

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

publications to be shipped, mailed and distributed from its place of business to purchasers located in various States of the United States other than the state of origination. Respondent transmits and receives, and causes to be transmitted and received, invoices, checks, monies and other business papers or documents in the course of advertising, selling, or otherwise distributing and collecting payments for said publications among and between the several States of the United States.

PAR. 4. In the course and conduct of its business of offering to sell and selling the *Boston Globe* newspaper and other publications, as aforesaid, respondent has entered into business arrangements with certain telephone solicitation companies who, in turn, employ or hire "solicitors" or other representatives to sell said publications. Acting through these telephone solicitation companies, respondent, through various direct and indirect means and devices, places into operation and controls, directs, supervises, recommends and otherwise implements sales methods whereby members of the general public are contacted by telephone solicitors and, by means of statements, representations, acts and practices as hereinafter set forth, are induced to enter into oral agreements with respondent which provide for the purchase of the *Boston Globe* newspaper and other publications and for payment therefore.

Respondent has paid for rent, telephone, advertising costs and other business expenses of said telephone solicitation companies; assisted, aided, and cooperated in the preparation of the sales solicitation program employed by said companies; and maintained final authority over the contents of said sales program.

In this manner, respondent, directly or indirectly, controls, furnishes the means, instrumentalities, services, and facilities for, condones, approves and accepts the pecuniary benefits flowing from the acts, practices and policies hereinafter set forth, of said telephone solicitation companies.

PAR. 5. Respondent, in the course and conduct of its business as aforesaid, acting through its telephone solicitation companies' salespersons has made statements and representations, directly or indirectly, respecting the terms and conditions of its publication subscription offers designed and intended to induce the sales of said publications. Representative of such statements but not all inclusive thereof are the following.

A. Written statements prepared by respondent include:

This is _____ calling on behalf of the Boston Globe for the Danny Thomas St. Jude's Leukemia Hospital for children. If you will take the Boston Globe for 90 days, the Boston Globe will make a donation to the St. Jude's Hospital.

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Almost everyone takes one or more newspapers and when they realize that contributions are the only means that many of these unfortunate children have to receive this expensive treatment FREE; they feel proud of their decision to have this paper delivered for 90 days.

However, we are not asking for a direct donation, as the donation would be made by the Boston Globe and it's a grand and easy way to help * * * in the fight against Leukemia * * *.

B. Statements of salespersons of respondent's solicitation company acting under the control of the respondent have included:

If you sign up for the Boston Globe for a trial period of just three months, the Globe has agreed to donate matching funds to St. Jude's Children's Hospital.

I don't know exactly the amount of the donation given to St. Jude's Hospital but it's sizeable.

If you subscribe to the Globe for 16 weeks then the entire subscription price will be donated to charity.

In the aforesaid manner, the respondent has represented, directly or by implication, that:

1. The telephone solicitors selling the *Boston Globe* newspaper and respondent's other publications are employed by or for the benefit of a charitable or non-profit organization.

2. Respondent donates all or a substantial amount of the total subscription price of the *Boston Globe* newspaper for the specified trial period to St. Jude's Hospital or other charitable or non-profit organization.

PAR. 6. In truth and in fact:

1. The telephone solicitors selling the *Boston Globe* newspaper and respondent's other publications are not employed by or for the benefit of a charitable or non-profit organization but are employed by a telephone solicitation company, Media Sales Inc., which has entered into a business arrangement with respondent to sell respondent's publications.

2. Respondent does not donate all or a substantial amount of the total subscription price of the *Boston Globe* newspaper for the specified trial period to St. Jude's Hospital or other charitable or non-profit organization. To the contrary, respondent donates a minimum amount of the subscription price to the charity. Thus, for a 13 week subscription to the *Boston Globe* newspaper costing \$26, respondent pays \$.25 to St. Jude's Hospital.

Therefore, the representations, acts and practices as set forth in Paragraph Five hereof, were, and are, unfair practices and are false, misleading and deceptive.

PAR. 7. In the further course and conduct of its business respondent, acting through the telephone solicitation companies, offers for sale and sells the *Boston Globe* newspaper and other publications without disclosing that the dollar amount of the donation given by respondent to St. Jude's Hospital is \$.25. Such fact is material and, if known to potential customers, would be likely to affect their decision to purchase the *Boston Globe* newspaper or other publication. Therefore, failure to disclose such material fact is misleading and a deceptive and unfair act or practice.

