

Complaint

87 F.T.C.

IN THE MATTER OF

POWER'S SERVICE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2810. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976*

Consent order requiring a Chicago, Ill., debt collection agency, among other things to cease misrepresenting the nature, import, or urgency of communications used in the collection of delinquent debts; misrepresenting the initiation of legal action for nonpayment of alleged debts or the effect of nonpayment on credit status of the alleged debtor; and furnishing means and instrumentalities of misrepresentation or deception. Further, the order requires respondent to disclose in correspondence to alleged debtors that respondents do not accept payments nor ordinarily file suits.

Appearances

For the Commission: *John F. LeFevre.*

For the respondents: *Pro se.*

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 Power's Service, Inc., a corporation and a wholly-owned subsidiary of Community Systems Corporation, a corporation, and Rosalind M. Mikesell, H.O. Seymour and G.C. Seymour, individually and as officers of said corporations, and J.P. Mikesell, individually and as an officer of Power's Service, Inc., 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 Power's Service, Inc. is a corporation and a wholly-owned subsidiary of Community Systems Corporation, a corporation. Both corporations are organized, existing and doing business under and by virtue of the laws of the State of Delaware, with their principal office and place of business located at 202 South State St., Chicago, Illinois.

Respondents Rosalind M. Mikesell, H.O. Seymour and G.C. Seymour are individuals and are officers of both corporate respondents. Respondent J.P. Mikesell is an individual and an officer of corporate respondent Power's Service, Inc. They formulate, direct and control the

acts and practices of the corporate respondent, Power's Service, Inc. and, with the exception of J.P. Mikesell, the acts and practices of corporate respondent Community Systems Corporation, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time in the past have been, engaged in the advertising, offering for sale and sale of a service to assist in the collection of alleged delinquent debts. This service consists of the preparation by respondents of a series of form notices and letters to be mailed to alleged delinquent debtors at regular intervals. Four styles of forms are used in this series: (1) that which bears the letterhead of Power's Service, Incorporated; (2) that which is styled both Credit Information and Deadline Notice; (3) that which is captioned Final Demand; and (4) that which is entitled Mailgram and is forwarded to the customer for mailing to the alleged delinquent debtor.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms and other printed material. One such form, which is mailed to the corporate respondents' customers with instructions to forward it to their alleged delinquent debtors, is a yellow printed form styled MAILGRAM.

PAR. 5. By and through the use of the form described in Paragraph Four, respondents have represented, and are now representing, directly or by implication, that the communication is a telegraphic message.

PAR. 6. In truth and in fact, the communication is not a telegraphic message. Rather, it is a printed form, mailed to respondents' customers with instructions to forward it to alleged delinquent debtors, which form by its color and appearance, styling, printing and format, simulates a telegraphic message and which, by virtue of said simulation, misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the use by respondents of said form, as set forth in Paragraph Four, was and is false, misleading and deceptive.

Complaint

87 F.T.C.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

We are writing you in connection with the above matter because payment on your account is past due. * * * If the amount IS correct, prompt reporting will maintain the good credit standing you now enjoy* * *.

* * * * *

* * * Please remember that once we recommend legal action in this matter it will be out of our hands. You can save money and credit prestige by friendly cooperation with your creditor* * *.

* * * * *

Unless payment or arrangements for settlement are made with your creditor at this time, we shall be forced to recommend that he forward your account to his attorney for whatever action he deems appropriate.

As you know, action by the creditor's attorney may add a considerable amount in court costs, fees and interest to the balance already due* * *.

* * * * *

* * * You are further notified that should it become necessary for your creditor to refer this matter to his attorney, interest and other expenses may then be added to the account* * *.

* * * * *

PAR. 8. In the course and conduct of their business and for the purpose of inducing the payment of alleged delinquent debts, respondents mail to their customers, with instructions to forward such to alleged delinquent debtors, various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations, are the following:

FINAL NOTICE BEFORE SUIT

YOU ARE HEREBY NOTIFIED that you are indebted to the undersigned in the amount stated above.

Unless you remit or arrange for adjustment of said indebtedness, or appear at the office of the claimant within seven days from the date hereof not later than one o'clock P.M., suit will be brought forthwith for the total amount of said indebtedness, together with costs of suit* * *.

* * * * *

* * * You are surely aware that under the laws governing the dissemination of credit information, your name and the amount you owe may be reported as due and unpaid* * *.

PAR. 9. By and through the use of the aforesaid statements and representations set forth in Paragraphs Seven and Eight, respondents have represented, are now representing, have caused or are now causing to be represented, directly or by implication, that:

1. legal action with respect to an alleged delinquent debt is about to be or may be initiated; and

2. if payment is not made in response to respondents' demands, the alleged delinquent debtor's general credit record will be or may be adversely affected.

PAR. 10. In truth and in fact:

1. legal action with respect to the alleged delinquent debt is neither about to be, nor may it be initiated.

