

Complaint

IN THE MATTER OF
CREDIT CARD SERVICE CORPORATION, ET AL.
ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8861. Complaint, Aug. 24, 1971—Decision, Jan. 19, 1973.

Order requiring an Alexandria, Virginia, seller of memberships in a credit card registration service, among other things to cease representing that a credit cardholder is responsible for payment of all goods and services obtained by unauthorized use of his credit cards; representing that potential liability incurred through unauthorized use of his card may amount to sums large enough to cause financial loss or ruin; representing that respondents' service can protect credit cardholders from substantial financial loss or ruin; failing to incorporate in written material or radio or television commercials a statement to the effect that a January 1971, Federal law limits liability to \$50 for unauthorized use of credit cards; and failing to provide prospective customers with the above-required information.

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 Credit Card Service Corporation, a corporation, doing business as Credit Card Service Bureau, and John P. Ferry, 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. Credit Card Service Corporation is a corporation doing business as Credit Card Service Bureau. It is 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 4660 Kenmore Avenue in the city of Alexandria, State of Virginia.

Respondent John P. Ferry is an individual and is 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

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have been engaged in the advertising, offering for sale, sale and distribution to the public of memberships in a credit card registration service.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said credit card registration service memberships to be sold from their place of business in Virginia to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said service in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of memberships in their credit card registration service, the respondents have made after January 24, 1971, and are now making, numerous statements and representations in advertisements inserted in newspapers and in direct mail and other promotional material with respect to the potential liability of a credit card holder if his credit cards are used by a person or persons not authorized to engage in such use.

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

You've seen the newspaper reports. Smart cautious business men, after a brief moment of carelessness, find themselves liable for thousands. A few hundred if you're lucky. Or as much (in one case) as \$175,000. But legally *they are stuck*. They have to pay credit card charges they knew nothing about. Car rentals. Round-the-world cruises. Luxury motel bills. Lavish entertaining. Dinner parties in expensive restaurants. Tailored clothing. Furs, jewels, rare perfumes for girl friends. Chartered planes.

A clever thief may be scheming to lift your wallet, containing your credit cards. Your charge plates. Your bank book. Some blank checks. And anything else that lets you charge goods or services, instead of paying cash.

Once he gets his hands on them *HE* will do the charging—and *YOU WILL HAVE TO PAY*.

This is legal. It is the law.

*No matter where you are, pick up a phone and make a TOLL-FREE phone call to Credit Card Service Bureau—800-336-0220. Our trained staff will instantly swing into action to legally protect you against any and all loss from unlawful use of your credit cards * * * your charge plates. No need to wait. CCSB's phones are ALWAYS monitored.*

You can eliminate all this risk for as little as 12 cents a week. BUT YOU MUST ACT AT ONCE. Simply fill in and mail the enclosed Application, together with your check for the \$9.

P.S. Save \$8 more. Make your order for \$19, FULL 3-YEAR CCSB

Membership. It's worth our while because we save on administrative costs. Our way of saying "thank you" is to pass some of this savings on to you. And, remember, whether you elect the 1-year or 3-year membership, you can charge the low cost to your Bank Americard or Master Charge card.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented and are now representing directly or by implication that:

1. A credit card holder who suffers a loss or theft of credit cards is legally responsible and will have to pay for all goods and services obtained by unauthorized use of his credit cards.
2. The potential liability which a card holder may incur through the unauthorized use of his credit cards may amount to sums large enough to cause the card holder financial ruin.
3. Respondents' services can protect a credit card holder from large financial loss or financial ruin resulting from unauthorized use of his credit cards.

PAR. 6. In truth and in fact:

1. A credit card holder who suffers a loss or theft of credit cards is not legally responsible and will not have to pay for all goods and services obtained by unauthorized use of his credit cards.
2. The potential liability which a credit card holder may incur through the unauthorized use of his credit cards may not amount to sums large enough to cause the card holder financial ruin.
3. Respondents' services cannot protect a credit card holder from large financial loss or ruin resulting from unauthorized use of his credit cards, because the credit card holder's financial loss is limited by Section 133 of Public Law 91-508 to fifty dollars (\$50), and in some events to no liability, as set forth hereinafter.

