

Complaint

87 F.T.C.

IN THE MATTER OF
PUBCO CORPORATION, ET AL.

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

Docket C-2799. Complaint, Feb. 27, 1976—Decision, Feb. 27, 1976

Consent order requiring a Washington, D.C., publishing firm and its Cornwells Heights, Pa., subsidiary which sells and distributes encyclopedia and books, among other things to cease misrepresenting that delinquent accounts will be reported to credit bureaus; misrepresenting expenses incurred during the debt collection process must be borne by the alleged debtor; misrepresenting collection notices sent to debtors by respondent are from an independent collection agency; and using other deceptive means to collect delinquent accounts from purchasers of their products.

Appearances

For the Commission: *Robert G. Day.*

For the respondents: *Helen Lee Sheehan, Feldman & Sheehan,*
Washington, D.C.

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 Pubco Corporation, a corporation, and The Publishers Agency, Inc., a corporation, also trading and doing business as Consolidated Collection Agency, 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 Pubco Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 1250 Connecticut Ave., N.W., Washington, D.C. Respondent Pubco Corporation dominates and controls the acts and practices of its wholly-owned subsidiary, The Publishers Agency, Inc. Respondent Pubco Corporation was formerly named Publishers Company, Inc.

Respondent The Publishers Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at 3399 Forrest Rd., Cornwells Heights, Pennsylvania.

Respondent The Publishers Agency, Inc., also trades and does business as Consolidated Collection Agency.

The aforementioned respondents cooperate and act together to bring about the acts and practices hereinafter set forth.

PAR. 2. Respondent Pubco Corporation is now, and for some time last past has been, engaged in the publishing and printing business through various subsidiary corporations.

Respondent The Publishers Agency, Inc. is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of encyclopedia and books to the general public and in the collection of accounts resulting from the sale of such encyclopedia and books.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the Commonwealth of Pennsylvania, and from other locations in various other States of the United States, to purchasers thereof located in various other States of the United States and in various foreign countries.

In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, debt collection letters to be mailed, through the facilities of the United States Postal Service, from their place of business located in the Commonwealth of Pennsylvania to alleged debtors located throughout the United States and in various foreign countries. The causing of such letters to be mailed to such persons is an integral part of respondents' sales methods.

Accordingly, respondents have maintained, and now maintain, a substantial course and conduct of business in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and in furtherance of a program for inducing the payment of alleged delinquent accounts by purchasers of their encyclopedia and books, respondents have made, and are now making, numerous statements and representations in printed forms and letters and other printed material which respondents mail, or cause to be mailed, to alleged delinquent debtors.

Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

1. Statements and representations on forms and letters with the letterhead "The Publishers Agency, Inc.":

We must report all delinquent accounts with Credit Bureaus throughout the country. Unless we hear from you in Ten Days time, suit will be instituted for the above amount.

Complaint

87 F.T.C.

We will have no alternative but to request the authorities to take action to collect your account.

Our Vice President — has advised us to place your account with a local collection agency. We are reluctant to initiate this action subjecting you to their methods of collection. You will be responsible for all of the additional expenses incurred during this process.

2. Statements and representations on forms and letters with the letterhead "Consolidated Collection Agency":

We have been retained by The Publishers Agency, Inc., who made a formal creditors complaint listing you in default in payment on your account.

Representatives in all the judicial districts of the United States and Canada.

Credit Reports — Special Investigations — Skips Located — Member of Credit Bureaus and Credit Associations throughout the United States.

Failure to hear from you in ten days will result in our forwarding this claim to our attorney with instructions to institute legal action.

3. Statement and representation on form without a letterhead:

Notice of Draft for Suit

4. Statements and representations on forms and letters with the letterhead "Law Office Harry Wolov;"

Law Office Harry Wolov Forrest Road, Expressway 95 Industrial Center Cornwells Heights, Pennsylvania 19020

I represent The Publishers Agency, Inc. of this city in the matter of \$ ———, constituting the balance due and owing my client for merchandise sold and delivered to you in accordance with a contract which you executed.

Please be advised therefore, that unless I receive your check or money order within 10 days, I shall be obligated to institute proceedings for the recovery of said monies.

I shall have no alternative except to cause legal proceedings to be instituted against you to protect the legal interests of my client.

I shall without further notice to you, forward this matter to my corresponding attorney in your community with instructions that legal proceedings be instituted against you forthwith.

I was urged by my client to institute legal proceedings against you for the recovery of the full balance due.

If this matter were referred to an attorney in your community, it would be accompanied with specific instructions to institute legal action against you.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. All delinquent accounts are reported to credit bureaus throughout the United States.

