

Complaint

81 F.T.C.

IN THE MATTER OF

ACCEPTANCE FINANCE COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2290. Complaint, Sept. 27, 1972—Decision, Sept. 27, 1972.*

Consent order requiring a Clayton, Missouri, finance company and its 74 subsidiaries, among other things to cease providing to customers negotiable instruments known as or similar to "Reddy Checks" unless it has received an affirmative, written, signed and dated authorization from customers. Such authorization shall include a clear explanation of the number of such instruments to be mailed each year; the approximate dates of such mailings; the approximate face amount of such instruments; the period of validity of such instruments; the length of time the consumer's consent to participate will be valid; and certain consequences if such instruments are negotiated.

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 Acceptance Finance Company, a corporation, hereinafter referred to as respondent, has 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 Acceptance Finance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 8012 Bonhomme Avenue, Clayton, Missouri.

Acceptance Finance Company operates through approximately seventy-four (74) wholly-owned subsidiary loan offices located in fourteen (14) states. Each subsidiary is incorporated in the respective state in which it is located under the name of NATIONWIDE FINANCE COMPANY OF (location identity). Respondent Acceptance Finance Company does not engage in any consumer loan transactions itself. The officers of the parent and each subsidiary are: Charles W. Morgan, president; Meyer M. Frank and Dan D. Morgan, vice presidents; and Milton Ferman, secretary-treasurer. Respondent Acceptance Finance formulates and controls the policies, acts and practices of each of the wholly-owned subsidiaries, including the acts and practices hereinafter set forth.

PAR. 2. Respondent is now and for some time last past has been engaged in the business of lending money through its wholly-owned subsidiary loan offices at the offices themselves and through the mail to the public in a substantial number of States of the United States.

PAR. 3. In the ordinary course and conduct of its business, respondent now offers and extends, and for some time in the past has offered and extended, consumer loans through its wholly-owned subsidiaries located in several States of the United States to consumers located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said loans in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of its business as aforesaid, respondent now causes and for some time last past has caused negotiable checks, called "Reddy Check Drafts," hereinafter referred to as "reddy checks," to be mailed to a substantial number of consumers. If the consumer negotiates a reddy check, the act of negotiation consummates a consumer loan as of the date of negotiation. If the consumer does not negotiate the check immediately, it remains valid for a period of up to ninety (90) days from the date shown on the reddy check. If such a loan is consummated, during the course of the credit relationship respondent at its option and without specific request causes subsequent reddy checks to be mailed to the debtor. The typical number of reddy checks mailed to each consumer is four per year. If these subsequent reddy checks are negotiated, a new loan is automatically consummated, combining the outstanding balance of the old loan and the amount of the new reddy check. This procedure of mailing negotiable checks may be continued for as long as the consumer is in debt to the respondent and, often, for up to two years after the contractual relationship of debtor-creditor has terminated.

PAR. 5. In the ordinary course and conduct of its business as aforesaid, respondent engages in three different methods of sending reddy checks to promote consumer loans:

1. Prospective borrowers contact one of respondent's subsidiaries in order to secure a consumer loan. One of the documents executed upon consummation of the loan transaction is termed a "Line of Credit Agreement" (hereinafter sometimes referred to as the "agreement"). The agreement has a two or three year duration.

The Line of Credit Agreement contains language to the effect that the respondent may send the consumer negotiable checks, described above as reddy checks, from time to time during the course of the contractual relationship between respondent and the debtor. This lan-

guage is two sentences within the full page agreement and is printed in such a manner so that it would not be readily observed nor read by most borrowers.

Pursuant to the agreement, redy checks are subsequently mailed without other notification to the customer. The customer is not informed of the number of checks to be mailed each year, nor the approximate dates for the mailings, nor the face amount of the redy checks which will be mailed. If a redy check is cashed, the new loan has the effect of automatically extending the agreement for another two or three years from the date of negotiation of the check.

2. A significant portion of respondent's source of customers for redy checks is obtained when respondent acquires a sales finance contract. Redy checks are subsequently mailed to these individuals without prior notification that such checks would be forthcoming. The consumers are not informed of the number of checks to be mailed each year, the approximate dates for the mailings, or the face amount of the redy checks which will be mailed. The checks are mailed in the same manner and with the same consequences as described in Paragraph Four.

3. Redy checks are mailed to respondent's past and present loan customers, at various intervals, although there is no "Line of Credit Agreement" in effect and such customers have not been notified in any other manner that such checks will be forthcoming. The consumers are not informed of the number of checks to be mailed each year, the approximate dates for the mailings, or the face amount of the redy checks which will be mailed. The checks are mailed in the same manner and with the same consequences as described in Paragraph Four.

PAR. 6. By and through the practice of issuing negotiable checks to consumers who either have not requested such checks or have not had adequate notice that such checks would be forthcoming and, by and through the practice of not informing consumers of the number of such checks to be received, the approximate dates for the mailings of such checks, or the face amount of the checks to be mailed, respondent has deprived such consumers of the opportunity to determine by their own decision whether they wish to participate in a program which provides for the issuance of such checks. Respondent has, thereby, engaged in a practice which is an unfair act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Acceptance Finance Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 8012 Bonhomme Avenue, Clayton, Missouri.

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

ORDER

It is ordered, That respondent Acceptance Finance Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiaries, division, or other device, in connection with the advertising, solicitation for or the consummation of loans in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Providing in any manner to any consumer negotiable instruments known as or similar to Reddy Checks *unless* Acceptance Finance Company, or any of its subsidiaries, has received from such recipient an affirmative, written, signed and dated request for or authorization to provide such negotiable instrument: *Provided, however*, That any consumer who has borrowed money from or whose sales finance contract has been assigned to, Acceptance Finance Company, or any of its subsidiaries, prior to the effective date of the Consent Order, may be sent additional Reddy Checks in the manner set forth in Paragraph B below. Such request or authorization shall contain language of a clear and conspicuous nature describing the Reddy Check program and the provisions for the consumer's consent to participate in such program and which includes an explanation of:

1. The number of such negotiable instruments intended to be mailed each year;
2. The approximate dates or months for such mailings;
3. The approximate face amount of such negotiable instruments;
4. The period of validity of such negotiable instruments;
5. The length of time the consumer's consent to participate in the program will be valid, *i.e.*, the original duration of the agreement; and
6. Certain consequences if such negotiable instruments are negotiated, including where appropriate the effect on any outstanding balance that may be owed to Acceptance Finance Company, or any of its subsidiaries, and the effect on the duration of the agreement as described in 5 above.

B. With respect to any consumer who has borrowed money from, or whose sales finance contract has been assigned to, Acceptance Finance Company, or any of its subsidiaries, prior to the effective date of this Consent Order, effective January 1, 1973, Acceptance Finance Company will discontinue and will not resume the practice of sending negotiable instruments known as or similar to Reddy Checks to any said consumer *unless* it, or any of its subsidiaries, has received from such recipient an affirmative, written, signed and dated request or authorization as described in Paragraph A above.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent at its general offices in Clayton, Missouri and in each of its subsidiary loan offices who are engaged as head of the particular department in the extension of consumer credit or in any aspect of preparation, crea-

tion, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said copy of this order from each such person.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent 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.