Section 133 of Public Law 91-508 (effective January 24, 1971) provides that if a card issuer wishes to hold a card holder liable, he can do so only if:

- a. the card has been accepted (is not unsolicited);
- b. the liability does not exceed \$50;
- c. adequate notice of potential liability was furnished to the card holder;
- d. the card issuer has provided an addressed notification statement which the card holder may return in the event of loss or theft of a credit card;

e. the unauthorized use occurs before the card holder has notified the card issuer of the loss, theft or other occurrence; and

f. for cards issued after January 24, 1971—and after January 24, 1972 for all cards no matter when issued—a card holder is liable for unauthorized use only if the card issuer has provided a method by which the user of a card can be identified as the person authorized to use it.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of services of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial numbers of respondents' credit card registration service memberships by reason of said erroneous and mistaken belief. Under the foregoing circumstances, the retention by respondents of funds obtained as a result of the sale of credit card registration service memberships is unfair.

PAR. 9. 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. Michael J. Carson and Mr. James L. Fletcher supporting the complaint.

Steptoe & Johnson, Washington, D.C., by Mr. Richard A. Whiting, Mr. Michael D. Campbell for respondents.

INITIAL DECISION

BY ANDREW C. GOODHOPE, HEARING EXAMINER

APRIL 4, 1972

PRELIMINARY STATEMENT

On August 24, 1971, the Federal Trade Commission issued the complaint in this proceeding charging respondent Credit Card Service Corporation ("Credit Card") and respondent John P. Ferry ("Ferry") with the violation of Section 5 of the Federal Trade Commission Act by making, after January 24, 1971, false, misleading and deceptive statements and by engaging, after January 24, 1971, in unfair methods of competition and in unfair or deceptive acts or practices by misrepresenting in their advertising material, soliciting subscriptions to their credit card protection service, the potential liability of a cardholder in the event his credit cards are used by a person or persons not authorized to engage in such use.

Respondents filed their answer on October 4, 1971, specifically denying the making of any false, misleading or deceptive statements after January 24, 1971, and also denying that they had engaged in any unfair method of competition or unfair or deceptive act or practice.

After a prehearing conference and a number of meetings, counsel in support of the complaint and counsel for the respondents entered into stipulations (CX 14, 15) and on January 5, 1972, a hearing was held at which time the stipulations and supporting documents for both parties were received in the record. Thereafter, counsel in support of the complaint and counsel for respondents filed proposed findings of facts and briefs in support thereof. Any proposed findings of fact or conclusions not found herein either specifically or by implication are rejected and the hearing examiner, having considered the entire record, including proposed findings of fact and conclusions and memoranda filed by both parties, makes the following findings of fact:

FINDINGS OF FACT

1. Respondent Credit Card Service Corporation is a corporation doing business as Credit Card Service Bureau. It is 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 4660 Kenmore Avenue in the city of Alexandria, State of Virginia.

2. Respondent John P. Ferry is an individual and is the president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices of the corporate respondent set forth in the complaint. His address is the same as that of the corporate respondent.

3. Respondents are now, and for sometime last past, have been engaged in the advertising, offering for sale, sale and distribution to the public of memberships in a credit card registration service.

For a charge of \$9 per year or \$19 for three years, the respondents provide the following services, among others, to their subscribers: rapid notification on behalf of the subscriber to credit card companies of the fact that a subscriber's credit cards have been lost or stolen; assisting subscribers in resolving alleged billing errors of credit card companies; assisting subscribers in changing of addresses on credit cards and in obtaining new cards. (CX 1 C, 2 C, 3 C, 3 D through E, 4 B and D, 6 and 9; RX 4 and 5)

4. In the course and conduct of respondents' business, respondents now cause, and for sometime last past, have caused their credit card registration service memberships to be sold from their place of business in Virginia to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in their service in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. The charge of violation of Section 5 of the Federal Trade Commission Act involves that portion of respondents' advertising after January 24, 1971, which includes references to the possibility of credit card holder liability for the unauthorized use of such cards but which allegedly does not adequately disclose the existence or substance of the limitations on such liability provided for in Public Law 91-508.

6. Public Law 91-508 was enacted by Congress on October 26, 1970, as an amendment to the Truth in Lending Act (15 U.S.C. § 1601, *et seq.*). (CX 14) Section 502 (15 U.S.C. § 1643) of that law, which became effective on January 24, 1971, provides as follows:

Section 1643. Liability of holder of credit card—Limits on Liability

(a) A cardholder shall be liable for the unauthorized use of a credit card

only if the card is an accepted credit card, the liability is not in excess of \$50, the card issuer gives adequate notice to the cardholder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped envelope to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. Notwithstanding the foregoing, no cardholder shall be liable for the unauthorized use of any credit card which was issued on or after the effective date of this section, and, after the expiration of twelve months following such effective date, no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless (1) the conditions of liability specified in the preceding sentence are met, and (2) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it. For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

(b) In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized, or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a), have been met.

