

subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IN THE MATTER OF

GIMBEL BROTHERS, INC., ET AL.

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

Docket C-2675. Complaint, June 18, 1975-Decision, June 18, 1975

Consent order requiring a New York City parent and its department store operation, Gimbels New York, among other things to provide charge customers having credit balances with periodic statements setting forth credit balances, no less than three times in a six-month period following creation of the balance; to notify charge account customers with credit balances of their right to a cash refund of the balance; to stop deleting credit balances of \$1.00 or more from a customer's account before making a cash refund or an offsetting purchase has been made; to automatically refund amounts of unclaimed credit balances after a period of account inactivity; and to refund all unclaimed credit balances more than \$1.00 created since June 30, 1972.

Appearances

For the Commission: *Alan D. Reffkin, Justin Dingfelder, and Howard F. Daniel.*

For the respondents: *Eugene H. Gordon, New York, N.Y.*

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 Gimbel Brothers, Inc., a corporation, and its divisions, Gimbels New York, hereinafter sometimes 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. Respondent Gimbel Brothers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 1275 Broadway, New York, N.Y. Respondent Gimbel Brothers, Inc. has the legal authority to formulate, control and direct the policies, acts and practices, including those hereinafter set forth, of its division Gimbels New York.

Respondent Gimbels New York is a division of Gimbel Brothers, Inc. Its principal office and place of business is located at 1275 Broadway, New York, N.Y.

PAR. 2. Respondent Gimbel Brothers, Inc., through operating divisions and a wholly-owned subsidiary, operates and controls a number of retail department and apparel stores in 14 states.

Respondent Gimbels New York operates approximately 11 department stores in three States.

PAR. 3. Respondents sell and distribute merchandise in commerce by operating and controlling retail department stores in a number of States and by causing merchandise to be shipped from their warehouses and from the places of business of their various suppliers to their warehouses and retail department stores for distribution to and purchase by the general public located in states other than those from which such shipments originate. By these and other acts and practices, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in merchandise and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of their aforesaid business, respondents permit customers of Gimbels New York who qualify for credit to charge purchases in accordance with the terms of charge account agreements executed between said customers and respondents. On occasion a customer's charge account balance represents an amount of money owed to the customer by respondents, rather than an amount of money owed to respondents by the customer. This

credit balance is the result of, among other things, overpayments by the customer or credits for returned merchandise.

5. Respondents customarily provide each customer having a charge account credit balance a monthly statement setting forth the amount of the credit balance, at the end of the billing cycle during which the credit balance is created and at the end of each subsequent billing cycle during which the credit balance has not been cleared from the customer's account and a transaction on the customer's account occurs. No such statement is provided for any billing cycle during which a customer does not transact any business on his charge account.

If a customer with a credit balance on his charge account does not specifically request that respondents pay him the amount of his credit balance but purchases merchandise or services on his charge account, respondents for a limited time apply the amount of the credit balance to reduce or eliminate the customer's obligation created by the purchase of merchandise or services.

If the customer does not request a refund in cash of the amount of the credit balance or make a purchase within a period of time allowed by respondents for activity to occur on the customer's account, respondents, through bookkeeping entries, clear the amount of the credit balance from the customer's charge account. No cash payment to the customer is made at the time of the clearing of his credit balance from his charge account. Subsequent periodic statements are not mailed until a later purchase is made. The outstanding credit balance that was previously reflected on a periodic billing statement is not applied to any purchase occurring after the credit balance has been cleared from the customer's account.

At no time is the customer informed of his right to receive a cash refund nor do respondents voluntarily refund cash representing outstanding credit balances without a specific customer request. Respondents have through such acts and practices eliminated substantial dollar amounts of credit balances as aforesaid from customer accounts in a substantial number of instances.

PAR. 6. By failing to notify customers with charge account credit balances that they have the right to request and receive cash payment of the amounts of their credit balances; by failing to furnish customers, at the end of each and every billing cycle during which credit balances remain outstanding, monthly statements reflecting the amount of their credit balances; by deleting outstanding credit balances from accounts without refunding such amounts and by providing billing statements for subsequent purchases which do not reflect such outstanding credit balances, respondents have caused a substantial number of their customers to be deprived of substantial sums of money rightfully

theirs. Therefore, the acts and practices described in Paragraph Five above were and are unfair.

PAR. 7. The acts and practices of respondents set forth in Paragraphs Five and Six above were and are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition 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 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, and 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 sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedures 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 Gimbel Brothers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 1275 Broadway, New York, N.Y.

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 Gimbel Brothers, Inc., a corporation,

and its division, Gimbels New York (hereinafter collectively referred to as respondent), their successors and assigns and their representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the handling of credit balances on retail consumer open end credit accounts or other retail consumer charge accounts (including, but not necessarily limited to thirty (30) day charge accounts) created incident to the business of selling consumer merchandise and services at retail, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to provide each charge account customer having a credit balance created after the date of entry of this order with a periodic statement setting forth such credit balance no fewer than three times during the six month period following the creation of the credit balance.
2. Failing to notify each charge account customer having a credit balance created after the date of entry of this order of the customer's right to request and receive a cash refund in the amount of such credit balance. Such notice shall be accomplished by a clear and conspicuous disclosure on or enclosed with each periodic statement; shall be accompanied by a return envelope, and shall be consistent with but need not be identical to the following:

NO PAYMENT REQUIRED

The Credit Balance shown on [this] [the enclosed] statement represents money we owe you. You may obtain a refund by presenting your statement at our store or by returning it in the enclosed envelope.

