

Complaint

89 F.T.C.

IN THE MATTER OF
THE DINERS' CLUB, INC.

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

Docket C-2878. Complaint, Apr. 27, 1977 --- Decision, Apr. 27, 1977

Consent order requiring, among other things, a New York City credit card company to cease failing to furnish customers with periodic statements setting forth credit balances; failing to notify customers of their right to request and receive cash refunds of such credit balances; failing to provide prescribed disclosure statements with credit balance notifications; and failing to make proper refunds as detailed in the order.

Appearances

For the Commission: *Roger J. Fitzpatrick, Hong S. Dea, Howard Daniels and John F. Lefevre.*

For the respondent: *Stuart M. Rosen, Weil, Gotshal & Manges, New York City.*

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 The Diners' Club, Inc., a corporation, has 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 The 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.

PAR. 2. Respondent The Diners' Club, Inc. extends credit to consumers and others through the issuance of a credit card, hereinafter sometimes referred to as a Diners' Club card.

PAR. 3. Respondent The Diners' Club, Inc. maintains business offices located in several states. Respondent issues Diners' Club cards to persons throughout the United States and contracts with merchants to honor purchases made on Diners' Club cards in retail businesses throughout the United States. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of its aforesaid business, respondent, pursuant to an agreement with its cardholders, issues Diners' Club cards, valid for a designated period of time, which enable the cardholders to charge purchases of merchandise or services from subscribing hotels, restaurants, gasoline stations, and other retail businesses. Respondent purchases from such businesses obligations incurred by cardholders when such businesses honor the Diners' Club card. In turn, the cardholders agree to repay respondent by making payments on their Diners' Club charge accounts.

PAR. 5. On occasion a Diners' Club cardholder's charge account balance reflects a credit on the cardholder's account which represents an amount of money owed to the cardholder by respondent, rather than an amount of money owed to respondent by the cardholder. This credit balance is the result of, among other things, overpayments by the customer or credits given for the purchase price of returned merchandise.

PAR. 6. Typical and illustrative of respondent's practices in handling the credit balances of its cardholders are the following:

Respondent provides a cardholder having a credit balance on his active Diners' Club account with periodic statements setting forth the amount of the credit balance. At no time does respondent refund cash representing an outstanding credit balance to a cardholder unless the cardholder specifically requests the refund of his credit balance.

Respondent cancels Diners' Club card accounts when, for among other reasons, it is requested to do so by the cardholders or when the cardholders fail to renew their accounts upon the expiration of their established terms. Upon the cancellation of his account, a cardholder is thereafter unauthorized to utilize his credit balance by making offsetting purchases. When cancelling an account which reflects a credit balance, respondent has not refunded cash representing the outstanding credit balance without the cardholder's specific request. Following six consecutive months during which there has been no change in the amount of the credit balance on a cancelled account, respondent has not refunded the credit balance from the cardholder's account.

Through such acts and practices, respondent in a substantial number of instances has retained in its possession substantial dollar amounts of credit balances belonging to its cardholders.

PAR. 7. By failing to refund to its cardholders without their request credit balances reflected on accounts on which no activity has taken place for a substantial period of time, and by cancelling Diners' Club accounts which reflect outstanding credit balances and failing to

refund without request credit balances from inactive cancelled accounts, respondent has caused a substantial number of its cardholders and former cardholders to be deprived of substantial sums of money rightfully theirs. Therefore, the acts and practices described in Paragraph Six above were and are unfair.

PAR. 8. The acts and practices of respondent set forth in Paragraphs Six and Seven above were and are to the prejudice and injury of the public and constitute unfair acts and practices in or affecting 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated the said Act, 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 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 The 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.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent The Diners' Club, Inc., a corporation, its successors and assigns and its representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the handling of credit balances on consumer credit accounts created incident to its business of issuing credit cards, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to mail or deliver to each of its cardholders having a credit balance created after the date of entry of this order a periodic statement setting forth such credit balance, no fewer than three times during the six-month period following the creation of the credit balance. *Provided, however,* that a periodic statement must be mailed or delivered as of the end of the first billing period during which the credit balance is created. *Provided further,* that no periodic statement need be sent once a credit balance is refunded or a fully offsetting purchase is made.

2. Failing to notify each cardholder having a credit balance created later than sixty (60) days from the date of entry of this order of his right to request and receive a cash refund in the amount of such credit balance, such notice to be accomplished by a clear and conspicuous disclosure on or enclosed with each periodic statement required by Paragraph One and accompanied by a return envelope. Such disclosure shall in all material respects be consistent with but need not be identical to the following:

"NO PAYMENT REQUIRED

The credit balance shown on the enclosed statement represents money we owe you. To obtain a refund, return the statement stub which contains your name and address, along with this notice, signed by you, in the enclosed envelope.

If you do not use your account or request a refund, a check will be mailed to you automatically within 7 months from the date this credit balance was created. But a credit balance of \$1.00 or less will not be refunded unless specifically requested and after the 7 month period will not be credited against purchases.

To Diners Club

Please refund the credit balance shown on the enclosed statement.

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(X) _____ Date _____"
Signature

Provided, however, that if respondent refunds without request credit balances of one dollar (\$1.00) or less, the last sentence of such disclosure relating to such balances may be deleted.

If the disclosure furnished in compliance with this paragraph is not identical to the above-quoted statement, such disclosure shall provide all of the information contained in the above quotation, shall not provide any additional information relating to credit balances, shall be set forth separately from any other written matter, and shall be made either entirely on the face of the periodic statement or entirely on one side of a separate page. In the event such disclosure is not on the face of the periodic statement, then the periodic statement shall state clearly and conspicuously on its face: "Credit Balance. Do not pay. For refund see [enclosed instructions]" or [reverse side"], *provided, however* that this notice may be abbreviated.

