

IN THE MATTER OF
FEDERATED DEPARTMENT STORES, INC.

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

Docket C-2880 Complaint, Apr. 27, 1977 --- Decision Apr. 27, 1977

Consent order requiring a Cincinnati, Ohio, retailer 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: *Harold P. Rosenberg*, in house counsel, Cincinnati, Ohio.

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 Federated Department Stores, Inc., a corporation, hereinafter sometimes referred to as respondent, 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 Federated Department Stores, 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 222 West 7th St., Cincinnati, Ohio. Respondent Federated Department Stores, Inc. is responsible for the formulation, control and direction of the policies, acts and practices of its divisions, including the acts and practices hereinafter set forth. Respondent's divisions include Abraham and Straus; Bloomingdale Bros.; Milwaukee Boston Store Co.; Bullock's; Bullock's North; Burdine's; William Filene's Sons Co.; Foley's; Goldsmith's; F. & R. Lazarus & Co.; Levy's of Tucson; I. Magnin & Co.; Rike's; Sanger-Harris; and Shillito's.

Abraham & Straus division operates ten department and specialty stores under the trade name Abraham & Straus. Its principal office

and place of business is located at 420 Fulton St., Brooklyn, New York.

Bloomington Bros. division operates twelve department and specialty stores under the trade name Bloomington's. Its principal office and place of business is located at Lexington Ave. and 59th St., New York, New York.

Milwaukee Boston Store Co. division operates six department and specialty stores under the trade name Boston Store. Its principal office and place of business is located at 331 W. Wisconsin Ave., Milwaukee, Wisconsin.

Bullock's division operates fifteen department and specialty stores under the trade name Bullock's. Its principal office and place of business is located at Broadway, Hill and 7th Sts., Los Angeles, California.

Bullock's North division operates three department stores under the trade name Bullock's North. Its principal office and place of business is located at 550 Stanford Shopping Center, Palo Alto, California (mailing address: P.O. Box 2007, Menlo Park, California 94025).

Burdine's division operates eleven department stores under the trade name Burdine's. Its principal office and place of business is located at 22 E. Flagler St., Miami, Florida.

William Filene's Sons Co. division operates eleven specialty stores under the trade name Filene's. Its principal office and place of business is located at 426 Washington St., Boston, Massachusetts.

Foley's division operates seven department and specialty stores under the trade name Foley's. Its principal office and place of business is located at 1110 Main St., Houston, Texas.

Goldsmith's division operates four department stores under the trade name Goldsmith's. Its principal office and place of business is located at 123 S. Main St., Memphis, Tennessee.

F. & R. Lazarus Co. division operates eleven department and specialty stores under the trade name Lazarus. Its principal office and place of business is located at S. High and W. Town Sts., Columbus, Ohio.

Levy's of Tucson division operates one department store under the trade name Levy's. Its principal office and place of business is located at El Con Shopping Center, Tucson, Arizona.

I. Magnin and Company division operates twenty-two specialty stores under the trade name I. Magnin. Its principal office and place of business is located at Union Square, San Francisco, California.

Rike's division operates five department stores under the trade

name Rike's. Its principal office and place of business is located at 2nd and Main Sts., Dayton, Ohio.

Sanger-Harris division operates nine department stores under the trade name Sanger-Harris. Its principal office and place of business is located at 303 N. Akard at Pacific, Dallas, Texas.

Shillito's division operates seven department stores under the trade name Shillito's. Its principal office and place of business is located at 7th and Race Sts., Cincinnati, Ohio.

PAR. 2. Respondent Federated Department Stores, Inc., through its aforesaid divisions, operates and controls a number of retail department and specialty stores in New York, Wisconsin, California, Florida, Massachusetts, Texas, Tennessee, Ohio and Arizona.

PAR. 3. Respondent Federated Department Stores, Inc. sells and distributes merchandise in commerce by operating and controlling retail department and specialty stores in a number of states and by causing merchandise to be shipped from its warehouses and retail department and specialty stores for distribution to and purchase by the general public located in states other than those from which such shipments originate. By these and other acts and practices, respondent maintains, and at all times mentioned 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 permits customers of its operating divisions who qualify for credit to charge purchases to revolving credit accounts or other charge accounts. On occasion, a customer's charge account balance consists of a credit on the customer's account which represents an amount of money owed to the customer by one of respondent's divisions, rather than an amount of money owed to one of respondent's divisions by the customer. This credit balance may be the result of, among other things, overpayments by the customer or credits given for the purchase price of returned merchandise.