If you do not charge against this credit or request a refund, a check will be mailed to you automatically after six months, except a credit balance of one dollar or less will not be refunded unless specifically requested, and it will not be credited against future purchases after this period.

Such disclosure need not be made by respondent in the event that it is respondent's policy to refund automatically and without request all credit balances regardless of amount. In such case a disclosure consistent with but not necessarily identical to the following must be made:

Contact any store for refund or you may purchase against the balance. If you do neither, refund will be made after 6 months.

3. Writing off or deleting any credit balance of more than one dollar (\$1.00) created after the date of entry of this order from a customer's account before respondent has made a cash refund or the customer has made a fully offsetting purchase, unless such credit balance is not in fact owed to the customer, or unless respondent has complied with the requirements of Paragraph B below.

4. Failing to refund to each charge account customer with a credit

balance of more than one dollar created after the date of entry of the order the full amount of said credit balance no later than thirty-one (31) days from the end of the sixth consecutive billing cycle during which the credit balance exists and the customer neither transacts any business on his account nor requests a refund, unless such credit balance is not in fact owed to the customer.

A. *It is further ordered*, That with respect to each credit balance owed to a customer in the amount of more than one dollar (\$1.00) which was created at any time since June 30, 1972, and which has not been refunded to the customer as of the date of entry of the order, respondent shall refund to each such customer the full amount of such credit balance, unless such credit balance is not owed to the customer, or the customer makes a fully offsetting purchase within the period for compliance herewith; *Provided, however*, That nothing contained herein shall prevent respondent from making such refund by giving a credit certificate(s) in the full amount of the credit balance which shall be redeemable, at the customer's option, in merchandise or cash. Such a certificate(s), or an accompanying notice attached to the certificate, shall clearly and conspicuously disclose that it is redeemable for cash if the customer so requests in person or if the customer returns the certificate(s) by mail with a request for cash redemption. Respondent shall comply with the provisions of this paragraph no later than three (3) months after the date of entry of this order, and the report required by Paragraph F of this order shall address itself specifically to the steps taken to comply with this paragraph.

B. *It is further ordered*, That each refund shall be given to the customer either in person or by mailing a check (or a credit certificate(s) in the case of credit balances existing prior to the date of entry of this order) payable to the order of the customer to the last known address shown in respondent's records for said customer. Each periodic statement sent pursuant to the terms of this order shall be mailed to the customer to the last known address shown in respondent's records for such customer. In the event that any such statement, check or credit certificate(s) is mailed without an address correction request to the Post Office and is subsequently returned to respondent with a notification to the effect that the customer to whom it was mailed is not located at the address to which it was sent, respondent shall remail the check, credit certificate(s) or statement with an address correction request to the Post Office. If any such check, credit certificate(s) or statement which has been mailed with an address correction request to the Post Office is returned to respondent and represents an amount of twenty-five dollars (\$25.00) or more, respondent shall employ one of the following procedures to locate the

customer: contacting a credit bureau; employing an independent contractor engaged in the business of skip-locating; contacting the customer's last known employer as shown in respondent's records; or reinstating the full amount of the credit balance on the customer's account and retaining it in such account for one year from the date on which the remailed check, certificate(s) or statement is returned so that offsetting purchases can be made. If any such check, credit certificate(s) or statement which has been mailed with an address correction request to the Post Office is returned to respondent and represents an amount of less than twenty-five dollars (\$25.00), respondent shall not be required to take any of the additional actions set forth in the preceding sentence. Thereafter, respondent shall be relieved of any further obligation to send any additional notice and/or any refund with respect to the credit balance in question; *Provided, however*, That in the event said customer should subsequently request a refund of any such credit balance owed the customer, respondent shall treat such request in the manner provided in Paragraph C.

C. *It is further ordered*, That if a customer requests, in person or by mail, a refund of a credit balance in any amount which had been reflected at any time on such customer's account, respondent shall, within thirty (30) days from receipt of such request, either refund the entire amount requested, if owed, or furnish the customer with a written explanation, with supporting documentation, when available, of the reason(s) for refusing to refund the amount requested.

D. *It is further ordered*, That a credit balance shall be deemed to be created, if it still exists, at the end of the billing cycle in which the credit balance is first recorded on a customer's account and at the end of the billing cycle in which the recorded amount of an existing credit balance is changed due to a customer's activity on the account. Whenever the recorded amount of an existing credit balance is changed, respondent's obligations under this order with respect to the credit balance existing prior to such change shall automatically be replaced by its obligations under this order with respect to the new credit balance created by said change.

E. *It is further ordered*, That, notwithstanding the foregoing, the provisions of this order shall not be applicable to credit balances on accounts administered by parties other than respondent or to transactions arising out of installment sales contracts.

F. *It is further ordered*, That respondent shall, within sixty (60) days after the entry of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

G. *It is further ordered*, That respondent notify the Commission at

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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 obligations arising out of the order.

H. *It is further ordered*, That respondent shall forthwith distribute a copy of this order to each of its retail operating divisions.