(c) Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(d) Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

7. Respondents, before January 24, 1971, knew of the existence of Pub.L. 91-508 and of its effective date. (RX 14, ¶ 8)

8. On December 29, 1970, respondents directed Credit Card's two mailing houses to mail 700,000 copies of the Ferry letter (CX 1-A through D) by January 13, 1971. (CX 14, ¶ 4) This letter, which contains several references to the virtually unlimited potential liability of a credit card holder resulting from unauthorized use of his credit cards, makes no reference to Pub.L. 91-508. (CX 14, ¶ 8; see App. A attached hereto for a copy of this letter) *

9. Due to administrative delays within the mailing houses, copies of the Ferry letter were mailed after January 24, 1971, the last mailing having occurred on February 4, 1971. (RX 14,

*Appendices A and B not reported.

¶ 7) No mailings of this material have been made since that date. (RX 14, ¶ 9)

10. There is no evidence that respondents caused the delays at the mailing houses or even knew of their existence.

11. Respondents have, since January 24, 1971, made four direct mail solicitations, two additional mailings and have run four separate newspaper advertisements. (RX 14, ¶¶ 10, 11 and 14; see App. B attached hereto* for copies of such solicitations and mailings)

12. In the mailings, solicitations and newspaper advertisements described above [a representative number of such mailings and solicitations appear in Appendixes A and B attached hereto and made a part hereof], respondents represented that: a credit card holder who suffers the loss or theft of his credit cards is legally responsible and will have to pay for all goods and services obtained by such unauthorized use of his credit cards; the potential liability which a card holder may incur through the unauthorized use of his credit card may amount to sums large enough to cause the card holder financial ruin; respondents' services can protect a credit card holder from large financial loss or financial ruin resulting from unauthorized use of his credit card.

13. In fact, as a result of the passage of Public Law 91-508 as an amendment to the Truth in Lending Act, the pertinent portions of which are quoted above, a credit card holder who suffers the loss or theft of his credit cards is not legally responsible and will not have to pay for all goods and services obtained by unauthorized use of his credit cards; the potential liability which a credit card holder may incur through the unauthorized use of his credit cards may not amount to sums large enough to cause the card holder financial ruin; respondents' services cannot protect a credit card holder from large financial loss or ruin resulting from unauthorized use of his credit cards.

14. The amendment to the Truth in Lending Act provides that a card holder is not liable for any unauthorized use of his credit card unless the following conditions have been met: the card has been accepted (is not unsolicited); liability in any event cannot exceed \$50; adequate notice of potential liability was furnished to the card holder; the card issuer has provided a pre-stamped, addressed notification statement which the card holder may return

*Appendices A and B not reported.

in the event of a loss or theft of a credit card; the unauthorized use occurs before the card holder has notified the card issuer of the loss, theft or other occurrence; and for cards issued after January 24, 1971—and after January 24, 1972 for all cards no matter when issued—a card holder is liable for unauthorized use only if the card issuer has provided a method by which the user of a card can be identified as the person authorized to use it. Consequently, any advertisements of the services which the respondents provide which do not fully and explicitly set forth the limitations of liability provided in the amendment to the Truth in Lending Act must be considered deceptive.

15. Respondents urge that in view of the allegations of Paragraph Four of the complaint that respondents made deceptive mailings after January 24, 1971, no finding of violation can be based upon the so-called "Ferry" letter (CX 1 A-D) since the respondents directed their mailings of this letter prior to January 24, 1971. Further, they urge that the fact that some of the mailings of this letter occurred after January 24, 1971, cannot be charged to them since they were not responsible for the delay in the mailings. The fact remains, however, that the amendments to the Truth in Lending Act actually were enacted by Congress on October 26, 1970, and that the respondents were aware of the existence of this Act before January 24, 1971, and of its effective date.

16. The best that the examiner can find in the respondents' favor was that they were cutting a very fine line by putting 700,000 copies of this Ferry letter in the mail after the Act was passed but before it became effective. The fact that some of the mailings occurred subsequent to the effective date of the Act, January 24, 1971, must also be attributed to respondents since their agents were doing the mailing and respondents set no cut-off date beyond which mailings should stop. The examiner finds that under the circumstances, the respondents must be held accountable for this letter and for the completely unqualified and misleading statements in the letter in the face of the amendment to the Truth in Lending Act, of which they were aware.