2. Legal action will be instituted against all debtors who fail to reply within 10 days to a collection notice, which threatens such action.

3. The respondents will request government officials to collect delinquent accounts prior to the alleged debt being reduced to a judgment.

4. The debtor will have to pay a collection agency's cost of collecting the debt.

5. Consolidated Collection Agency is an independent collection agency retained by respondents to collect respondents' delinquent accounts.

6. Consolidated Collection Agency has collection representatives in all the judicial districts of the United States and Canada.

7. Consolidated Collection Agency is engaged in the business of conducting investigations, locating skips and providing credit reports.

8. Failure of a debtor to reply to a collection notice from Consolidated Collection Agency will result in a legal action being filed by an attorney.

9. The form bearing the title "Notice of Draft for Suit" is a notice issued by a court of law.

10. The account has been referred to an attorney, that the letter or form was sent by an attorney, that files have been transmitted to an attorney, or that an attorney is actively involved in collecting or reviewing that account in preparation for institution of a legal action.

11. Failure of a debtor to pay the alleged debt in response to a collection letter from "Law Office Harry Wolov" will result in the account being forwarded to an attorney in the debtor's community with specific instructions to institute a legal action.

PAR. 6. In truth and in fact:

1. All delinquent accounts are not reported to credit bureaus throughout the United States.

2. Legal action will not be instituted against all debtors who fail to reply, within 10 days, to a collection notice, which threatens such action.

3. The respondents will not request government officials to collect delinquent accounts prior to the alleged debt being reduced to a judgment.

4. The debtor does not normally have to pay a collection agency's expenses in collecting an alleged debt. Such expenses are normally paid by the collection agency, from the commission it receives from the respondents.

5. Consolidated Collection Agency is not an independent collection agency retained by respondents to collect respondents' delinquent accounts. Consolidated Collection Agency is a fictitious name used by The Publishers Agency, Inc., in the collection of its own accounts.

6. Consolidated Collection Agency does not have collection representatives in all the judicial districts of the United States and Canada.

7. Consolidated Collection Agency is not engaged in the business of conducting investigations, locating skips and providing credit reports. The sole business of Consolidated Collection Agency is the collection of accounts for The Publishers Agency, Inc.

8. Failure of a debtor to reply to a collection notice from Consolidated Collection Agency will not result in a legal action being filed by an attorney.

9. The form bearing the title "Notice of Draft for Suit" is not a notice issued by a court of law. Such form is a collection notice used by The Publishers Agency, Inc.

10. No referral of the alleged delinquent account to an attorney has been made, no letter has been sent by an attorney, no files have been transmitted to an attorney and no attorney is actively involved, at this stage of the collection activity.

11. Failure of a debtor to pay the alleged debt in response to a collection letter carrying the letterhead "Law Office Harry Wolov" will not result in an account being forwarded to an attorney in the debtor's community with specific instructions to institute legal action.

Therefore, the statements and representations set forth in Paragraphs Four and Five, hereof, were, and are, false, misleading and deceptive.

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead alleged debtors into the payment of the alleged debts by reason of their erroneous and mistaken belief that said statements and representations were, and are, true.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as these sold by the respondents.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and 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 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, an 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 considered the comments filed thereafter pursuant to Section 2.34 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 Pubco Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 1250 Connecticut Ave., N.W., Washington, D.C. Respondent Pubco Corporation dominates and controls the acts and practices of its wholly-owned subsidiary, The Publishers Agency, Inc.

Respondent The Publishers Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at 3399 Forrest Rd., Cornwells Heights, Pennsylvania. Respondent The Publishers Agency, Inc., also trades and does business as Consolidated Collection Agency.

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 Pubco Corporation, a corporation, and The Publishers Agency, Inc., a corporation, trading and doing business as Consolidated Collection Agency, or under any other name or names, and their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of, or attempting to collect, or assisting in the collection of, or inducing, or attempting to induce, the payment of, accounts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission

Act, as amended, shall forthwith cease and desist from representing, orally or in writing, directly or by implication, that:

1. Delinquent accounts are reported to credit bureaus, unless such representation is true.

2. Government officials will be requested to collect a delinquent account, prior to the account being reduced to a judgment.

3. Any expense of collection, other than those costs customarily levied against losing defendants by courts of law, will be borne by the alleged debtor.

4. Collection notices sent to debtors by respondents are sent by a collection agency independent of respondents.

5. Respondents have a collection representative in any locality where they do not have such a representative.

6. Respondents are engaged in any business in which they are not engaged.

7. Collection notices sent to debtors by respondents are legal notices issued by a court of law, or otherwise misrepresenting the legal effect of any collection notice.