3. Writing off or deleting from a cardholder's account any credit balance of more than one dollar (\$1.00) created after the date of entry of this order before respondent has made a cash refund or the cardholder has made a fully offsetting purchase, unless such credit balance is not in fact owed to the cardholder, or unless respondent has complied with the requirements of Paragraph B below.

4. Failing to refund to each cardholder having a credit balance of more than one dollar (\$1.00) created after the date of entry of this order, the full amount of said credit balance no later than thirty-one (31) days from the end of the sixth consecutive billing cycle during which a credit balance exists and the cardholder neither transacts any business on the account nor requests a refund, unless such credit balance is not in fact owed to the cardholder.

A. *It is further ordered,* That with respect to each credit balance owed to a Diners' Club cardholder in the amount of more than one dollar (\$1.00) which was created at any time within the three-year period prior to the date of entry of this order and which has not been refunded to the cardholder as of the date of entry of this order, respondent shall refund to each such cardholder the full amount of such credit balance, unless such credit balance is not owed to the cardholder, or the cardholder makes a fully offsetting purchase within the period for compliance herewith. Respondent shall effect complete compliance with the provisions of this paragraph no later than seven (7) months after the date of entry of this order, and the

report required by Paragraph G of this order shall address itself specifically to the steps taken to comply with this paragraph.

B. *It is further ordered,* That each refund shall be given to the cardholder either in person or by mailing a check payable to the order of the cardholder to the last known address shown in respondent's records for said cardholder. Each periodic statement sent pursuant to the terms of this order shall be mailed to the cardholder at the last known address shown in respondent's records. In the event that any such statement or check is returned to respondent with a notification to the effect that the cardholder to whom it was mailed is not located at the address to which it was sent, respondent shall remail the check or statement with an address correction request to the Post Office, unless respondent has already done so. If the check or statement which has been remailed is returned to respondent and reflects an amount larger than fifteen dollars (\$15.00), respondent shall obtain from a credit bureau the most current address available for the cardholder in the credit bureau's files by means of an in-file report or other credit bureau report. If a new address is obtained, respondent shall remail the check or statement to the cardholder. If the cardholder is not located by the preceding method, respondent shall reinstate the full amount of the credit balance on the cardholder's account to be retained until such time as the term of the account expires so that offsetting purchases can be made, and upon such reinstatement, respondent shall be relieved of any further obligation to send any additional notices and/or any refund without request with respect to the credit balance in question. In the event said cardholder should subsequently request a refund of any such credit balance, respondent shall treat such request in the manner provided in Paragraph C.

C. *It is further ordered,* That if a cardholder requests, in person or by mail, a refund of a credit balance in any amount at any time within six (6) years subsequent to the date on which the credit balance was created, respondent shall, within thirty (30) days from receipt of such request, either refund the entire amount requested, if owed, or furnish the cardholder with a written explanation, with supporting documentation, when available, of the reason(s) for refusing to refund the amount requested. Returning a periodic statement stub and signed credit balance notice to respondent shall constitute a request for refund of said credit balance.

D. *It is further ordered,* That a credit balance shall be deemed to be created at the end of the billing cycle in which the credit balance is first recorded on an account and at the end of the billing cycle in which the recorded amount of an existing credit balance is changed

due to a cardholder's use of the account. Whenever the recorded amount of an existing credit balance is changed, respondent's obligations under this order with respect to the credit balance existing prior to such change shall automatically be terminated and replaced by its obligations under this order with respect to the new credit balance created by said change.

E. *It is further ordered*, That respondent shall maintain the following data: name and address of each Diners' Club cardholder who was sent a refund without request of a credit balance; the date the credit balance was created and the date it was refunded; and the amount of the credit balance. *Provided, however*, that respondent shall not be required to maintain such data for a period in excess of six years from the date such credit balance was refunded.

F. *It is further ordered*, That respondent shall, upon request, produce for the purpose of examination and copying by representatives of the Federal Trade Commission those records required to be retained by this order.

G. *It is further ordered*, That respondent shall, within ninety (90) days after the entry of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

H. *It is further ordered*, That respondent 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 corporation which may affect compliance obligations arising out of the order.

I. *It is further ordered*, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

IN THE MATTER OF
CARTE BLANCHE CORPORATION

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

Docket C-2879. Complaint, Apr. 27, 1977 --- Decision, Apr. 27, 1977

Consent order requiring a Los Angeles, Calif. credit card company to cease failing to furnish customers with periodic statements setting forth credit balances; failing to notify customers of their right to request and receive cash refunds of such credit balances; failing to provide prescribed disclosure statements with credit balance notifications; and failing to make proper refunds as detailed in the order.

Appearances

For the Commission: *Roger J. Fitzpatrick, Hong S. Dea, Howard Daniels and John F. Lefevre.*

For the respondent: *Stephen B. Friedman, 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 Carte Blanche Corporation, a corporation, has 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 Carte Blanche Corporation 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 3460 Wilshire Boulevard, Los Angeles, California.

PAR. 2. Respondent Carte Blanche Corporation extends credit to consumers and others through the issuance of a credit card, hereinafter sometimes referred to as a Carte Blanche card.

PAR. 3. Respondent Carte Blanche Corporation maintains business offices located in several states. Respondent issues Carte Blanche cards to persons throughout the United States and contracts with merchants to honor purchases made on Carte Blanche cards in retail businesses throughout the United States. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.