17. The respondents further urge that their mailings, solicitations and other advertising were improved subsequent to January 24, 1971, the effective date of the amendment, to give subscribers to its services notice of the amendment to the Truth in Lending Act. The contention must be rejected. The next mailing

was in March 1971 of the so-called "George Baine" letter. (CX 2 A through 2 E; App. B) This letter describes a mythical George Baine who had his wallet containing from 10 to 20 credit cards stolen. The letter in lurid detail describes poor Mr. Baine's predicament. There is no indication in this letter that the amendment to the Truth in Lending Act existed except for a vague reference to the fact that respondents' service "reduces your liability below the legal limit established by current state and federal laws." The next mailing in June 1971 (CX 3 B; App. B) is another letter similar to the George Baine letter, except this one involves "Mr. Hammette" who lost his wallet containing credit cards. This letter does contain a reference to the amendment to the Truth in Lending Act setting forth in an incomplete fashion the liability provisions for unauthorized use provided by that Act. The letter goes on to the effect that the mythical Mr. Hammette could be liable for \$174,000 for unauthorized use of his credit cards under the Act. In additional mailings made in June 1971 (RX 4 and 5; App. B), respondents do refer to the amendment to the Truth in Lending Act, but again in an incomplete and confusing fashion, stating that anyone could be held liable up to \$50 for unauthorized use of his credit card. As found above the amendment to the Truth in Lending Act has a number of conditions which must be fulfilled before any credit card issuer can hold anyone liable for unauthorized use of the credit card in any amount.

As a result, it is found that even in their solicitations, mailings and other advertisements subsequent to the effective date of the amendment to the Truth in Lending Act, the respondents have failed to adequately set forth the provisions of that Act.

18. In addition, respondents urge that the statements made in their mailings, solicitations and other advertisements are true since a substantial number of credit cards are issued to the users or the users' employers solely for business purposes. The argument is that Section 104 of the Truth in Lending Act provides that such Act shall not apply to "Credit transactions involving extensions of credit for business or commercial purposes, or to government or governmental agencies or instrumentalities, or to organizations." And that since Public Law 91-508 is inserted into the Truth in Lending Act as an amendment following Section 131 of that Act, the exemption provided in Section 104 of the Truth in Lending Act applies to the amendment pertaining to the lia-

bility of holders of credit cards. Consequently, respondents urge that the services which they supply and the claims that they make are accurate insofar as they pertain to holders of credit cards used for business or commercial purposes. To support this argument, the respondents cite three informal staff opinions. The first two of these are respondents' Exhibits 9 and 10 which are letters to unknown addressees signed by Griffith L. Garwood, an attorney in the Truth in Lending Section of the Federal Reserve Board. He states that the Truth in Lending Act's exclusion of extensions of credit for business and commercial purposes from coverage by that Act leads him to believe that the amendment to the Truth in Lending Act involving credit cards likewise does not apply to credit cards used for commercial purposes. The third such letter is respondents' Exhibit 11, in which counsel in support of the complaint repeats that it is his opinion that credit cards used for commercial purposes are not protected by the amendment to the Truth in Lending Act limiting a card holder's liability for unauthorized use of a credit card which has been issued or used for business or commercial uses. These are apparently the only opinions on this subject in existence at this time.

19. The examiner cannot concur in these opinions. It is quite obvious that the credit card provisions were inserted by Congress as an amendment to the Truth in Lending Act merely as a convenient place to insert such provisions for efficient administration by the Federal Reserve Board and the Federal Trade Commission. Anyone seeking to borrow money for a business or commercial reason can safely be assumed to be sufficiently knowledgeable or to have the advice of an accountant or attorney, in seeking such a loan and would therefore be fully apprised as to the entire matter including interest and any other charges involved and would not need the protection provided by the Truth in Lending Act. This, however, has nothing to do with the protection given to credit cards by the credit card amendment. The examiner is unable to subscribe to the theory that a truck driver, taxi driver, traveling salesman or even a business executive would not have their credit cards protected against unauthorized use by the credit card provisions to the same extent as any other citizen. It would require a strained interpretation of the credit card provisions of the Truth in Lending Act to construe them as providing that a person traveling on business and purchasing

gas with a credit card for an automobile used in such business would not be protected while the same person's wife or family could have and use a credit card, possibly from the same card issuer, to purchase gasoline for the family automobile and have that card protected. No person should lose his status as a consumer simply because he is engaging in business or working. It is concluded, therefore, that the credit card amendment to the Truth in Lending Act is intended to protect all credit cards.