8. A delinquent account will be referred to an attorney, upon the debtor's failure to satisfactorily reply to a collection notice, unless such action will result from such failure, at that stage of the collection process.

9. An account has been referred to an attorney or that an attorney is actively involved in collecting or reviewing an account, unless, and until, such representation is true.

10. Files have been moved, transferred or reviewed, or directions issued, or other action requested, authorized or directed, to, or by, an attorney, unless, and until, such representation is true.

11. Communications to an alleged debtor are from an attorney when, in fact, no attorney is actively involved in reviewing the case or when such attorney does not offer to, and does not, in fact, subsequently deal directly with any communication to him, or her, from the alleged debtor.

12. Legal action *will* be taken against a delinquent debtor unless payment is made on a delinquent account; *provided, however*, that it shall be a defense in any enforcement proceeding brought hereunder for respondents to establish that they do, in fact, take such legal action when payment is not made in *all* cases in which the representation is made and the delinquent debtor remains subject to service of process at a known, good address.

13. Legal action *may* be taken against a delinquent debtor unless payment is made on a delinquent account; *provided, however*, that it shall be a defense in any enforcement proceeding brought for

respondents to establish that they do in fact take such legal action against a *majority* of debtors to whom the representation is made who do not make payment on such delinquent accounts; *and provided further*, that it shall not be a violation of this subsection for respondents to represent that they may refer the account of a delinquent debtor to an attorney to determine what action is appropriate, if, in fact, they can establish that they do in fact refer the accounts of delinquent debtors to an independent attorney for evaluation of what action is appropriate in a majority of cases in which such representation is made and payment is not made on an account.

14. Legal action has been taken and suit filed against a delinquent debtor; *provided, however*, that it shall be a defense in any enforcement proceeding brought hereunder for respondents to establish that prior to making the representation respondents had, in fact, taken legal action and filed suit against the delinquent debtor.

It is further ordered, That respondents Pubco Corporation, a corporation, and The Publishers Agency, Inc., a corporation, trading and doing business as Consolidated Collection Agency, or under any other name or names, and their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of, or attempting to collect, or assisting in the collection of, or inducing, or attempting to induce, the payment of, accounts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from using the word "collection," or any other word or words of similar import and meaning but not specifically set forth herein, in any corporate or trade name, in any manner which would indicate, or suggest, that respondents' retail accounts have been turned over to a collection agency independent of respondents or that respondents are engaged in the business of collecting delinquent accounts for others, unless such representation is true.

It is further ordered, That respondents shall forthwith deliver a copy of this order to each of their agents, representatives and employees engaged in the collecting of retail accounts resulting from the sale of books or encyclopedias and shall secure from each such person a signed statement acknowledging receipt of a copy of this order, which such signed statements shall be retained by respondents for the duration of employment of each such person.

It is further ordered, That respondents shall forthwith deliver a copy of this order to each of their operating divisions engaged in the collecting of retail accounts resulting from the sale of books or encyclopedias.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in a corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or the creation or dissolution of subsidiaries engaged in the collecting of retail accounts resulting from the sale of books or encyclopedias; but the provisions hereof shall not prevent any such corporate respondent from assigning or selling its accounts in bulk to collection agencies or finance companies not affiliated with corporate respondents without such prior notice.

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 this order.

IN THE MATTER OF
VITAMIN EDUCATION INSTITUTE, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8979. Complaint, July 3, 1974—Decision, Mar. 1, 1976

Consent order requiring three Tarzana, Calif., affiliates engaged in selling and distributing vitamin supplements and a dietary regimen to use with those supplements, among other things to cease using deceptive weight loss claims; using words implying professional or institutional connections as part of the corporate or trade name; and to discontinue representing the *Research Report* as a bona fide medical or scientific research report.

Appearances

For the Commission: *David G. Cameron* and *Blanche R. Deight*.

For the respondents: *Lawrence R. Gordon, Gordon, Weinberg & Gordon*, Los Angeles, Calif.

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 Vitamin Education Institute, a corporation, and Certified Research Foundation, a corporation trading and doing business under its own name and as Natural Vitamin Research Council, and Marketing Group One, a corporation, and Herbert B. Pastor, individually and as an officer of the said corporations, 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 Vitamin Education Institute is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 10203 Riverside Dr., North Hollywood, California.

Respondent Certified Research Foundation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, trading and doing business under its own name and as Natural Vitamin Research Council, with its principal office and place

* Reported as amended by administrative law judge's Order Amending Complaint issued Nov. 15, 1974.