draw on the alleged debtor's bank account to effect payment of the alleged delinquent account.

5. An alleged debtor has applied for credit and gave the name of the recipient of the form as a reference.

6. Respondents are requesting certain information from an alleged debtor's employer or former employer to determine his employment status and address.

PAR. 11. In truth and in fact:

1. Respondents have not been given authority by the creditor to initiate legal action to enforce the collection of an alleged debt at the time they mail form letters which represent they do have such authority.

2. Respondents, at the time they send a form letter stating they have been so instructed, have not been instructed by a creditor to refer an alleged delinquent account to an attorney in order to institute legal proceedings to enforce collection of an account if an alleged debtor fails to pay the account by a certain specified date.

3. In many instances respondents do not recommend to the creditor that he refer an alleged delinquent account to an attorney to institute legal proceedings to enforce collection of said account if the alleged debtor fails to pay the account by a certain specified date.

4. Respondents do not forward a sight draft to the bank of an alleged debtor and draw against an alleged debtor's bank account to effect payment of an alleged delinquent account.

5. In instances where respondents mail a form letter to a third party which represents that an alleged debtor has applied for credit and has given the third party's name as a reference, the alleged debtor has not applied for credit and thus has not given the third party's name as a reference. On the contrary, respondents use said form to obtain information about the alleged debtor without revealing that the purpose of the inquiry is to assist respondents in the collection of an alleged delinquent account.

6. In instances when respondents mail a form to the employer or former employer of an alleged debtor requesting information about the alleged debtor, respondents do not reveal that the true purpose of the inquiry and the obtaining of information sought therein is to assist respondents in the collection of an alleged delinquent account.

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

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the public, including alleged debtors, prospective clients and clients (creditors), into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' services by creditors and the payment of accounts by alleged debtors, by reason of such erroneous and mistaken 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the

public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mutual Credit Bureau, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 2800 Euclid Avenue, city of Cleveland, State of Ohio.

Respondents Kenneth G. Kirchenbauer and Albert DiMarco are officers and directors of said corporation and their principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Mutual Credit Bureau, Inc., a corporation, and its officers, and Kenneth G. Kirchenbauer and Albert DiMarco, individually and as officers and directors of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the collection of accounts or attempts to collect accounts or the advertising, offering for sale, sale or distribution of any service in connection with or printed matter in connection with the collection of accounts, attempts to collect accounts, the solicitation of accounts for collection or contracts therefor, in commerce, as "commerce" is defined in the Federal trade Commission Act, do forthwith cease and desist from:

1. Using the term "Credit Bureau," or any other words or terms of similar import or meaning, in respondents' corporate or trade name, or representing, in any manner, that respondents are a credit bureau or performing the functions of a credit bureau, unless respondents regularly engage in gathering, recording and disseminating favorable as well as unfavorable information relative to the credit worthiness, financial responsibility, paying habits and character of individuals, firms, corporations, or any other legal entity being considered for credit extension so that a prospective creditor may be able to make a sound decision in the extension of credit.

2. Using the term "Professional Audit System" or any other words or terms of similar import or meaning in describing or referring to respondents' pre-collection service.

3. Representing, directly or by implication, that respondents have an Audit Division which is specially staffed, established and operated to audit accounts of creditors, or representing that respondents have any other division or organizational unit specially staffed, established and operated to perform any other functions in connection with respondents' business, unless in every instance, respondents do have such divisions or organizational units which are specially staffed, established and operated to audit such accounts or perform other functions in connection with the operation of respondents' business.

4. Representing, directly or by implication, that respondents offer a complete credit and collection service, or misrepresenting, in any manner, the nature or extent of credit and collection services offered by respondents.

5. Representing, directly or by implication, that no charges or fees will be made on any accounts not collected unless in every instance respondents do not assess a charge or fee of any kind and in any manner whatsoever.

6. Using fee schedules which do not clearly and conspicuously disclose thereon all possible fees, charges and rates respondents can assess for the collection of accounts, or misrepresenting, in any manner, the fees and charges assessed by respondents.

7. Representing, directly or by implication, that any of respondents' services or systems are guaranteed without clearly and conspicuously disclosing in immediate connection therewith, the nature and extent of the guarantee, the manner in which the guarantor will perform, and the identity of the guarantor.

8. Representing, directly or by implication, that respondents' business is nationwide in scope, or misrepresenting, in any manner, the extent, size or services of respondents.

9. Representing, directly or by implication, that respondents have been instructed or given the authority to initiate legal action, or will recommend to the creditor the institution of legal proceedings to enforce collection of an alleged delinquent account if the alleged debtor fails to pay said account, or fails to respond to requests for payment or cooperation,

unless in every instance, respondents have been instructed or given authority to initiate legal action, and do recommend to the creditor the institution of legal action to enforce collection of an alleged delinquent account.

10. Representing, directly or by implication, that respondents will send a sight draft to an alleged debtor's bank.

11. Using any form, questionnaire or other material, printed or written, which does not clearly and conspicuously reveal that the purpose for which the information is requested is that of obtaining information concerning alleged debtors or for the collection of, or the attempt to collect, alleged delinquent accounts.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein 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 this order.