20. As of September 30, 1971, respondents had approximately 48,000 subscribers to their credit card registration service. Approximately 26,855 of these subscribed to respondents' credit card registration service during the period January 1, 1971 to September 30, 1971.

21. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of services of the same general kind and nature as those sold by respondents.

CONCLUSIONS

1. Statements and representations made by the respondents in direct mail and other advertising material promoting the sale of respondents' credit card registration service regarding the potential liability of a credit card holder if his credit cards are used by a person not authorized to engage in such use are false, misleading and deceptive. The respondents have failed to set forth in their advertising material the existence of the credit card amendment to the Truth in Lending Act and the provisions of that Act as they pertain to the liability of a credit card holder for unauthorized use of his credit card.

2. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial numbers of respondents' credit card registration memberships by reason of said erroneous and mistaken belief. Under the foregoing circumstances, the retention by respondents of funds obtained as a result of the sale of credit card registration service memberships is unfair.

3. The aforesaid acts and practices of respondents 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.

ORDER

It is ordered, That respondents Credit Card Service Corporation, a corporation, its successors and assigns, doing business as Credit Card Service Bureau or under any other name, and its officers, and John P. Ferry, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale or sale of their credit card registration service, through the sale of memberships or by any other device, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a credit card holder who suffers a loss or theft of credit cards is legally responsible and will have to pay for all goods and services obtained by unauthorized use of his credit cards.

2. Representing, directly or by implication, that the potential liability which a card holder may incur through the unauthorized use of his credit cards may amount to sums large enough to cause large financial loss or financial ruin.

3. Representing, directly or by implication, that respondents' services can protect a credit card holder from large financial loss or financial ruin resulting from unauthorized use of his credit cards.

4. Representing, directly or by implication, that a credit card holder can incur any liability resulting from the unauthorized use of his credit cards, except to the extent expressly provided for in Public Law 91-508.

5. Failing to incorporate the following notice clearly and conspicuously in any written material offering the sale of respondents' credit card registration service to the public:

IMPORTANT NOTICE

Effective January 24, 1971, a Federal law provides that a cardholder has no liability for unauthorized use of his credit card unless all of the fol-

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lowing four conditions are met. If the card issuing company (1) has notified you of your new limited liability, (2) has provided you with a pre-stamped envelope by which to notify them of a loss, (3) the card contains an approved method of identification, and (4) the use occurred before the card issuer is notified, then your liability is limited to \$50 per card.

6. Failing to incorporate the following notice clearly and conspicuously in any radio or television commercial offering the sale of respondents' credit card registration service to the public:

A Federal law limiting to a maximum of \$50 per card protects you from charges on lost or stolen credit cards. Along with your membership application Credit Card Service Corporation will give you details concerning this law.

7. Failing to provide each prospective customer who responds to a radio or television commercial offering the sale of respondents' credit card registration service with the notice required by order Paragraph 5.

8. Failing to provide each of its customers who have subscribed to respondents' credit card registration service on or after January 24, 1971, the effective date of Public Law 91-508, and who did so as a consequence of receiving the advertising material cited in the complaint or advertising containing representations substantially similar to those alleged by the complaint to be deceptive irrespective of when such advertising was received with a copy of the following notice, and a self-addressed envelope or card by which the customer may notify respondents of his desire for a refund, such notice to be accompanied by a letter from Mr. John P. Ferry which shall be approved by the staff of the Commission.

IMPORTANT NOTICE

Effective January 24, 1971, an amendment to the Federal Truth in Lending Act limits a cardholder's liability for unauthorized use of his card. *IF, BECAUSE OF THIS LAW, YOU DO NOT WISH TO CONTINUE YOUR MEMBERSHIP, YOU ARE ENTITLED TO A REFUND. THIS OFFER OF REFUND SHALL REMAIN EFFECTIVE FOR A PERIOD OF 30 DAYS.* This law provides that a cardholder has no liability unless:

- (a) the card has been accepted (was not unsolicited);
- (b) the liability does not exceed \$50; (c) adequate notice of potential liability was furnished to the cardholder; (d) the card issuer has provided an address notification statement which the cardholder may return in the

event of a loss or theft of a credit card; (e) the unauthorized use occurs before the cardholder has notified the card issuer of the loss or other occurrence; and (f) for cards issued after January 24, 1971—and after January 24, 1972, for all cards no matter when issued—a cardholder is liable for unauthorized use only if the card issuer has provided a method by which the user of a card can be identified as the person identified to use it.