PAR. 5. Typical and illustrative of respondent's practices in handling the credit balances of its customers are the following: Respondent, through its divisions, provides each customer having a charge account credit balance with a periodic statement setting forth the amount of the credit balance; the statement is mailed at the end of the billing cycle during which the credit balance is created. A second periodic statement is mailed six months after the first. No additional periodic statement is provided to a customer for any billing cycle during which the credit balance is reflected on the account, unless business is transacted on the account.

If the customer does not request a refund in cash in the amount of

the credit balance or make a purchase within six months following the issuance of the first statement, respondent's divisions, through bookkeeping entries, may transfer the amount of the credit balance from the customer's charge account subject to automatic reinstatement. No cash payment to the customer is made at the time of the transfer of his credit balance from his charge account.

At no time do respondent's divisions refund cash representing an outstanding credit balance without request.

Through such acts and practices, respondent's divisions, in a substantial number of instances, have retained in their possession substantial dollar amounts of credit balances belonging to their customers.

PAR. 6. By failing to furnish to customers, during billing cycles in which credit balances of any amount remain outstanding, a sufficient number of periodic statements disclosing the amounts of their credit balances along with their right to request and receive cash payment of the amounts of their credit balances, and by failing to refund without request credit balances reflected on accounts on which no business has been transacted for a substantial period of time, respondent has caused a substantial number of its divisions' charge account customers to be deprived of substantial sums of money rightfully theirs. Therefore, the acts and practices described in Paragraph Five above were and are unfair.

PAR. 7. The acts and practices of respondent, through its divisions, as set forth in Paragraphs Five and Six 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 Federated Department Stores, 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 222 West 7th St., Cincinnati, Ohio.

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 Federated Department Stores, 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 retail consumer revolving credit accounts or other retail consumer charge accounts (including, but not necessarily limited to thirty (30) day charge accounts) created incident to the business of selling consumer merchandise and services at retail, 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 charge account customer 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 in 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 and *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 charge account customer having a credit balance created later than sixty (60) days from the date of entry of this order of the customer's 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 (1) 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] OR [This credit balance] represents money we owe you. You may obtain a refund by presenting your statement at our store or by returning it in the enclosed envelope. If you do not charge against this credit or request a refund, a check will be mailed to you in ____ months. But a credit balance of \$1 or less will not be refunded unless specifically requested, and it will not be credited against future purchases after that ____ month period." *Provided, however,* if respondent refunds without request credit balances of one dollar (\$1.00) or less, the last sentence of such disclosure may be deleted, and if respondent credits amounts under \$1.00 against future purchases, the phrase "and it will not be credited against future purchases after the ____ month period," 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 any credit balance of more than one dollar (\$1.00) created after the date of entry of this order from a customer's account before respondent has made a cash refund or the customer has made a fully offsetting purchase, unless such credit balance is not in fact owed to the customer, or unless respondent has complied with the requirements of Paragraph B below; *provided, however,* that if a credit balance is automatically credited against future purchases, that balance is not considered to be written off or deleted from a customer's account.

4. Failing to refund to each charge account customer with 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 customer neither transacts any business on the account nor requests a refund, unless such credit balance is not in fact owed to the customer.

A. *It is further ordered*, That with respect to each credit balance owed to a customer 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 customer as of the date of entry of this order, respondent shall refund to each such customer the full amount of such credit balance, unless such credit balance is not owed to the customer, or the customer makes a fully offsetting purchase within the period for compliance herewith; *provided, however*, that nothing contained herein shall prevent respondent from making such refund by giving a credit certificate(s), in the full amount of the credit balance which shall be redeemable, at the customer's option, in merchandise or cash. Such a certificate(s) shall clearly and conspicuously disclose on its face that it is redeemable for cash if the customer so requests in person or if the customer returns the certificate(s) by mail with a request for cash redemption. 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 I 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 customer either in person or by mailing a check (or credit certificate(s) in the case of credit balances existing prior to the date of entry of this order) payable to the order of the customer, to the last known address shown in respondent's records for said customer. Each periodic statement sent pursuant to the terms of this order shall be mailed to the customer at the last known address shown in respondent's records. In the event that any such statement or check (or credit certificate) is returned to respondent with a notification to the effect that the customer to whom it was mailed is not located at the address to which it was sent, respondent shall remail the check or statement (or credit certificate) with an address correction request to the Post Office unless respondent has already done so. If the check or statement (or credit certificate) which has been remailed is returned to respondent and reflects an amount larger than fifteen dollars (\$15.00), respondent shall then obtain from a credit bureau the most current address available for the customer by means of an in-file report or other report of information then existing in the credit

