

Complaint

89 F.T.C.

IN THE MATTER OF

NATIONAL ACCOUNT SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING
ACTS*Docket C-2884. Complaint, Apr. 22, 1977 --- Decision, Apr. 22, 1977*

This consent order, among other things, requires a Chicago, Illinois, debt collection agency, and its subsidiaries, to cease using unfair and deceptive debt collection tactics; failing to disclose, in connection with the extension of consumer credit, such disclosures as are required by Federal Reserve Board regulations; and obtaining consumer credit information under false pretenses. Further, the order requires the return or destruction of unauthorized consumer credit information; the maintenance of certain prescribed records; and the establishment and maintenance of a surveillance program designed to insure the firm's employees comply with the provisions of the order.

Appearances

For the Commission: *Kenneth H. Donney.*

For the respondent: *Frank C. Christl, Gendel, Raskoff, Shapiro & Quittner*, Los Angeles, Calif.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that National Account Systems, Inc., a corporation, NAS Creditors Service, Inc., a corporation, National Accounts System of Milwaukee, Inc., a corporation, A. B. Hartman, Inc., a corporation, and Diners Club, Inc., a 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:

DEFINITIONS

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

(a) "consumer reporting agency," "agency," and/or "agencies"---any person, partnership, corporation or association, which for monetary fees, dues or on a cooperative nonprofit basis, regularly

engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) "consumer report"---any written, oral or other communication of any information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family or household purposes, (2) employment purposes, or (3) other purposes authorized under Section 604 of the Fair Credit Reporting Act.

(c) "subscriber"---any person, partnership, corporation or association who receives a consumer report from a consumer reporting agency and who is authorized to receive such report by using a subscriber code issued by the agency.

(d) "subscriber code"---any code or codes issued to subscribers by a consumer reporting agency; such codes are used for identification purposes to obtain a consumer report and the use of such codes may result in the subscriber being billed by said agency.

(e) "debts" or "debt"---any financial obligation, alleged financial obligation, delinquent account or alleged delinquent account owed by or allegedly owed by a consumer to a creditor.

PAR. 2. Respondent National Account Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of Diners Club, Inc.

Respondent NAS Creditors Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent National Accounts System of Milwaukee, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent A. B. Hartman, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Delaware with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent Diners Club, 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 10 Columbus Circle, New York, New York.

Respondent National Account Systems, Inc. owns fifty percent (50%) of the stock of Indianapolis Account Service, Inc., an Indiana corporation, and directs and controls the acts and practices of Indianapolis Account Service, Inc., whose corporate mailing address is 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois, but whose principal place of business is 1308 North Meridian St., Suite 103, Indianapolis, Indiana.

PAR. 3. Respondents are now, and for some time in the past have been engaged in, among other activities, the practice of collecting or attempting to collect a substantial number of debts.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents solicit and receive accounts for collection from business and professional people (hereinafter sometimes referred to as "creditors") located in various States of the United States, which accounts the respondents seek thereafter to collect from debtors located in various States of the United States. In the further course and conduct of their business, respondents transmit collection messages from their places of business located in various States of the United States. The respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are now, in competition in or affecting commerce with other persons, partnerships and corporations in the attempted collection and collection of consumer debts on behalf of creditors.

COUNT I

The following allegations are made in respect to National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., and A. B. Hartman, Inc.

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference as if fully set forth herein verbatim.

PAR. 6. In the ordinary course and conduct of their business, as aforesaid, respondents are now, and for some time in the past, have been, using the subscriber codes owned by subscribers, such subscribers being unrelated to respondents. Respondents engage in said activities by telephoning a consumer reporting agency, and falsely representing, directly or by implication, that respondents are the subscribers of the subscriber codes, or that respondents are authorized to use the subscriber codes. This is done by communicating to said agency a subscriber code that is owned by, and is for the sole use of, one of said subscribers. Thus, the reporting agency is deceived as to the identity of the telephone caller. Respondents use said codes to obtain consumer reports from said agency, the obtaining of which under such false pretenses is unauthorized. Further, respondents do not pay for the consumer reports, but rather the true subscriber is sometimes charged by said agency for such consumer reports. Moreover, respondents are not subscribers to any consumer reporting agency in their own right.

