

IN THE MATTER OF
UNIVERSAL CREDIT ACCEPTANCE CORPORATION, ET
AL.

MODIFIED ORDER, IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8821. Decision, Feb. 16, 1973 - Modified Order, Mar. 11, 1975

Order modifying an earlier order dated February 16, 1973, 82 F.T.C. 570, 38 F.R. 7545, pursuant to order of the United States Court of Appeals for the Ninth Circuit dated Sept. 11, 1974 (503 F.2d 321), by setting aside the portions of the order which required individual respondent John Clifford Heater to make refunds of monies to certain past victims of the violations found.

Appearances

For the Commission: *Alfred Lindeman, W. T. Mitchell, William A. Arbitman and Harrison J. Sheppard.*

For the respondents: *Alfred L. Young, San Mateo, Calif.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent John Clifford Heater having filed in the United States Court of Appeals for the Ninth Circuit on Apr. 26, 1973, a petition to review and set aside those portions of the order to cease and desist issued herein on Feb. 16, 1973, which required him to make refunds of monies to certain past victims of the violations found; and the Court having rendered its decision and entered judgment on Sept. 11, 1974, directing that the order provisions for refunds to past victims be set aside;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court to read as follows:

ORDER

It is ordered, That respondents Universal Credit Acceptance

Corporation, Continental Credit Card Corporation, International Credit Card Corporation, also trading as National Credit Service, corporations, and their officers, and John Clifford Heater, individually and as an officer of Universal Credit Acceptance Corporation and International Credit Card Corporation, and Howard P. Gingold, individually and as an officer of Continental Credit Card Corporation, and respondents' franchisees, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale or sale of franchises or credit card services, or any other products or services, or in the operation of any credit card service or other business in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

1. (A) Representing that franchisees will earn or can reasonably expect to earn or receive any stated or gross or net amount of earnings or profits; or representing, in any manner, the past earnings of franchisees unless in fact the past earnings represented are those of a substantial number of franchisees in the geographical area about which such representations are made and accurately reflect the average earnings of said franchisees under circumstances similar to those of the person to whom the representation is made.

(B) Representing that franchisees can expect to remain active franchisees for many years; or representing, in any manner, the longevity or tenure of past or existing franchisees unless in fact the periods of time represented are those for which a substantial number of franchisees actively pursued membership sales efforts.

(C) Selling, or offering franchises for sale, in any manner, without disclosing clearly and conspicuously in writing at or before the time of the first oral sales presentation, or in the event no oral sales presentation is made, reasonably prior to the execution of a franchise application, agreement or contract:

(i) the median and mean gross earnings from the sale of memberships in respondents' program by franchisees in the most recent calendar year (who were active for the entire year) preceding the year in which such sale or offer is made;

(ii) the total number of franchisees in the most recent calendar year preceding the year in which the sale or offer is made;

(iii) the total number of franchisees in subparagraph (ii) above who had earnings from the sale of memberships during the designated year in the following dollar amounts:

- a. \$1,000 or less
- b. over \$1,000 but not over \$5,000
- c. over \$5,000 but not over \$10,000

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d. over \$10,000 but not over \$20,000

e. over \$20,000

(iv) the number of franchisees referred to in subparagraph (ii) above who sold memberships for the following periods of time:

a. 1 year or less

b. over 1 year but not over 2 years

c. over 2 years but not over 3 years

d. over 3 years but not over 4 years

e. over 4 years

(v) the total number of members submitting credit charges in respondents' program during the most recent calendar year preceding the year in which the sale or offer is made;

(vi) the number of members referred to in subparagraph (v) above who submitted credit charges under respondents' program for the following periods of time:

a. 1 year or less

b. over 1 year but not over 2 years

c. over 2 years but not over 3 years

d. over 3 years but not over 4 years

e. over 4 years

(vii) the percentage of credit charges recoured to members during the most recent calendar year and the full number and nature of reasons for which respondents may recourse charges;

(viii) the name and current address of each of respondents' franchisees in the most recent calendar year preceding the year in which such sale or offer is made;