bureau's file. If a new address is obtained, respondent shall remail the check or statement (or credit certificate) to the customer. If the customer is not located by the preceding method, respondent shall reinstate the full amount of the credit balance on the customer's account to be retained for one year from the date on which the remailed check or statement was returned so that offsetting purchases can be made and respondent shall be relieved of any further obligation to send any additional notice and/or any refund with respect to the credit balance in question. *Provided, however*, that in the event said customer should subsequently request a refund of any such credit balance, respondent shall treat such request in the manner provided in Paragraph C and *provided, further*, that respondent has the right pursuant to the Commission's Rules, to petition the Commission to request a reopening of this proceeding to seek modification of Paragraph B with respect to costs incurred in complying with the requirement of obtaining credit reports if respondent concludes that compliance with such requirement is economically burdensome or inequitable.

C. *It is further ordered*, That if a customer requests, in person or by mail, a refund of a credit balance in any amount which had been initially reflected on such customer's account at any time within six years preceding the date on which the refund request is made, respondent shall, within thirty (30) days from receipt of such request, either refund the entire amount requested, if owed, or furnish the customer with an individualized written explanation, with supporting documentation, when available, of the reason(s) for refusing to refund the amount requested. Mailing to respondent in the return envelope referred to in Paragraph (2) a periodic statement [or other form referred to in Paragraph (2)] which reflects a credit balance shall constitute a request for a refund of said credit balance.

D. *It is further ordered*, That, notwithstanding the foregoing, respondent may refund amounts of one dollar (\$1.00) or less by refunding the cash equivalent in United States postage stamps unless the customer requests a cash refund. Along with and at the same time of such refund of stamps, respondent shall clearly and conspicuously disclose that if the customer prefers, the customer may receive cash, in lieu of stamps, if he notifies respondent by telephone, mail or in person. Respondent thereupon shall accept return of the stamps and shall promptly make the refund by check or cash.

E. *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 a customer's account and at the end of the billing cycle in which the recorded amount of an existing credit balance is

changed due to a customer'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.

F. *It is further ordered*, That, notwithstanding the foregoing, the provisions of this order shall not be applicable to credit balances on accounts administered by third parties or to transactions arising out of lay-away plans or installment sales contracts.

G. *It is further ordered*, That commencing not later than sixty days after the date of entry of this order, respondent shall maintain, for each of its retail operating divisions, the following data: the name and address of each customer who thereafter receives a refund of a credit balance; the date the credit balance was first reflected on the customer's account; the closing date of the billing cycle in which it was refunded; and the amount of the credit balance. Respondent shall also maintain for each of its retail operating divisions copies of all written explanations furnished pursuant to Paragraph C above. *Provided, however*, that respondent shall not be required to maintain the information required by this paragraph for a period in excess of six years from the date each individual credit balance was refunded or the date each individual explanation was furnished.

H. *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.

I. *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.

J. *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.

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

Complaint

89 F.T.C.

IN THE MATTER OF
CITY STORES COMPANY

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

Docket C-2881 Complaint, Apr. 27, 1977 --- Decision, Apr. 27, 1977

Consent order requiring a New York City retailer 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 City Stores Company, a corporation, hereinafter sometimes referred to as respondent, 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 City Stores Company 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 500 Fifth Ave., New York, New York. Respondent, through its divisions and wholly-owned subsidiaries, operates a total of 149 department, specialty, and home furnishing stores.

Lit Brothers division operates eleven department stores under the trade name Lit Brothers. Its principal office and place of business is located at 8th and Market St., Philadelphia, Pennsylvania.

Maison Blanche division operates seven department stores under the trade name Maison Blanche. Its principal office and place of business is located at 901 Canal St. (Box 60820), New Orleans, Louisiana.

Richards division operates eight department stores under the trade