9. Failing to refund all monies requested by customers in accordance with the notice required by order Paragraph 8 above.*

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents or other persons engaged in the offering for sale, or sale of respondents' services or in any aspect of preparation, creation, or planning of advertising, and that respondents obtain a signed statement acknowledging receipt of said order by each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change within 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 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.

OPINION OF THE COMMISSION

BY DIXON, *Commissioner*:

On August 24, 1971, the Commission issued a complaint charging respondents with making false, misleading and deceptive representations concerning their credit card registration service. The underlying facts are stipulated. Corporate respondent, Credit Card Service Corporation, for a fee of \$9 a year or \$19 for three years, provides, as its principal service, notification on behalf of the subscriber to credit card companies of the fact that a subscriber's credit cards have been lost or stolen. It also offers assistance to the subscriber in resolving billing errors

*Reported as amended by hearing examiner's order April 13, 1972.

of credit card companies and in obtaining new cards when the subscriber's cards have been lost or stolen, or the subscriber's address has changed. Respondents, in the advertisements challenged by the complaint, represented that their service was valuable for the reason that a credit card holder is liable for the full amount charged to a lost or stolen credit card, and, as a result, credit card holders might "find themselves liable for thousands * * * or as much (in one case) as \$175,000." (CX 1B)

It is alleged that this representation as to the value of the service is deceptive because, with the enactment of Public Law 91-508, potential liability for a lost or stolen credit card cannot exceed \$50 per credit card. Specifically, under Pub.L. 91-508 liability will only reach \$50 if (a) the card has been accepted by the credit card holder, (b) the card issuer provides an addressed notification statement which the card holder can return in the event of the loss or theft of the credit card, (c) adequate notice of potential liability is provided to the card holder, and (d) the card issuer provides a method by which the user of the credit card can be identified as the person authorized to use it.

Also of importance, Pub.L. 91-508 provides that the card holder will not be liable for any charges made after the card issuer has been notified of the loss or theft of the card.

Pub.L. 91-508 went into effect on January 24, 1971, as to credit cards issued after that date. After January 24, 1972, it applied to all credit cards, no matter when they were issued.

In sum, since the effective date of Pub.L. 91-508, a credit card holder's liability, in no circumstance, can exceed \$50 per credit card, and his liability will reach \$50 only if the card issuer fulfills certain requirements, and the card holder fails to notify the card issuer of the loss or theft of the card.

The administrative law judge held that, because respondents represented that liability was unlimited after the effective date of Pub.L. 91-508, respondents had made the deceptive representations as alleged in the complaint. Respondents' appeal does not extend to this holding or any of the administrative law judge's Findings of Fact except "to the extent that * * * errors [in these findings] served or may have served as a predicate for certain paragraphs of the proposed order." (Respondents' Appeal Brief, pages 4, 5.) It is from the scope of the proposed order that respondents appeal.

By the proposed order, respondents are proscribed from repre-

senting that a credit card holder is "legally responsible and will have to pay for all goods and services obtained by unauthorized use," that liability for unauthorized use "may amount to sums large enough to cause large financial loss or financial ruin," that a credit card holder may incur any liability resulting from the unauthorized use of his credit cards except to the extent expressly provided for in Public Law 91-508. Further, respondents, by the order, are required to provide, in any written material, or in any radio or television commercial, offering the sale of respondents' credit card service, a clear and conspicuous disclosure describing the protection afforded by Pub.L. 91-508.

Of principal concern to respondents, the order in addition requires that respondents provide a refund to "each of its customers who have subscribed to respondents' credit card registration service on or after January 24, 1971 * * * and who did so as a consequence of receiving the advertising material cited in the complaint or advertising containing representations substantially similar to those alleged by the complaint to be deceptive, irrespective of when such advertising was received."

Together with their objection to this restitution provision, respondents contend that the order fosters inaccurate disclosures.

I. RESTITUTION

The Commission held in *Curtis Publishing Co.*, 3 Trade Reg. Rep. ¶ 19,719 (1971) [78 F.T.C. 1472], that restitution is an appropriate order when respondent's retention of funds is unfair in and of itself, for in such a case restitution is the only effective remedy. The touchstone of any order is, of course, the determination of what remedy is necessary to cure the unfair acts and practices supported by the record. In this matter, then, we must look beyond the challenged deceptive practices (they, after all, can be effectively remedied by proscribing specifically-described representations and by requiring affirmative disclosures) to whether, as alleged in the complaint, the retention by respondents "of funds obtained as the result of the sale of credit card registration service membership is unfair."