On the contrary, at the end of the letter service, respondents merely suggest that the account be referred to their customer's local attorney. Furthermore, while respondents' letter service is being used, it is virtually certain that no legal action is being or will be initiated on the basis of the alleged delinquent debtor's failure to respond to respondents' communications; and

2. if payment is not made in response to respondents' demands, the alleged delinquent debtor's general credit record will not be adversely affected.

Therefore, the statements and representations set forth in Paragraphs Seven, Eight, and Nine were and are false, misleading and deceptive.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 12. The use by respondents of the form as set forth in Paragraph Four hereof, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that the said communication is a telegraphic message. Furthermore, the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to

induce the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of 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 and unfair and deceptive acts and practices in or affecting 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 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 Power's Service, Inc., is a corporation and a wholly-owned subsidiary of Community Systems Corporation, a corporation. Both corporations are organized, existing and doing business under and by virtue of the laws of the State of Delaware with their principal office and place of business located at 202 South State St., Chicago, Illinois.

Respondents Rosalind M. Mikesell, H.O. Seymour and G.C. Seymour are individuals and are officers of both corporate respondents. Respondent J.P. Mikesell is an individual and an officer of corporate

respondent Power's Service, Inc. They formulate, direct and control the acts and practices of the corporate respondent, Power's Service, Inc. and, with the exception of J.P. Mikesell, the acts and practices of corporate respondent Community Systems Corporation. Their address is the same as that of the corporate respondents.

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, Power's Service, Inc., a corporation, and Community Systems Corporation, a corporation, their successors and assigns, and their officers, and Rosalind M. Mikesell, J.P. Mikesell, H.O. Seymour and G.C. Seymour, individually and as officers of either corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, or placing in the hands of others for use, envelopes, letters, forms, or any other materials which appear to be, or simulate, telegraphic messages.

2. Using, or placing in the hands of others for use, envelopes, letters, forms, or any other materials which misrepresent the nature, import, purpose or urgency of any communication.

3. Representing, directly or by implication, that:

(a) legal action with respect to an alleged delinquent debt has been, is about to be, or may be initiated;

(b) if payment is not made in response to respondents' demands, the alleged debtor's credit rating, record or status may be or will be adversely affected.

Provided, however, That it shall be a defense in any enforcement proceeding initiated under this Paragraph Three for the respondents to establish that such representations are factually correct.

4. Failing clearly and conspicuously to disclose in each letter, form or notice to alleged delinquent debtors the following statement:

This communication is only a reminder notice. Power's Service, Inc., cannot accept payment nor will it take legal action regarding this claim.

This statement shall be made in prominent type, of a size no smaller

than the basic body copy in the letter, form or notice and in a color which contrasts with the color of the stationery and writing or printing in the body of the letter, form, or notice.

5. Making any statement in any letter, form or notice to alleged delinquent debtors which is inconsistent with, negates or contradicts, the affirmative disclosure required by Paragraph Four.

6. Placing in the hands of others the means and instrumentalities to represent any of the matters prohibited in Paragraph Three or which fail to comply with the requirements of Paragraphs Four or Five of this order.

It is further ordered, That the corporate respondent Community Systems Corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of alleged delinquent debts and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of successor corporations, 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 the individual respondents named herein promptly notify the Commission of the discontinuance of their employment with Community Systems Corporation or Power's Service, Inc., whichever is applicable, and of their affiliation with a new business or employment. In addition, the individual respondents named herein shall promptly notify the Commission of their affiliation with a new business or employment whose principal activities include the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts, or of their affiliation with a new business or employment in which their own duties and responsibilities involve the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in

which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That the respondents named herein shall within sixty (60) days after service upon them of this order file with the Commission a report, in writing, signed by the respondents, setting forth in detail the manner and form in which they have complied with this order.

Complaint

87 F.T.C.

IN THE MATTER OF
CONTINENTAL COLLECTION SERVICE, ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2811. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976

Consent order requiring a Clarissa, Minn., debt collection agency, among other things to cease misrepresenting the nature, import or urgency of any communication utilized in the collection of delinquent debts; misrepresenting the initiation of legal actions; misrepresenting that if debts are paid within a specified time, respondent will absorb the cost of any legal actions initiated; and furnishing means or instrumentalities of misrepresentation or deception. Further, respondents are required to disclose in correspondence to alleged debtors that respondents do not accept payment nor ordinarily file suits.

Appearances

For the Commission: *Roger J. Fitzpatrick.*

For the respondents: *Rodger J. Johnston, Flora & Johnston, Long Prairie, Minn.*

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 Continental Collection Service, a partnership, and Carol Carrick and Morris Perna, individually and as copartners trading and doing business as Continental Collection Service, 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 Continental Collection Service is a partnership organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at Main St., Clarissa, Minnesota.

Respondents Carol Carrick and Morris Perna are individuals and are partners in Continental Collection Service. They formulate, direct and control the acts and practices of Continental Collection Service, including the acts and practices hereinafter set forth. Their business address is Main St., Clarissa, Minnesota and their mailing address is Box 6011, West St. Paul, Minnesota.

PAR. 2. Respondents are now and for some time in the past, have