PAR. 7. By and through the use of the aforesaid acts and practices, respondents have obtained information on consumers from consumer reporting agencies under false pretenses. Said acts and practices constitute unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 8. In the ordinary course and conduct of their business, as aforesaid, and for the purpose of inducing collection of said debts, respondents or their agents and employees make several oral and written representations, directly and by implication to many debtors and others. Typical and illustrative of these representations and statements, but not inclusive thereof, are the following:

1. That if said debtors do not pay their debts the debtors will go to jail.
2. That legal documents are being served upon said debtors.
3. That respondents or their agents are "ministers" and/or "insurance agents," and/or attorneys.
4. That respondents will destroy or harm said debtors' credit standings.
5. That if said debtors do not pay immediately the debtors will be sued by respondents.
6. That respondents will "garnish" the debtors' wages.

PAR. 9. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not expressly set out herein, and with the sole intent of collecting debts

owed by debtors, respondents and their agents and employees represent and have represented, directly or by implication that:

1. The debtors will go to jail if they do not pay off the debts immediately.

2. The debtors have in their possession legal documents served upon them by respondents and therefore are being sued by respondents.

3. The respondents or their agents are "ministers" of some church and/or insurance agents of some company and/or attorneys.

4. The respondents will harm or destroy the debtors' credit standings if the debtors do not pay by a certain date.

5. The respondents will sue the debtors if the debtors do not pay by a certain date.

6. The respondents will garnish the debtors' wages if said debtors do not pay by a certain date.

PAR. 10. In truth and in fact,

1. The debtors will not go to jail if they do not pay their debts.

2. The debtors have not been served with legal documents and have not been sued but rather have received letters written by respondents which are drafted in such a way so as to appear to be legal documents.

3. Respondents or their agents are not ministers nor insurance agents nor attorneys but rather pretend to be in order to mislead the debtors.

4. Respondents have not decided to destroy or harm credit standings, and often respondents never take such actions.

5. Respondents have not decided to sue the debtors, and often respondents never take such action.

6. Respondents have not decided to garnish the debtors' wages, and often respondents never take such action.

Therefore, the uses of said statements and representations are false and misleading and constitute unfair methods of competition and unfair and deceptive acts and practices.

PAR. 11. In the further course and conduct of their business, and for the purpose of inducing the consumers to pay the debts, respondents' employees use abusive and obscene language when contacting consumers. In addition, respondents telephone the consumers' employers and urge the employers to pressure the consumers to pay the debts. Such actions by respondents constitute oppressive debt collection practices and therefore are unfair methods of competition and unfair acts and practices.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged, are unethical, oppressive, exploitative and cause

substantial injury to consumers, and 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 or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

The following allegations are made in respect to National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., and A. B. Hartman, Inc.

Alleging violations of the Truth in Lending Act and of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One, Two, and Three are incorporated by reference as if fully set forth herein verbatim:

PAR. 13. In the ordinary course and conduct of their business, as aforesaid, respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such credit, as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 14. Subsequent to July 1, 1969, in the further course and conduct of their business, as aforesaid, respondents have made and are making loans or have arranged for and are arranging for the making of loans which involve extensions of credit which are not credit sales. In these transactions respondents permit debtors or alleged debtors to repay their debts in more than four equal monthly installments for which respondents have been, and are charging many of their customers a finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z. Respondents do not provide these customers with consumer credit cost disclosures.

By and through the use of these methods, respondents:

1. Fail to disclose the finance charge expressed as an annual percentage rate, as "annual percentage rate" is defined in Section 226.2 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
2. Fail to disclose the date on which the finance charge begins to accrue, as required by Section 226.8(b)(1) of Regulation Z.
3. Fail to disclose the number, amount, and due date or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

4. Fail to disclose the total amount of finance charges, with a description of each amount included, using the term "finance charge" as required by Section 226.8(d)(3) of Regulation Z.