The determination of unfairness in this regard, we held in *Curtis, supra*, depends upon finding that respondent has unfairly retained funds secured as a consequence of his illegal activities under certain types of circumstances, as for example, "where the

consumer, as a result of deception or fraud on the part of the seller, pays for a product or service but receives nothing of value in return or receives something that is either worthless or of only token value."

It is noted, first of all, that respondents are not charged with failing to perform as promised, *i.e.*, notifying credit card issuers that a card has been lost or stolen, but with exaggerating the value of the service offered. But it should be pointed out, in this connection, that a respondent's performance will not necessarily preclude restitution when it knows or has reason to know that its performance is of no value and the customer does not have this knowledge. Performance, under such circumstances, will not have enhanced the value of the service or lessened the unfairness inherent in a respondent's retention of funds.

Therefore, the question of whether retention of subscription fees was unfair is not resolved by the fact that corporate respondent here may have contacted credit card issuers. Respondents' retention of funds will be unfair, as we stated above, if the service is "either worthless or of only token value." It is respondents' contention, in this regard, that their service is valuable. Because a credit card holder, even with the limited liability protection of Pub.L. 91-508, may be liable for \$50 per credit card, potential liability remains significant, particularly for those credit card holders carrying numerous credit cards. Inasmuch as respondents' service can protect card holders from this liability, respondents argue that their service is of more than token value.

Complaint counsel contend that the consumer "actually received a service which is of no value," because the service does not protect respondents' card holders "from the crushing liability described by respondents." (Complaint Counsel's Brief, page 21.) But, of course, demonstrating that the value of respondents' service is grossly exaggerated is not the same as showing that it is of no value. Under Pub.L. 91-508, a person can be liable up to \$50 on each credit card he possesses under certain circumstances. Respondents' service, if properly fulfilled, could relieve a person of this liability. Moreover, as previously noted, respondents' service included the resolving of billing errors of credit card issuers and the obtaining of new cards for persons whose cards had been lost or stolen. There is no evidence that respondents did not perform these services, although they misrepresented the value thereof with respect to the card holder's liability. This mis-

representation can be prevented by order provisions barring future use and requiring appropriate disclosures.

We find that respondents grossly overstated the value of their services but that the record does not support complaint counsel's contention that the services were worthless or of only token value. The restitution provision in the initial decision's proposed order will be set aside.

II. APPLICABILITY OF THE BUSINESS EXCEPTION

Respondents contend that the administrative law judge's proposed order will foster "incomplete and, therefore, inaccurate disclosures," as it would disallow representations, either in the required affirmative disclosure or elsewhere, that credit card liability is unlimited for a *business* card holder. It is respondents' position that the Truth in Lending Act exemption as to business transactions is applicable to Pub.L. 91-508. We agree that if this is the case, the order is deficient.¹

It is not disputed that Pub.L. 91-508 was enacted as an amendment to the Truth in Lending Act, and that the unamended Act excepts, *inter alia*, "credit transactions involving extensions of credit for business or commercial purposes, or to government or governmental agencies or instrumentalities, or to organizations."

We must determine, of course, whether Congress intended to exclude the business card holder from the limited liability protection of Pub.L. 91-508. In this regard, the amendmemnts, to the extent that they are unambiguous, will be controlling. They are the latest, if not the only, direct expression of the Congressional will on the question of the substantive coverage of Pub.L. 91-508.

The unamended Truth in Lending Act is not likely to be very helpful. The express purpose of the Truth in Lending Act is "to insure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit" (Truth in Lending Act Section 102, 15 U.S.C. 1601), while Pub.L. 91-508 is designed to protect "cardholders" from the "unauthorized use" of credit cards. Thus it is clear that the Truth in

¹ Because of our disposition of this issue, we need not reach complaint counsel's contentions that even if the business exception is applicable to Pub.L. 91-508, respondents should be precluded from utilizing this exception as (a) their sales have been designed solely to reach nonbusiness subscribers who would not qualify under the exception, and (b) the respondents would use the exception to circumvent the order.

Lending Act and the subject amendments are at best loosely related (both deal with the broad field of credit). And that, only insofar as definitions are concerned, can it be confidently said that the Act and the subject amendments are interconnected. Significantly, in this connection, the first section of Pub.L. 91-508 contains definitions which were made part of the Definitions Section (Truth in Lending Act Section 103, 15 U.S.C. 1602). On the other hand, the substantive sections of Pub.L. 91-508 follow the last section of the Credit Transaction Chapter of the Truth in Lending Act.