(ix) a financial statement reflecting respondents' assets and liabilities (stating separately fixed assets and liquid assets) for the most recent calendar year;

(D) Selling, or offering memberships for sale, in any manner, without disclosing clearly and conspicuously in writing at or before the time of the first oral sales presentation, or in the event no oral sales presentation is made, reasonably prior to the execution of any application, agreement or contract:

(i) the percentage of credit charges recoured to members during the most recent calendar year preceding the year in which the sale or offer is made and the full number and nature of reasons for which respondents may recourse charges;

(ii) the total number of members submitting credit charges in respondents' program during the most recent calendar year preceding the year in which the sale or offer is made;

(iii) the number of members referred to in subparagraph (ii) above who participated for the following periods of time:

- a. 1 year or less
- b. over 1 year but not over 2 years
- c. over 2 years but not over 3 years
- d. over 3 years but not over 4 years
- e. over 4 years

(iv) a financial statement reflecting respondents' assets and liabilities (stating separately fixed assets and liquid assets) for the most recent calendar year.

Provided, however, That in the event respondents operated or used any corporate or trade name for a period of less than five years, the disclosures called for in this paragraph shall reflect the operations of the last preceding business entity used by respondents to sell and administer franchises and memberships.

2. Selling, or offering franchises for sale, in any manner, without furnishing to each prospective purchaser reasonably prior to the execution of a franchise application or agreement, a copy of the Federal Trade Commission Consumer Bulletin No. 4, "ADVICE FOR PERSONS WHO ARE CONSIDERING AN INVESTMENT IN A FRANCHISE BUSINESS."

3. (A) Representing that persons do not risk any loss of money in coming to respondents' offices, or any other place, for a franchise interview, or that respondents authorize the reimbursement of air fare expenses for such interviews, without disclosing clearly and conspicuously in writing prior to the expenditure of any funds by such persons, all conditions which must be met to receive reimbursement, including the exact amount of any deposit or downpayment required.

(B) Failing to reimburse travel expenses to any person respondents have promised such reimbursement.

4. Representing that persons do not risk losing the deposits or downpayments submitted with applications for franchises; or that such deposits or downpayments are refundable when such deposits or downpayments may be forfeited if the applicants withdraw or fail to pay the balance due after acceptance of their application by respondents, or for any other reason;

Provided, however, That respondents may make such representations if they do in fact refund such deposits.

5. Misrepresenting that any geographical area offered as a franchise has not been previously franchised by respondents or misrepresenting that such area has been franchised before by respondents and was profitable for the prior franchise holder.

6. Misrepresenting that respondents have a franchise committee which actually checks the qualifications of prospective franchisees, or

misrepresenting, in any manner, that respondents check, or have checked the qualifications of a prospective franchisee.

7. Misrepresenting that respondents have a regional manager who will interview, or has interviewed, prospective franchisees for a particular geographical area; or that respondents have applications pending for a particular area; or that any person must act immediately to be considered for a franchise; or misrepresenting, in any manner, the nature and extent of interest of others in any particular franchise, or franchises in general.

8. Representing that franchise holders receive substantial benefits from renewals of memberships or from annual bonuses based on a percentage of net credit charges submitted by members; or representing, in any manner, benefits to franchisees which are dependent upon the actions of members, unless the benefits represented are those received by a substantial number of franchise holders.

9. (A) Representing that persons risk losing little or nothing in investing in a franchise; or that respondents will repurchase any franchise.

(B) Representing that respondents will aid or assist in the resale of franchises without contemporaneously, clearly and conspicuously disclosing the nature of such assistance and the amount of the resale purchase price which respondents will retain.

(C) Representing that respondents' franchises are vested property rights which may be sold, assigned, transferred or testated, without contemporaneously, clearly and conspicuously disclosing that franchises are subject to termination by respondents if a franchise holder does not produce a prescribed sales quota.

10. Representing, in any manner, that respondents' program has received national acceptance, or that respondents' program can be sold with ease; or misrepresenting in any manner, the salability or degree of acceptance or approval of respondents' program.