5. Fail to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

6. Fail to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

7. Fail to make the disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

PAR. 15. By and through the acts and practices set forth above, respondents National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc. and A. B. Hartman, Inc., have failed and are now failing to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of the Act, and, pursuant to Section 108 thereof, respondents have violated the Federal Trade Commission Act, as amended.

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 Los Angeles 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 Federal Trade Commission Act and the Truth in Lending 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure 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 National Account Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of Diners Club, Inc.

Respondent NAS Creditors Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent National Accounts System of Milwaukee, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent A. B. Hartman, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent Diners Club, 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 10 Columbus Circle, New York, New York. Diners Club, Inc. is joined as a respondent in that it is the sole owner of National Account Systems, Inc., and will be liable for civil penalty as provided in Paragraph 7 of the executed agreement in the event that any named respondent violates any of the provisions of Part IV of the order after it becomes final or in the event that National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., or A. B. Hartman, Inc., violate any of the other provisions of the order after it becomes final.

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

National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., and A. B. Hartman, Inc., for the purposes of Parts I, II, and III of this order are the only parties to whom reference is made when the term "respondents" is used.

I

It is ordered, That National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., and A. B. Hartman, Inc., their successors and assigns, their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or branch, or other device in connection with the collection of or attempting to collect consumer debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Obtaining information on consumers from a consumer reporting agency or any other source under false pretenses.
2. Failing to keep accurate records of the sources of all information obtained on all consumers.
3. Retaining on respondents' premises any books, pamphlets, or any other writings or materials containing subscriber codes or any information which would enable respondents to use subscriber codes unless respondents or their employees or agents are:
 - (a) Members of a consumer reporting agency; and
 - (b) Authorized to possess and use such codes; such authorization must expressly include collecting or attempting to collect debts for respondents and such authorization must be maintained in respondents' files.

Any such codes or information currently in respondents' possession or which subsequently come into respondents' possession and are not permitted as required in (a) and (b) must be destroyed or returned to the authorized user and a record kept of such action for three years, making such record available to the Federal Trade Commission for inspection and copying upon request.

4. Representing in any manner, directly or by implication, orally or in writing, that respondents have the authority or right to cause debtors to go to jail or to be defendants in criminal prosecutions for not

paying their debts; or misrepresenting in any manner respondents' authority to affect debtors' legal rights or liabilities.

5. Representing in any manner, directly or by implication, orally or in writing, that respondents are serving legal or judicial documents upon debtors unless such is the case; or misrepresenting in any manner the status, significance or official nature of any papers sent to debtors.

6. Representing in any manner, directly or by implication, orally or in writing, that respondents or their agents are something or someone other than a debt collection agency or debt collector; or misrepresenting in any manner the official, professional or vocational status of respondents or their agents, or misrepresenting, in any manner, the position or function of any of respondents' agents, employees, and representatives.

7. Representing in any manner, directly or by implication, orally or in writing, that respondents will destroy or attempt to harm debtors' credit standings, or that respondents possess the authority or intend to disclose information regarding debtors to a consumer reporting agency; or misrepresenting in any manner the effect of any action taken by respondents on a debtor's credit standing.

8. Representing in any manner, directly or by implication, orally or in writing, that legal action has been initiated or is being initiated unless respondents have in fact instituted the legal action represented; or misrepresenting in any manner that legal action will be initiated, including but not limited to, attachment or garnishment proceedings, unless respondents are able to establish that at the time the representation was made respondents intended in good faith to institute the legal action represented.

9. Representing in any manner, directly or by implication, orally or in writing, that judgment may be entered against a debtor without the debtor having notice of the legal action and an opportunity to appear and defend himself or herself in a court of law.

10. Informing a debtor of a creditor's post judgment rights without disclosing at the same time that no judgment may be entered against the debtor unless the debtor has first been given notice and an opportunity to appear and defend himself or herself in a court of law.