We turn then to Section 103 of the Truth in Lending Act to determine the definition of "cardholder," both because it is the definition of this word that determines the scope of the coverage of the Act, and because it is in the Definitions Section of Pub.L. 91-508 that we are likely to find the Congressional intent.

"Cardholder" is defined, in the amendments, as "any person to whom a credit card is issued" (Section 103(m)). The Truth in Lending Act defines "person" to mean a "natural person or an organization" (Section 103(d)), and "organization" to mean "corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association" (Section 103(c)).

Thus Congress specifically included credit cards used for business purposes in setting forth the definitions which determine the scope of Pub.L. 91-508. We cannot agree with respondents that what Congress so deliberately included it intended to exclude through the subject exception, particularly since (a) the Exceptions Section of the unamended Truth in Lending Act is otherwise entirely unrelated to the purpose and substance of Pub.L. 91-508, and (b) Congress had the term "natural person" at hand (in Truth in Lending Act Section 103(d)), a term that would have directly and unequivocally brought about the limitation on the scope of Pub.L. 91-508 urged by respondents, but chose not to use it.

If the unamended Truth in Lending Act had even tangentially dealt with unauthorized use of credit cards (for then the Exceptions Section might have been conceived with the unauthorized use of credit cards in mind), respondents might have made a reasonable argument that the Congress intended that the exception should apply to the amendments. Such, of course, is not the case here.

We, therefore, reject respondents' contention that the business exception applies to Pub.L. 91-508, and affirm the administrative law judge's order in this respect. Respondents appeal will be granted in part and denied in part. An appropriate order will be issued.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the administrative law judge's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having determined for the reasons set forth in the accompanying opinion that respondents' appeal should be granted in part and that the initial decision should be modified to conform with the views set forth in the opinion:

It is ordered, That the initial decision be modified by striking therefrom the last sentence of Conclusion 2 on page 11 [p. 202 herein], and substituting therefor the findings and conclusions contained in the accompanying opinion.

It is further ordered, That the findings and conclusions contained in the initial decision, as so modified, be, and they hereby are, adopted as the decision of the Commission.

It is further ordered, That the following order, be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondents Credit Card Service Corporation, a corporation, its successors and assigns, doing business as Credit Card Service Bureau or under any other name, and its officers, and John P. Ferry, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale or sale of their credit card registration service, through the sale of memberships or by any other device, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a credit card holder who suffers a loss or theft of credit cards is legally responsible and will have to pay for all

goods and services obtained by unauthorized use of his credit cards.

2. Representing, directly or by implication, that the potential liability which a card holder may incur through the unauthorized use of his credit cards may amount to sums large enough to cause large financial loss or financial ruin.

3. Representing, directly or by implication, that respondents' services can protect a credit card holder from large financial loss or financial ruin resulting from unauthorized use of his credit cards.

4. Representing, directly or by implication, that a credit card holder can incur any liability resulting from the unauthorized use of his credit cards, except to the extent expressly provided for in Public Law 91-508.

5. Failing to incorporate the following notice clearly and conspicuously in any written material offering the sale of respondents' credit card registration service to the public:

IMPORTANT NOTICE

Effective January 24, 1971, a Federal law provides that a cardholder has no liability for unauthorized use of his credit card unless all of the following four conditions are met. If the card issuing company (1) has notified you of your new limited liability, (2) has provided you with a pre-stamped envelope by which to notify them of a loss, (3) the card contains an approved method of identification, and (4) the use occurred before the card issuer is notified, then your liability is limited to \$50 per card.

6. Failing to incorporate the following notice clearly and conspicuously in any radio or television commercial offering the sale of respondents' credit card registration service to the public:

A Federal law limiting liability to a maximum of \$50 per card protects you from charges on lost or stolen credit cards. Along with your membership application Credit Card Service Corporation will give you details concerning this law.

7. Failing to provide each prospective customer who responds to a radio or television commercial offering the sale of respondents' credit card registration service with the notice required by Paragraph 5.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents or other persons engaged in the offering for sale, or sale of respondents' services or in any aspect of preparation, creation, or planning of advertising, and that respondents obtain a signed statement acknowledging receipt of said order by each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change within 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 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.

Commissioners Kirkpatrick and MacIntyre not participating.

IN THE MATTER OF
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.,
ET AL