

tion's report, in which, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
TRANS-AMERICAN COLLECTIONS, INC., ET AL.

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

Docket 8901. Complaint Oct. 16, 1972—Decision, Sept. 26, 1973.*

Consent order requiring a Bloomington, Illinois, seller of debt collection services, among other things to cease using materials which simulate telegraphic communications; using materials which misrepresent the nature, content or purpose of any communication; threatening debt collection suits, not in good faith; failing to include a notice to the effect that communications are only a reminder notice and that respondent, Trans-American, cannot accept monies nor will it take any action regarding this claim; and furnishing to others means and instrumentalities of misrepresentation or deception.

Appearances

For the Commission: *Leroy M. Yarnoff, Frederick D. Clements and Thomas S. Westhoff.*

For the respondents: *Wald, Harkrader & Ross*, Washington, D.C. and *Glickfield & Graves*, Marion, Indiana.

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 Trans-American Collections, Inc., a corporation, and Wayne E. Martin and Eleanor G. Martin, individually and as officers 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

*The complaint is reported as amended by the administrative law judge's order of January 9, 1973.

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thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Trans-American Collections, 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 1206 North Towanda Plaza, Bloomington, Illinois.

Respondents Wayne E. Martin and Eleanor G. Martin are individuals and are officers of the said 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 advertising, offering for sale and sale of a service for the collection of alleged debts. This service consists of the preparation and mailing by the respondents of a series of form notices and letters to alleged debtors.

Respondents sell their service through commissioned salesmen in various States of the United States. Creditor-purchasers of the service are provided with a book of serialized coupons, one coupon per account to be serviced, for which they pay a flat-rate fee in advance, which rate is determined by the number of accounts to be serviced. To initiate the service the creditor fills in one of the coupons with information concerning the alleged debtor and debt and himself and mails it to the respondents who then cause a series of form notices and letters to be mailed to the alleged debtor at regular intervals over a period of about ninety days. Two basic styles of forms are used in this series: (1) that which is titled TELEGRAM; and (2) that which bears the letterhead of Trans-American Collections, Inc.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now, and for some time last past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of the United States mail, letters, notices, forms and other material for use in the collecting of alleged delinquent accounts. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said business 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 payment of alleged delinquent accounts, the respondents mail or cause to be mailed, and have mailed

or caused to be mailed, to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative, but not all inclusive, of said forms and material are the following:

1. A yellow window envelope on which a return address is printed, with no name, and to which is affixed a metered stamp depicting a spread eagle. The word TELEGRAM is printed in large black type over the window.

2. A yellow, printed form styled TELEGRAM, designed to be inserted in the envelope described in subparagraph 1 of this Paragraph.

Photocopies of some such forms described in subparagraphs 1 and 2 of this Paragraph are annexed to and made part of this complaint.

PAR. 5. By and through the use of the envelopes and forms described in subparagraphs 1 and 2 of Paragraph Four, 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 to those to whom said forms are mailed that:

1. The communication is a telegraphic communication of the type usually termed to be a telegram.

PAR. 6. In truth and in fact:

1. The communication is not a telegraphic communication of the type usually termed to be a telegram. Rather, it is a printed form letter, mailed to alleged debtors, which form by its color and appearance, styling, printing and format simulates a telegraphic communication and which, by virtue of said simulation, misleads the recipient as to its content and import, purpose, and urgency.