11. Representing in any manner, directly or by implication, orally or in writing, the post judgment rights of a creditor unless said rights are in fact as specifically represented in the jurisdiction in which collection is sought; or misrepresenting in any manner, directly or by implication, the post judgment rights of a creditor.

12. Using abusive or obscene language when talking with or writing to debtors.

13. Placing any telephone call to any debtor, or orally contacting debtors in any manner, between the hours, in the time zone of the debtor, of 9:00 p.m. and 7:00 a.m. on weekdays, including Saturdays, and between the hours of 9:00 p.m. and 12:00 noon on Sundays.

14. Initiating more than two (2) oral conversations with any debtor in any one week regarding the collection of the same debt.

It is further ordered, That respondents, their successors and assigns, with respect to oral or written communications to persons other than the alleged debtor, cease and desist from:

(a) Communicating or threatening to communicate, or implying the fact or existence of any debt to a debtor's employer prior to any judgment;

(b) Communicating with or threatening to communicate, or implying the fact or existence of any debt to any other third parties, including former employers of the debtor other than one who might be reasonably expected to be liable therefor except with the written permission of the debtor or except where legal documents are being served according to law;

(c) Reporting a debt or an alleged debt to a consumer reporting agency unless respondents also promptly report to said consumer reporting agency the subsequent payment of said debt or alleged debt, or the resolution of any dispute concerning said debt, or alleged debt.

It is further ordered, That said respondents shall maintain for a period of three (3) years with respect to each debtor, records which shall consist of copies of all collection letters, dunning notices, requests for information and similar correspondence delivered to such debtor or third parties, or any indication of what items or documents were sent; a record or tabulation of all telephone calls made to or about the debtor showing the identity of the caller, the date of the call, the telephone number called, the purpose and result of the call and any notes or reports made in connection therewith when obtained; and copies of all documents pertaining to collection efforts such as referrals to lawyers or other agencies and legal documents utilized in collection efforts, or any indication of what items were sent.

II

It is ordered, That National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., and A. B. Hartman, Inc., their successors and assigns, their officers, agents,

representatives and employees, directly or through any corporation, subsidiary, division or branch, or other device, in connection with any consumer credit transaction, including, but not limited to, transactions involving the deferment of the payment of debts and/or the refinancing of any existing extension of credit or the increasing of existing obligations, as these terms are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act (15 U.S.C. 1601-65 (1970), *as amended*, 15 U.S.C. 1601-65(a), (Supp. IV, 1974), do forthwith cease and desist from:

1. Failing to disclose the finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, expressed and identified as an annual percentage rate, as "annual percentage rate" is defined in Section 226.2 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
2. Failing to disclose the date on which the finance charge begins to accrue, as required by Section 226.8(b)(1) of Regulation Z.
3. Failing to disclose the number, amount and due dates or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments" as is required by Section 226.8(b)(3) of Regulation Z.
4. Failing to disclose the total amount of finance charges, with a description of each amount included, using the term "finance charge," as required by Section 226.8(d)(3) of Regulation Z.
5. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
6. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
7. Failing to make the disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.
8. Failing in any consumer credit transaction to make all disclosures, required by Sections 226.6, 226.7, 226.8, and 226.9 of Regulation Z, and failing to make all disclosures, determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, and 226.9 of Regulation Z.

III

It is further ordered, That:

- (a) Respondents shall deliver a copy of this order to all present and future employees and their agents engaged in debt collection and to

any other person or entity connected with respondents to whom respondents presently refer or assign and to whom in the future respondents may refer or assign matters for debt collection;

(b) Respondents shall provide each of their employees with a form returnable to respondents clearly stating the employee's intention to conform his or her business practices to the requirements of this order; respondents shall require said persons to agree in writing on said form to conform his or her business practices to the requirements of this order and shall retain said statement during the period said person is so engaged, and for three (3) years thereafter, and make said statement available to representatives of the Federal Trade Commission for inspection and copying upon request;

