

IN THE MATTER OF

FILMDEX CHEX SYSTEM INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS

Docket C-2669. Complaint, May 16, 1975-Decision, May 16, 1975

Consent order requiring a Centreville, Va., credit reporting company, among other things to cease furnishing, in violation of the Fair Credit Reporting Act; such information as has been gathered by respondents on consumers to persons without a permissible purpose.

Appearances

For the Commission: *Bernard Rowitz and Irvin E. Abrams.*

For the respondents: *John R. Foley, Foley & Foley, Wash., D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Fair Credit Reporting Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that FilmDEX Chex System Incorporated, a corporation, and Joseph E. Slattery, individually and as an officer of said corporation, hereinafter sometimes 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 FilmDEX Chex System Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 15500 Lee Hwy., Centreville, Va.

Respondent Joseph E. Slattery 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 herein-after set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Subsequent to Apr. 25, 1971, in the ordinary course and conduct of their business, respondents have compiled and published lists containing, among other things, the names and addresses of consumers, together with statements or indications that such consumers have outstanding unpaid bills, or with statements or indications that such consumers have issued forged checks, checks drawn upon

nonexistent accounts, or checks which have been returned by the drawee bank because of insufficient funds or other reasons.

The information contained in the aforesaid lists concerning consumers whose names and addresses appear therein, bears on said consumers' credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics and/or mode of living. Therefore, each of the aforesaid lists constitutes a series of consumer reports as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

Respondents are, and have been, for monetary fee, regularly engaged in the practice of assembling such information on consumers for the purpose of furnishing such lists to third parties, and regularly use a means or facility of interstate commerce for the purpose of preparing and/or furnishing said lists. Therefore, respondents are a consumer reporting agency as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. At the time respondents furnish the aforesaid consumer reports in list form, respondents do not have reason to believe that each person to whom the consumer reports are furnished has a legitimate business need for the information in each report in connection with a business transaction involving each consumer reported upon, nor do respondents have reason to believe that each recipient otherwise intends to use the information contained in each report for a purpose set forth in Section 604 of the Fair Credit Reporting Act. Further, the furnishing of such consumer reports is neither in response to a court order nor in accordance with the written instructions of each consumer to whom the reports relate.

Therefore, respondents, in the ordinary course and conduct of their business, as aforesaid, furnish consumer reports to persons, as "person" is defined in Section 603(b) of the Fair Credit Reporting Act, who do not have a legitimate business need or other permissible purpose to receive the consumer reports furnished to them, as required by Section 604(e) of the Act.

By furnishing consumer reports as described above, respondents have violated, and are violating, Section 604 of the Fair Credit Reporting Act.

PAR. 4. By and through the acts and practices described in Paragraph Three above, respondents have failed to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act, and have furnished consumer reports to persons under circumstances in which there are reasonable grounds for believing that such reports will not be used for a purpose listed in Section 604 of such Act. Therefore, respondents

have violated, and are violating, Section 607(a) of the Fair Credit Reporting Act.

PAR. 5. The acts and practices set forth in Paragraphs Three and Four above, were, and are, in violation of the Fair Credit Reporting Act and pursuant to Section 621(a) of that Act, said acts and practices constitute unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, and the Fair Credit Reporting Act; 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 aforesaid draft of complaint, 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Filmdex Chex System Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 15500 Lee Hwy., Centreville, Va.

Respondent Joseph E. Slattery is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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 Filmdex Chex System Incorporated, a corporation, its successors and assigns, and its officers, and Joseph E. Slattery, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with collecting, preparation, assembling and/or furnishing of consumer reports as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub.L. 91-508, 15 U.S.C. §1601, *et seq.*), shall forthwith cease and desist from:

1. Furnishing any consumer report to any person, unless such report is furnished:

- a. In response to the order of a court having jurisdiction to issue such order; or
- b. In accordance with the written instructions of the consumer to whom the report relates; or
- c. To a person which respondents then has reason to believe intends, at the time the information is furnished, to use the information:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) For employment purposes; or

(3) In connection with the underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a business transaction involving each consumer, reported upon.

2. Furnishing consumer reports in list form, unless the identity of the consumer to whom the information relates is not disclosed on such list, and cannot be determined without the use of additional information and identification to be provided by the consumer. Such additional information and identification to be provided at the time of the transaction with the user.

3. Failing to require prospective users of consumer reports to certify the purposes for which the information in such reports is

sought, and that it will be used for no other purpose, in accordance with Section 607 of the Fair Credit Reporting Act.

4. Furnishing consumer reports to any user or prospective user of such reports who does not first provide the identification and the certification of purpose for which information in such reports is sought, as required by Section 607(a) of the Fair Credit Reporting Act.

5. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purpose listed under Section 604 of the Act, as provided by Section 607 of the Act.

6. Failing to include the following statement on the face sheet of series of consumer reports published and distributed by respondents with such conspicuousness and clarity as is likely to be read and understood by users of such consumer reports:

a. Information contained within these series of consumer reports will be used exclusively by the designated recipient or his representatives for the following permissible purposes and no other:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) In connection with employment purposes; or

(3) In connection with the underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a legitimate business need for the information in connection with a business transaction involving the consumer.

b. It is understood by the users of these series of consumer reports that Pub. L. 91-508, Section 619, states "Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the preparation and/or furnishing of consumer reports, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents 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

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subsidiaries or any other change in the corporation which may effect compliance 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, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.