

The suit must be filed in the county where the defendant either lives or the contract was signed.

Complaint

84 F.T.C.

Appearances

For the Commission: *Randall H. Brook.*
For the respondent: *Edward S. Berger*, Chicago, Ill.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Montgomery Ward & Co., Incorporated, has violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint:

PARAGRAPH 1. Montgomery Ward & Co., Incorporated, is an Illinois corporation with its principal office located at 619 West Chicago Ave., Chicago, Ill.

PAR. 2. Respondent is a general merchandise and catalog retailer, engaged in the advertising, offering for sale, sale and distribution of clothing, household goods, appliances, tools, tires and various other articles of merchandise. Allegations below of respondent's present acts or practices include past acts or practices.

PAR. 3. Respondent sells, ships and distributes its products throughout the United States, and is thus in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course of its business, respondent regularly extends credit (hereinafter referred to as retail credit accounts) for the purpose of facilitating consumers' purchases of respondent's products.

PAR. 5. In the course of its collection of retail credit accounts, respondent regularly sues, directly or through collection agencies, allegedly defaulting purchasers in courts located far from where the purchaser defendants reside or from where they signed the contracts sued upon. Courts located closer to where defendants reside or where they signed the contracts sued upon could be used for these suits. In Alaska, for example, many defendants are low income Alaskan natives who reside in small villages five hundred or more miles from the forum court. The distance, cost and inconvenience of defending such suits place a virtually insurmountable burden on defendants. Respondent thus effectively deprives many defendants of a reasonable opportunity to appear, answer and defend. Therefore, such use of distant or inconvenient forum is unfair.

PAR. 6. In its pursuit of post-judgment remedies in Alaska, respondent regularly causes orders for judgment debtor examinations to be issued. Through these orders, respondent requires defendants to appear in person in Anchorage, at their own expense, to testify as to their

assets. Such orders have been issued in midwinter against defendants residing in northern Alaska, five hundred or more miles from Anchorage. Such defendants could readily be examined by local magistrates or through sworn written interrogatories. Thus, the use of such burdensome orders against distantly-residing defendants is unfair.

PAR. 7. The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and constitute unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 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 complaint to issue herein, 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 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 sixty days, now in further conformity with the procedure prescribed in Section 2.34(b) of its 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 Montgomery Ward & Co., Incorporated, is an Illinois corporation with its principal office located at 619 West Chicago Ave., Chicago, Ill.
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 respondent Montgomery Ward & Co., Incorporated, a corporation, and its successors, assigns, officers, agents, repre-

sentatives and employees, directly or through any corporation, subsidiary, division or other device, including any collection agency, in connection with the collection of retail credit accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Instituting suits except in the county (or, in Alaska, in the court closest to) where defendant resides at the commencement of the action, or in the county (or, in Alaska, in the court closest to) where the defendant signed the contract sued upon. If defendant cannot be located by diligent efforts, suit may be instituted in the county of defendant's last known residence. These provisions shall not preempt any rule of law which further limits choice of forum or which requires, in actions quasi in rem or involving real property or fixtures attached to real property, that suit be instituted in a particular county.

Provided, That, with respect to collection suits filed on behalf of respondent by any third party relating to accounts assigned for collection to that third party prior to the date of service of this order, failure of such third party to bring such suits in the appropriate location as set forth above shall not constitute noncompliance with this paragraph.

For purposes of this order, in open end credit transactions (for example, "revolving charge accounts"), the "contract sued upon" is the document (commonly called "sales slip" or "purchase order") evidencing the actual credit sale.

2. Causing the issuance of any order for judgment debtor examination which requires the personal appearance of a defendant, unless the appearance may be made in the county of the defendant's residence or, in Alaska, in a location no more distant from the defendant's residence than the nearest court.

It is further ordered, That, where respondent learns subsequent to institution of a suit that Paragraph 1 above has not been complied with, it shall forthwith terminate the suit and vacate any default judgment entered thereunder. In lieu of terminating a suit, respondent may effect a change of forum to a county or court permitted by the preceding Paragraph 1, provided that respondent gives defendant notice of such action and opportunity to defend equivalent to that which defendant would receive if a new suit were being instituted. *Further,* Where respondent learns that Paragraph 2 above has not been complied with, it shall forthwith vacate the judgment-debtor examination order. In all cases respondent shall provide defendants with a clear explanation of the action taken and of defendants' rights to appear, answer and defend in the new forum. Compliance with this paragraph, where suit has been

instituted in the county appearing from respondent's business records to be where defendant resides, shall be considered compliance with the preceding Paragraph 1.

It is further ordered, That, where respondent terminates a suit or vacates a judgment pursuant to the preceding Paragraph, it shall give notice of such termination or vacation to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. Section 603), which respondent has been informed or has reason to know has recorded the suit or judgment in its files. Additionally, respondent shall furnish such notice to any other person or organization upon request of the defendant.

It is further ordered, That respondent prepare and maintain a summary of suits instituted, pending, terminated, or acted upon subsequent to judgment. This summary shall contain each defendant's (1) name, (2) address, and (3) county of residence; (4) county where the contract sued upon was signed by the defendant, if the suit was not instituted in the residence county; (5) county where served; (6) date served; (7) date filed; (8) docket number; (9) name and (10) location of court in which filed; (11) name of plaintiff (if a collection agency suing in its own name); (12) amount claimed; and (13) disposition (including garnishment or execution, if any). Where a suit has been instituted in a county other than where defendant resides or signed the contract sued upon, the reason for this choice of forum shall be explained. This summary shall cover a continuous two-year period commencing with service upon respondent of this order. A summary of suits instituted by respondent's principal collection counsel for its Central Credit Units in Oakland, Los Angeles, Kansas City, Chicago, Albany, and Baltimore shall also be prepared for a year period immediately prior to such service, with information limited to items 1, 3, 4 and 10 above, and a notation of whether a default judgment has been entered. A copy of this summary shall be submitted to the Federal Trade Commission on a semiannual basis except that the summary of activity for the year preceding service of this order upon respondent shall be submitted within sixty days after service.

It is further ordered, That respondent shall forthwith deliver a copy of this order to each of its subsidiaries and operating divisions, to each collection agency currently collecting any of respondent's retail credit accounts, and to any other collection agency prior to referral to it of any of respondent's retail credit accounts. Respondent shall obtain and preserve signed and dated statements from each collection agency, acknowledging receipt of the order and willingness to comply with it.

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

IN THE MATTER OF

TRU-VIEW PLASTICS, INC., ET AL.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF THE