

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

name Richards. Its principal office and place of business is 1 N.E. 1st St., Miami, Florida.

Loveman's division operates five department stores under the trade name Loveman's. Its principal office and place of business is located at 216 N. 19th St., Birmingham, Alabama.

Hearn's division operates a department store under the trade name Hearn's. Its principal office and place of business is located at 149th Street at 3rd Ave., Bronx, New York.

R. H. White's division operates two department stores under the trade name R.H. White's. Its principal office and place of business is located at Lincoln Plaza, Worcester, Massachusetts.

Franklin Simon division operates sixty-eight specialty stores under the trade name Franklin Simon. Its principal office and place of business is located at 560 Washington St., New York, New York.

B. Lowenstein & Bros. Inc., a wholly-owned subsidiary, operates four department stores under the trade name Lowenstein's. Its principal office and place of business is located at 85 N. Main St., Memphis, Tennessee.

W. & J. Sloane, Inc., a wholly-owned subsidiary, operates thirty-five home furnishing stores under the trade name W. & J. Sloane. Its principal office and place of business is located at 414 Fifth Ave., New York, New York.

The Mayer Furniture Co., a wholly-owned subsidiary of W. & J. Sloane, Inc. operates seven home furnishing stores under the trade name W. & J. Sloane. Its principal office and place of business is located at 1130 Connecticut Ave., Washington, D.C.

PAR. 2. Respondent City Stores Company is responsible for the formulation, control and direction of the policies and practices of the aforesaid divisions and subsidiaries including the acts and practices hereinafter set forth.

PAR. 3. Respondent City Stores Company sells and distributes merchandise in commerce by operating and controlling retail department, specialty and home furnishing stores in a number of states and by causing merchandise to be shipped from its warehouses and retail department 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 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 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 stores, rather than an amount of money owed to one of respondent's stores by the customer. 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. 5. Typical and illustrative of respondent's practices in handling the credit balances of its customers are the following: Respondent through its divisions and subsidiaries provides each customer having a charge account credit balance with a periodic statement setting forth the amount of the credit balance. A periodic statement is mailed at the end of the billing cycle during which the credit balance is created and at the end of the five billing cycles immediately following. 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.

A number of respondent's divisions or subsidiaries do not inform charge account customers having a credit balance that they are entitled to request and receive a cash refund of their credit balance. At no time do any of respondent's divisions or subsidiaries refund cash representing outstanding credit balances without request.

Through such acts and practices respondent's divisions and subsidiaries 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 notify all customers whose charge accounts reflect credit balances that they have the 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' and subsidiaries' 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 and subsidiaries 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 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.
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 City Stores Company, 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. *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 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

This Credit Balance represents money we owe you. You may use it or obtain a refund by presenting your statement at our store or by returning, in the enclosed envelope, the bill top of the enclosed statement indicating thereon ‘please refund.’ If you do not charge against this credit or request a refund, a check will be mailed to you automatically within 7 months after your credit balance was created. 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 the seven 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.

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 placed on the reverse side of the periodic statement or on a separate enclosure 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. 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 the 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. The report required by Paragraph H 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 on 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 obtain from a credit bureau the most current address available for the customer 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 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 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 customer 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 customer requests, in person or by mail, a refund of a credit balance in any amount at any time within six 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 customer with a written explanation, with supporting documentation, when available, of the reason(s) for refusing to refund the amount requested. The returning of a bill top upon which the customer has indicated a request for refund, to respondent, shall constitute a request for a refund of the 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 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.

E. *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.

F. *It is further ordered*, That respondent shall maintain for each of its retail operating divisions and subsidiaries the following data: name and address of each customer 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 with respect to a customer who was sent a refund without request in excess of six (6) years from the date such refund was made.

G. *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.

H. *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.

I. *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.

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

Complaint

89 F.T.C.

IN THE MATTER OF

ATLANTIC RICHFIELD COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2882. Complaint, Apr. 27, 1977 --- Decision, Apr. 27, 1977*

Consent order requiring a Los Angeles, Calif., manufacturer and marketer of petroleum products to cease failing to furnish credit card 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: *Hong S. Dea.*For the respondent: *David L. Roll, Steptoe & Johnson, Washington, D.C.*

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 Atlantic Richfield Company, 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 Atlantic Richfield Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with a principal office and place of business located at 515 South Flower St., Los Angeles, California.

PAR. 2. Respondent Atlantic Richfield Company manufactures and markets various petroleum products throughout the United States. It markets gasoline domestically for resale in approximately 37 states and the District of Columbia.

PAR. 3. Respondent sells and distributes petroleum products in commerce in a number of states by causing its products to be shipped from its refineries and from the places of business of its various suppliers to respondent's storage areas and retail gasoline service stations 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