

Complaint

88 F.T.C.

IN THE MATTER OF

INTERSTATE CHECK SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS*Docket C-2857. Complaint, Dec. 17, 1976 — Decision, Dec. 17, 1976*

Consent order requiring an Indianapolis, Ind., credit reporting firm, among other things to cease collecting, assembling, furnishing or utilizing consumer reports in violation of the Fair Credit Reporting Act.

Appearances

For the Commission: *Ronald G. McCauley* and *James S. Teborek*.

For the respondents: *Peter Grable, Watson, Gleason & Hay*, Indianapolis, Indiana.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Interstate Check Systems, Inc., a corporation, and Gerald A. McColloum, 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 Interstate Check 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 5306 N. Keystone Ave., Indianapolis, Indiana.

Respondent Gerald A. McColloum is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Subsequent to April 25, 1971, in the ordinary course and conduct of their business, respondents have compiled and published lists containing, among other things, the names and street numbers of consumers, together with statements of 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 for some time past 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 and for some time past have regularly used, 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 is furnished has a legitimate business need for the information 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 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.

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(3) of the Act.

Therefore, by so 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 the 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 Chicago 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 Fair Credit Reporting Act and the Federal Trade Commission 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 procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Interstate Check Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 5306 N. Keystone Ave., Indianapolis, Indiana.

Respondent Gerald A. McCollum is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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 Interstate Check Systems, Inc., a corporation, its successors and assigns, and its officer Gerald A. McCollum, individually and as an officer of said Interstate Check Systems, Inc., and respondents' officers, agents, representatives and employees, hereafter collectively "respondents," directly or through any corporation, subsidiary, division or other device, in connection with the collecting, preparation, assembling or furnishing of consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law 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) to a person whom respondent 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; or

(b) in response to the order of a court having jurisdiction to issue such order; or

(c) in accordance with the written instructions of the consumer to whom the report relates.

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 a unique identifier, such as social security number, drivers' license number, or bank account number. The identifier used must be provided by the consumer at the time of the transaction with the user.

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

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 respondents shall 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 subsidiaries or any other change in the corporate respondent which may affect compliance obligations arising out of this order.

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 his current business 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 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.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF
MARTIN MARIETTA CORPORATION, ET AL.

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

Docket 9039. Complaint, June 24, 1975 — Decision, Dec. 20, 1976

Consent orders requiring three portland cement manufacturers, Martin Marietta Corporation, Rockville, Md., Ideal Basic Industries, Inc., Denver, Colo., and OKC Corp., Dallas, Tex., among other things to offer, for a ten-year period, a point of origin price for bulk portland cement to a customer each time a delivered price is offered. Customers are given the option of furnishing or arranging transportation from the mill at the point of origin price. The Ideal order defines the point of origin price as the delivered price less the actual freight which would have been incurred to the destination. The other two orders define the point of origin price as the delivered price less the unabsorbed or average freight factor included in it. Further, the orders prohibit the exchange of price information among competitors and control of the place of use of portland cement which has been sold to a customer.

Appearances

For the Commission: *James C. Egan, Jr.*

For the respondents: *Harold F. Parker, Terrence C. Sheehy, J.F. Bruce and William J. Hunter, Howrey, Simon, Baker & Murchison, Washington, D.C. for Martin Marietta Corporation. Gordon Granier and Jeffrey C. Pond, Holland & Hart, Denver, Colo. for Ideal Basic Industries, Inc. Daniel McCallen, Dallas, Tex. and Edward T. Tait and Eric F. Stoer, Reed, Smith, Shaw & McClay, Washington, D.C. for OKC Corp.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents have violated and are now violating Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint, charging as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purpose of this complaint, the following definitions shall apply:

- (a) "Portland cement" — a material which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement; and
- (b) "Ready mixed concrete" — a material produced by combining