

Order Placing Matters on Docket for Review

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service of this order, file with the Commission a written report, signed by the respondents, setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

CONTROL DATA CORPORATION, ET AL. D. 8940
ELECTRONIC COMPUTER PROGRAMMING INSTITUTE,
INC., ET AL. D. 8952 LAFAYETTE UNITED
CORPORATION, ET AL. D. 8963

Orders, July 15, 1975

Issues of Commission proceeding, in regard to consumer redress, and concerning relationship of administrative proceedings to later consumer redress actions placed on Commission's docket for review. Briefs to be submitted on two itemized questions.

Appearances

For the Commission: *Edward D. Steinman.*

For the respondents: *Charles A. Price, Oppenheimer, Wolff, Foster, Shephard & Donnelly*, Minneapolis, Minn. and *James F. Hoff*, Bloomington, Minn.

ORDER PLACING MATTERS ON DOCKET FOR REVIEW

These matters are now before the Commission upon two applications for review and a certification by an administrative law judge¹ concerning the question of whether restitution, under the Federal Trade Commission Act, should be regarded as an option in formulating remedies in these matters inasmuch as: (1) a United States Court of Appeals has held in *Heater v. Federal Trade Commission*, 530 F.2d 321 (9th Cir. 1974) that the Commission lacks the authority to impose such

¹ In *Electronic Computer Programming Institute*, complaint counsel had moved for issuance of a *subpoena duces tecum* seeking, in part, evidence needed to support restitutionary relief. The administrative law judge in that matter denied the motion on the grounds that it sought information which might not be in furtherance of the legitimate statutory authority of the Commission based on *Heater v. F.T.C.*, 530 F.2d 321 (9th Cir. 1974). However, he granted complaint counsel leave to file an application for review of his ruling and to determine whether the matter should be placed on our suspense calendar pending the final outcome of the *Heater* case.

In *Lafayette United Corporation*, this question came to us under different circumstances. There, respondents had moved to strike and dismiss from the complaint the claim for restitution and to quash in part a *subpoena duces tecum* sought by complaint counsel. The law judge denied these motions but, in view of the Commission's decision not to appeal the *Heater* decision, he *sua sponte* certified to the Commission the question of whether it would be in the public interest to allow complaint counsel to continue to seek restitutionary relief.

Finally, in *Control Data Corp.*, the law judge denied respondents' motion to strike from the complaint Paragraph 11, which, they argued, was intended solely to obtain retroactive restitution, but granted them leave to file an application for review of this ruling. The only question approved for review was to be the policy question of how the Commission will proceed in the area of restitution in light of *Heater*.

relief; and (2) the Commission has determined not to seek review of that decision.² Furthermore, each of these matters expressly or by implication raises fundamental questions concerning the implementation of the recently enacted Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, Pub. L. 93-637 (Jan. 4, 1975).

Section 206 of the Magnuson-Moss Act authorizes the Commission to file actions for consumer redress in federal courts if a final Commission cease and desist order has been entered against respondents for engaging in acts or practices in violation of Section 5 of the Federal Trade Commission Act. The Commission intends to exercise that authority whenever appropriate and reserves the right to proceed under that section with respect to the respondents in these cases if the statutory conditions are met.

The three matters now before the Commission raise the general issue of how the Commission intends to proceed in regard to consumer redress and several specific issues concerning the relationship of the administrative proceedings to possible later consumer redress actions under the Magnuson-Moss Act. Therefore, in order to determine the questions presented, the Commission needs to consider carefully, as to each of these matters, the following questions, based on the assumption that the Commission intends to seek consumer redress, if at all, pursuant to Section 206 of the Magnuson-Moss Act.

(1) To what extent, if any, should evidence be presented and findings be made in the administrative proceedings regarding the nature and extent of the injuries sustained by consumers as a result of the challenged acts or practices?

(2) To what extent, if any, should evidence be presented and findings be made on the issue whether the challenged acts or practices are such that "a reasonable man would have known under the circumstances [that they are] dishonest or fraudulent"?

It is ordered, That the above-captioned matters be placed on the Commission's docket for review pursuant to Section 3.23(b) of the Rules of Practice; and

The parties are invited to submit additional briefs on the aforesaid questions within thirty (30) days of the service of this order. Answering briefs may be submitted within ten (10) days after service of the aforesaid briefs.

² The complaints in these matters all contain a similarly worded paragraph which charges respondents with two distinct violations of Section 5: (1) unfairly retaining monies allegedly obtained by inducing persons, through false and deceptive representations, to pay for courses of instruction which will be virtually worthless in obtaining future employment; and (2) hindering competition by retaining monies obtained from consumers for their courses by false and deceptive representations. In each case, the notice order accompanying the complaint states that, if the facts as alleged therein are proved, the Commission may order restitution for past, present and future losses suffered by consumers.

Complaint

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IN THE MATTER OF

WORLD WIDE SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2683. Complaint, July 16, 1975 - Decision, July 16, 1975*

Consent order requiring an Indianapolis, Ind., training school for truck drivers and heavy equipment operators, among other things to cease using deceptive and unfair means to sell instruction courses or any other product or service.

Appearances

For the Commission: *William M. Rice, Jr.*

For the respondents: *M. Daniel Friedland*, Indianapolis, Ind.

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 World Wide Systems, Inc., a corporation, and Francis J. Witherbee, individually and as an officer of said corporation, and also doing business as Associated Systems, Atlas Systems, Coastway American Systems and Great Lakes Development Corporation, and Steven L. Bradshaw, individually and as a former officer of said corporation, and also doing business as Associated Systems, Atlas Systems, Coastway American Systems, Great Lakes Development Corporation, New Horizons Unlimited and others, and Eugene C. Kobylarz, individually and doing business as New Horizons Unlimited, Rapidway Systems, Trailmasters and Roads and Lands, 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent World Wide Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 1042 E. Washington St., Indianapolis, Ind.

Respondent Francis J. Witherbee is an individual and officer of respondent corporation and also does business as Associated Systems, Atlas Systems, Coastway American Systems and Great Lakes Development Corporation. He formulates, directs and controls the acts and practices of the corporate respondent and said business entities,