Therefore, the use by respondents of said envelopes and forms as set forth in Paragraphs Four and Five was and is false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, and for the purpose of inducing the payment of alleged delinquent accounts, the respondents mail or cause to be mailed, and have mailed or caused to be mailed, to alleged delinquent debtors various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

* * * TRANS-AMERICAN COLLECTIONS, INC. SERVING ALL COUNTRIES
OF NORTH AMERICA * * *

* * * * *

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* * * * *
 * * * Collection Division * * *
 * * * * *
 * * * Claims Division * * *
 * * * * *
 * * * Claims Department * * *
 * * * * *

* * * You are further notified that claimant requests that Trans-American Collections, Inc. resume procedures to liquidate claim involved, in order to satisfy the liability set forth above. If employed, we request verification as to employers

name and address. If incorporated or self-employed, name of firm and banking institution with whom you do business * * *

* * * Notice is hereby given that we shall recommend that our client advance court costs and immediately enter suit in favor of credit grantor according to law, if the amount owed warrants this action * * *

* * * You are hereby requested to liquidate claim at claimants office * * * within 5 days after the delivery hereof * * * or protest liability of claim on file. Failure to comply may result in commencement of litigation by creditor if claim warrants such action, with ultimate seizure of property, including monies, automobile, credits, and bank deposits, now in your possession. If claimant receives an amount sufficient to satisfy the liability set forth herein, prior to the time of protest as scheduled, you may apply for, and with consent of claimant your appearance will not be required * * *

* * * Your refusal or neglect to satisfy the above liability at claimants claim office, compels us to notify you, that if claimant obtains judgment, you may present assets exempt from levy and protest the validity of claim immediately by calling * * * within 48 hours upon receipt of this final notice. All statements will be recorded * * *

* * * Final—72 hour—notice * * * We wish to put you on notice that your payment of this claim must be received by the creditor at once. You are further notified legal proceedings by the creditor following judgment may compel you to bring all financial records to court for examination. A writ of execution may be issued and may be satisfied by a levy on your automobile or other personal property, real estate, bank accounts, chattels, goods and accounts receivable. A public auction of the aforementioned property may be held after public advertising of same and usual sales process is conducted by sheriff. Court costs, sheriff fees, judgments, and all other expenses relative to these proceedings may be assessed against the debtor. Litigation is expensive. Remit payment direct to creditor now to avoid these costs * * *

PAR. 8. By and through the use of the aforesaid statements and representations, including the use of the word "collections" in the corporate name, and others of similar import and meaning not expressly set out herein, the respondents have represented, and are now representing, directly or by implication:

1. (a) That the said corporate respondent is a collection agency;
- (b) that delinquent debtors' accounts are referred to corporate respondent by creditors for collection; and
- (c) that corporate respondent is prepared to institute, or cause to be instituted, legal proceedings in the collection of delinquent debts.
2. That legal action with respect to an allegedly delinquent account has been or is about to be initiated.

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3. That if payment is not made, the alleged debtor's general or public credit rating will be adversely affected.

PAR. 9. In truth and in fact:

1. (a) The said corporate respondent is not a collection agency;
- (b) delinquent debtors' accounts are not referred to corporate respondent by creditors for collection; and
- (c) corporate respondent does not and cannot institute legal proceedings for the collection of delinquent accounts.

On the contrary, respondents sole business is the preparation and mailing of form letters and notices to alleged debtors, exhorting them to pay their alleged creditors.

2. Legal action with respect to the allegedly delinquent account has not been, or is it about to be, initiated. On the contrary, while respondents' service is being used, it is virtually certain that no legal proceedings are being initiated.

3. If payment is not made, the alleged debtor's general or public credit rating is not adversely affected.

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

PAR. 10. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 11. The use by respondents of the envelopes and forms as set forth in Paragraph Four hereof, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that the said communication is a telegram, an emergency communication, or one of similar concern containing urgent matter. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 12. 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

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

Urgent Message

TELEGRAM 1:05 P.M.

July 27, 1971.

Pay to—

RF: Amount of claim, \$27.00

Notice is hereby given that we shall recommend our client advance court costs and immediately, according to law, enter suit in favor of claimant, if recommended by legal council and the legality of claim warrants this action. It is imperative that you settle this claim within the next 72 hours. Important to you, that claimant receive full settlement in time allowed. It makes no difference to us whether you pay voluntarily or under compulsion. If claimants legal counsel accepts our recommendation to commence litigation, and if legal action has been filed, you may be subject to court costs even upon full remittance. Do not remit to Trans-American Collections, Inc. or their mailing addresses at 333 North Michigan Ave., Chicago, 1505 E. 17th St., Santa Ana, Ca., 303 W. 42nd St., New York City, 1225 Post St., San Francisco, Ca., 636 W. Broadway, Vancouver 9, B.C.