(c) In the event such person will not agree to sign and file the form set forth in paragraph (b) above with respondents and conform to the provisions of this order, respondents shall not use or engage or continue the use or engagement of such person to collect debts or aid or assist respondents in the collection of debts;

(d) Respondents shall inform each person and entity described in paragraph (a) above that respondents shall not use or engage or shall terminate the use or engagement of any such person or entity unless such person or entity's business practices conform to the requirements of this order; and that respondents are obligated by this order to terminate the use or engagement of those persons or entities who engage on their own in the acts or practices prohibited by this order;

(e) Respondents shall institute a program of reasonable surveillance of their officers, employees and their agents engaged in debt collection, adequate to reveal whether the business practices of each said person conform to the requirements of this order;

(f) Upon receiving information from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) indicating reasonable proof of a violation of any provision of this order by any person or entity described in paragraph (a) above, respondents shall within 72 hours notify such person or entity by certified mail, return receipt requested, that such violation of this order has occurred ("Termination Notice"), and that respondents shall forthwith discontinue dealing with said person or entity. Immediately after such notification, respondents shall permanently discontinue dealing with said person or entity;

(g) Respondents shall retain evidence of compliance with this order and all Termination Notices and make such evidence available to representatives of the Federal Trade Commission for inspection and copying upon request;

(h) Respondents shall prepare and maintain a list of all employees containing the names of all such persons and their aliases, if any, and their last known addresses and telephone numbers for three (3) years following the date of their last employment with respondents; such list shall be made available to representatives of the Federal Trade Commission for inspection and copying upon request.

IV

It is further ordered, That respondents National Account Systems, Inc., a corporation, NAS Creditors Service, Inc., a corporation, National Accounts System of Milwaukee, Inc., a corporation, A. B. Hartman, Inc., a corporation, and Diners Club, Inc., a corporation, hereinafter referred to as respondents, shall not use independent agents or other entities knowingly for the purpose of circumventing any provision of this order.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents 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.

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.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with more restrictive agreements, orders or directives of any kind obtained by any other governmental agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by, the Federal Trade Commission.

IN THE MATTER OF

THE AMERICAN MEDICAL ASSOCIATION, ET AL.

Docket 9064. Interlocutory Order, Apr. 26, 1977

Denial of respondents' motions that Commission reconsider issuance of complaint and for oral argument.

ORDER DENYING MOTIONS TO RECONSIDER ISSUANCE OF
COMPLAINT

The complaint in this matter alleges that respondents have entered into agreements that, *inter alia*, prevent their members (medical doctors) from soliciting business, by advertising, or otherwise from engaging in price competition. The complaint further asserts that respondents have caused the agreements to be published and circulated in the *Principles of Medical Ethics* and have enforced these alleged restrictions.

The administrative law judge has now certified respondents' motions that the Commission reconsider issuance of the complaint. Respondents assert that even before the filing of the complaint, the conduct challenged in this proceeding had been terminated. Respondents note, for example, that the Judicial Council of the American Medical Association has reviewed the Association's position regarding advertising and solicitation by physicians and issued a "Statement on Advertising and Solicitation" which permits the making of information about physicians available to the public. The Statement indicates that information may be provided "through the accepted local media of advertising or communication, which are open to all physicians on like conditions." The Statement proscribes "solicitation," defined as "the attempt to obtain patients by persuasion or influence, using statements or claims that (1) contain testimonials, (2) are intended or likely to create inflated or unjustified expectations of favorable results, (3) are self-laudatory and imply that the physician has skills superior to other physicians engaged in his field or specialty of practice, or (4) contain incorrect or incomplete facts, or representations or implications that are likely to cause the average person to misunderstand or be deceived."

Respondents also argue that in view of the pendency on the Supreme Court's docket of *Bates v. State Bar of Arizona*, Dkt. No. 76-316 (argued Jan. 18, 1977), a case raising the question of the legality of state restrictions on advertising by attorneys, the Commission should "reexamine whether this is the time to intervene in efforts of