11. (A) Representing that credit charges submitted under respondents' program are guaranteed payable or are payable without recourse; or that respondents assume the risk of nonpayment by members' customers in any manner including, but not limited to, using the terms "we honor all approved major credit cards," "honor all credit cards," "non-recourse," "without recourse" or any other terms or words of similar import or meaning.

(B) Representing that all members can expect to be successful or satisfied with the performance of respondents' program; or that members usually continue using respondents' program for two years and renew their contracts thereafter.

12. Using or disseminating any article written or prepared by

respondents and published substantially verbatim in any newspaper, magazine, or other publication.

13. Using any letter, payment check, or other materials which purport to represent the satisfaction or success of any franchisee or member unless,

(A) Such franchisee or member is actively selling or using respondents' program or service at the time such letter, payment check, or other materials are used;

(B) the full name and current address of the franchisee or member and the existence of any remuneration are disclosed clearly and conspicuously in conjunction with the use of such letter, payment check or other materials;

Provided, however, That respondents shall not obtain or use any such letter, payment check or other material relating to any franchisee or member who has not sold or participated in respondents' program or service for at least six (6) months.

14. Representing that respondents' program costs members little or nothing at all; or that the program costs members half as much as trading stamps; or misrepresenting, in any manner, the cost of respondents' program to members.

15. Representing that members complete just one simple form for all credit charges; or misrepresenting, in any manner, the procedures necessary to process credit charges and receive payment therefor; or failing to disclose contemporaneously, clearly and conspicuously any and all reasons which will preclude receipt of full payment of credit charges submitted by members.

16. Representing that members receive payment for each credit charge submitted to respondents in 30 days; or misrepresenting, in any manner, the period of time in which members will receive payment for credit charges submitted to respondents.

17. Failing to disclose clearly and conspicuously that respondents' program or service is not approved or endorsed by the individual issuers of the credit cards approved by respondents.

18. Representing that members are assured or can achieve a minimum 10 percent or any other percentage or amount of increase in business using respondents' program, without disclosing the number of members who have actually received said increase and offering to identify such members on request, and without maintaining verified statements from said members that they have received said increases.

19. (A) Using the name Fair Trade Bureau or any other name which represents that respondents' operations and activities have been endorsed by any independent or governmental organization.

(B) Writing, preparing, or disseminating any Better Business Bureau reports concerning respondents' business.

20. (A) Representing that every credit charge submitted by members is subject to the most intensive collection procedure in the credit industry; or misrepresenting, in any manner, the intensity or nature of respondents' collection activities.

(B) Using the name North American Collections or any other trade name or collection agency similarly related to respondents without disclosing contemporaneously, clearly and conspicuously that such name or agency is owned, operated or controlled by respondents.

21. Representing that respondents will institute legal action against inactive members whose accounts respondents claim are in arrears, unless respondents do intend to pursue such remedies and have in practice pursued such remedies against substantial number of members.

22. Furnishing, or otherwise placing in the hands of others, the means or instrumentalities by or through which the public may be misled or deceived in the manner or as to the things prohibited by this order.

It is further ordered, That respondents incident to selling their franchises and credit card services:

a. Inform orally all persons to whom solicitations are made and provide in writing in all applications and contracts in at least ten-point bold type that the application or contract may be cancelled for any reason by notification to respondents in writing within seven days from the date of execution.

b. Refund immediately all monies to (1) all persons who have requested cancellation of the application or contract within seven days from the execution thereof, and (2) all persons who paid any monies for franchise fees, deposits or downpayments on franchises, air fare or other expenses for a home office interview, and for membership fees, membership dues and discount fees, who show that any of respondents' solicitations, applications, contracts or performance were attended by or involved any violation of any of the provisions of this order.

It is further ordered, That the respondents shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen and franchisees or other persons engaged in the sale of respondents' franchises and services, and secure from each such salesman, franchisee or person a signed statement acknowledging receipt of said order.

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

It is further ordered, That the respondents notify the Commission at

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least thirty (30) days prior to any proposed change in the corporate respondents 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 the order.

It is further ordered, That each of 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 all of the provisions of this order.