[Postal Meter FRANK]

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DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its

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rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Trans-American Collections, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1206 North Towanda Plaza, Bloomington, Illinois.

Respondents Wayne E. Martin and Eleanor G. Martin are officers of said corporation. They formulate, direct and control the policies, acts and practices of the said corporation, and their business address is the same as that of said corporation.

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, Trans-American Collections, Inc., a corporation, its successors and assigns, and its officers, and Wayne E. Martin and Eleanor G. Martin, individually and as officers of said corporation, and respondents' agents, representatives, and employees directly or through any corporation, subsidiary, division or other device in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection of or inducing or attempting to induce, the payment of delinquent accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, or placing in the hands of others for use, envelopes, letters, forms, or any other materials which appear to be, or simulate, telegraphic communications;

2. Using, or placing in the hands of others for use, envelopes, letters, forms, or any other materials which misrepresent the nature, contents, or purpose of any communication;

3. Representing directly or by implication that:

(a) Respondents are prepared to institute or cause to be instituted, legal proceedings in the collection of delinquent debts.

(b) Legal action with respect to an allegedly delinquent account has been, or is about to be, or may be initiated.

(c) Nonpayment of the delinquent account will adversely affect the credit rating of the debtor.

Provided, however, That it shall be a defense in any enforcement

proceeding initiated under this Paragraph 3 for the respondents to establish that such representations are factually correct.

4. Failing clearly and conspicuously to disclose in each letter, form or notice to delinquent, or alleged delinquent, debtors the following statement:

This communication is only a reminder notice. Trans-American Collections, Inc., cannot accept monies nor will it take any action, legal or otherwise, regarding this claim.

This statement shall be made in prominent type, of a size no smaller than the basic body copy in the letter, form or notice, and in red ink to contrast with the text of the letter to be printed or written in black or blue ink, or in black and blue ink, or in black or blue ink if the text of the letter is printed or written in red.

The respondents may use the term "collections" in their corporate name.

5. Making any statement or statements in any letter, form or notice to delinquent, or alleged delinquent, debtors which is/are inconsistent with, negate/s or contradict/s, the affirmative disclosure required by Paragraph 4.

6. Placing in the hands of others the means and instrumentalities to represent any of the matter prohibited in Paragraph 3 or which fail to comply with the requirements of Paragraphs 4 or 5 of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating officers, agents, representatives or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of delinquent accounts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondent corporation 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 with obligations arising out of the 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, signed by the respondents, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

ALL STATES LINCOLN-MERCURY, INC., TRADING AS CROSS
ROADS LINCOLN-MERCURY, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE FEDERAL
TRADE COMMISSION AND THE TRUTH IN LENDING ACTS*Docket C-2460. Complaint, Sept. 27, 1973—Decision, Sept. 27, 1973.*

Consent order requiring a Cleveland, Ohio, retailer of new and used automobiles, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

*Appearances*For the Commission: *Vivian L. Solganik.*For the respondents: *Charles Hyman, of Hyman, Zagrans & Carothers, Elyria, Ohio.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act, and Regulation Z, the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that All States Lincoln-Mercury, Inc., a corporation, d.b.a. Cross Roads Lincoln-Mercury, and Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 All States Lincoln-Mercury, Inc., d.b.a. Cross Roads Lincoln-Mercury, 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 9415 Broadway, in the city of Cleveland, State of Ohio.

Respondents Charles E. Mullinax, Wallace A. Scotten, Earl B. Porter, and Harry W. Lum are officers of the corporate respondents. 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.