

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

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, customers of respondent who qualify for credit may charge purchases to gasoline credit card accounts at certain retail gasoline service stations. 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 respondent, rather than an amount of money owed to respondent by the customer. This credit balance is the result of, among other things, over-payments 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 prior to 1976, were the following:

Respondent provided to each customer having a charge account credit balance of one dollar (\$1.00) or more a periodic statement setting forth the amount of the credit balance. This periodic statement was usually mailed at the end of the billing cycle during which the credit balance was created and during the two billing cycles immediately following. No additional periodic statement was provided to a customer for any billing cycle during which the credit balance was reflected on the account, unless business was transacted on the account. At no time was a customer having a credit balance adequately and specifically informed by respondent that he was entitled to request and receive a cash refund of his credit balance.

Respondent provided to each customer having a credit balance of less than one dollar (\$1.00) one periodic statement setting forth the amount of the credit balance, mailed at the end of the billing cycle during which the credit balance was created. No additional periodic statement was provided to a customer for any billing cycle during which the credit balance was reflected on the account, unless business was transacted on the account. At no time was a customer having a credit balance adequately and specifically informed by respondent that he was entitled to request and receive a cash refund of his credit balance.

If a customer having a credit balance of one dollar (\$1.00) or more did not request a refund in cash of the amount of the credit balance or transact further business on his account, respondent maintained the credit balance on the account. If a customer having a credit balance of less than one dollar (\$1.00) did not request a refund in cash of the amount of the credit balance or transact further business on his account within one month after receipt of the periodic statement,

respondent through bookkeeping entries, removed the credit balance from the customer's account. No cash payment to the customer was made at the time of the removal of his credit balance from his charge account.

Respondent did not refund cash representing an outstanding credit balance without a specific request by the customer.

PAR. 6. By failing to furnish to customers, during billing cycles in which credit balances of any amount remained outstanding, a sufficient number of periodic statements disclosing the amount of their credit balances; by failing to adequately and specifically notify customers whose charge accounts reflected credit balances that they had 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 had been transacted for a substantial period of time, respondent caused a substantial number of its 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, 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 Atlantic Richfield Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 515 South Flower St., Los Angeles, California.

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 Atlantic Richfield Co., 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 gasoline credit card accounts or other retail consumer credit charge accounts (including, but not necessarily limited to thirty (30) day charge accounts) created incident to credit card sales of petroleum and automotive products at service station outlets, 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 during the first billing period succeeding the creation of the credit balance.

2. Failing to notify each charge account customer having a credit balance created after 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 (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 represents money we owe you. You may use it or you may obtain a refund by returning the statement in the enclosed envelope. Please write across the statement 'refund requested.' If charges are not applied against this credit or you do not request a refund, a check will be mailed to you within seven months after your credit balance was created. But a credit balance of less than one dollar (\$1.00) will not be refunded unless specifically requested, and it may not be credited against future purchases after the seven-month period."

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 entirely on 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 charges have been applied to the account, unless such credit balance is not in fact owed to the customer, or unless respondent has complied with the requirements of Paragraph B below.

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 the order the full amount of said credit balance no later than thirty-five (35) days from the end of the sixth consecutive billing cycle during which a credit balance exists and charges have not been applied against the account and the customer has not requested 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 entry of this order, and which has not been refunded to the customer as of the date of entry of the 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. Respondent shall effect complete compliance with the provisions of this paragraph no later than six (6) months after the date of entry of this order, and the report required by Paragraph J 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 effected by mailing a check 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 for said customer. If the check or statement is returned to respondent and reflects an amount larger than fifteen dollars (\$15.00), respondent may remail such check or statement, and if such check or statement is returned following such mailing or following such mailing and remailing, respondent shall attempt to obtain from a credit bureau or other consumer reporting agency the most current address on file for that customer. 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 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 without request 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.

C. *It is further ordered,* That if a customer requests by mail a refund of a credit balance in any amount which had been reflected at any time on such customer's account, respondent shall, within thirty (30) days from receipt of such request, either refund the entire amount requested, if owed and not escheated as required by state law, 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 receipt by respondent of a mailed periodic statement [or other form referred to in Paragraph (2)] which

reflects a credit balance shall be deemed a request for a 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 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 charges applied to 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 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 credits created on delinquent customer accounts by the application of monies obtained by collection agencies in excess of the delinquent amount originally owed to respondent, where such excess represents attorney's fees, interest, court costs or other costs of debt collection.

F. *It is further ordered*, That respondent shall maintain the following data: name and address of each customer who received a refund without request of a credit balance; the date the credit balance was first reflected on the customer's account and the date of the first mailing of the refund; and the amount of the credit balance. *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 refund was first mailed.

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 this order shall not be deemed to have been violated if:

(1) respondent shows by a preponderance of evidence that its failure to comply with this order was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error; and

(2) within twenty (20) days from the time respondent discovers or should reasonably have discovered the error, respondent notifies the Commission in writing of the nature, extent, and apparent cause of the error and of the steps it has taken or it will take to rectify the error and prevent its recurrence; and

(3) within sixty (60) days from the time respondent discovers or

reasonably should have discovered the error, respondent takes all actions necessary to assure that all customers affected by the error promptly receive all the rights and benefits to which they are entitled pursuant to the terms of this order.

I. *It is further ordered*, That if respondent is of the opinion that changed conditions of fact or law require that this order be altered, modified or set aside, or that the public interest so requires, respondent has the right, pursuant to the Commission's Rules of Practice, to file with the Commission a petition requesting a reopening of the proceeding for that purpose.

J. *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.

K. *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.

L. *It is further ordered*, That respondent shall forthwith distribute a copy of this order to all management personnel whose duties involve the accounting and bookkeeping treatment of credit balances.

Complaint

89 F.T.C.

IN THE MATTER OF  
GLOBE NEWSPAPER CO., INC.

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

*Docket C-2883. Complaint, Apr. 29, 1977 --- Decision, Apr. 29, 1977*

This consent order, among other things, requires a Dorchester, Mass., newspaper publisher to cease misrepresenting the role, identity, and purpose of telephone solicitors; failing to disclose the amount of charitable donations it will make in exchange for the purpose of newspaper subscriptions; and placing in the hands of others the means and instrumentalities by which the public may be deceived. Further, the firm is required to donate \$70,000 to the St. Jude Research Hospital; maintain files containing inquiries and complaints relating to proscribed practices; and institute a surveillance program designed to insure solicitors' compliance with the terms of the order.

*Appearances*

For the Commission: *Lois M. Woocher, Arthur E. Levine, and Paul A. Manoff.*

For the respondent: *Bingham, Dana & Gould, Boston, Mass.*

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 Globe Newspaper Co., Inc., a corporation, hereinafter 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 Globe Newspaper Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 135 William T. Morrissey Boulevard, Dorchester, Massachusetts.

PAR. 2. Respondent has been, and is now engaged in the publishing, advertising, offering for sale, and sale and distribution of the *Boston Globe* newspaper and other publications.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent has been and is now engaged in a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, in that respondent has caused said