PAR. 8. By and through the use of the aforesaid acts and practices, respondent places in the hands of telephone solicitation companies, their salespersons, and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 9. The use by respondent, directly or indirectly, of the aforesaid false, misleading, deceptive and unfair representations, acts or practices has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of a substantial number of subscriptions to the *Boston Globe* newspaper and other publications of respondent.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, have been to the prejudice and injury of the public and have constituted unfair and deceptive 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 Boston Regional Office 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(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

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 office and principal place of business located at 135 Morrissey Boulevard, city of Boston, Commonwealth of Massachusetts.

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 Globe Newspaper Co., Inc., a corporation, and its successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any newspaper, newspaper subscription or other product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any representative or other person soliciting a purchaser or prospective purchaser with the intent or with the result of inducing or securing a subscription, order for, or the purchase or agreement to purchase of the *Boston Globe* newspaper or other product is performing services on behalf or primarily for the benefit of or represents any charitable, educational, social, or other association, or any individual or firm other than respondent; or affirmatively misrepresenting in any manner, the identity of the solicitor or of his or her firm and the business they are engaged in.

2. Failing affirmatively to disclose clearly and conspicuously during the initial contact or solicitation of a purchaser or prospective purchaser, in connection with any offer to make a donation to or otherwise to benefit any charitable, educational, social, or other association or person other than a person whose sole benefit is in the form of a payment or receipt of monetary remuneration in the

normal course of the sale and delivery of newspapers, the terms, conditions, nature and exact amount expressed in dollars and as a percentage of the total cost to the purchaser or prospective purchaser of any such donation and benefit to said charitable, educational, social, or other association or person.

3. Furnishing or otherwise placing in the hands of others, the means and instrumentalities by and through which the public may be misled or deceived in the manner or by the acts and practices prohibited by this order, with the knowledge that said means and instrumentalities are likely to be used in an unfair or deceptive manner.

It is further ordered, That:

(A) Respondent pay the sum of seventy thousand dollars (\$70,000) as a donation to the St. Jude's Children's Research Hospital located at 332 North Lauderdale St., Memphis, Tennessee 38101, a charitable organization. This sum shall be paid in two annual installments of thirty-five thousand dollars (\$35,000) each. The first of such payments shall be made no later than sixty (60) days after the date of service of this order; and the second payment shall be made within one year following the date of the first payment;

(B) Respondent shall within thirty (30) days after each payment referred to above file with the Boston Regional Office a report in writing setting forth the manner in which compliance with subparagraph (A) of this paragraph was made and the records and documents demonstrating such compliance;

(C) Respondent herein deliver a copy of this decision and order to any person including present and future employees, agents, solicitors and independent contractors who in connection with any offer of a donation or benefit covered by Paragraph 2 of this order promotes, offers for sale or sells subscriptions to any product included within the scope of this order;

(D) Respondent herein provide each person or entity so described in subparagraph (C) of this paragraph with a form returnable to the respondent clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(E) Respondent herein inform each person or entity described in subparagraph (C) of this paragraph that the respondent will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondent that he or she will be bound by the provisions contained in this order;

(F) If such party as described in subparagraph (C) of this paragraph will not agree to file the notice set forth in subparagraph (D) above with the respondent and be bound by the provisions of this order, the respondent shall not use or engage or continue the use or engagement of such party to promote, offer for sale, sell or distribute any product included within the scope of this order;

(G) Respondent herein inform the persons or entities described in subparagraph (C) above that the respondent is obligated by this order to discontinue dealing with or to terminate the use or engagement of persons who continue on their own the deceptive acts or practices prohibited by this order;

(H) Respondent herein institute a program of continuing surveillance adequate to reveal whether the business practices of each person described in subparagraph (C) above conform to the requirements of this order;

(I) Respondent herein discontinue dealing with or terminate the use or engagement of any person described in subparagraph (C) above, who continues on his or her own any act or practice prohibited by this order as revealed by the aforesaid program of surveillance; and

(J) Respondent herein maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondent's business for inspection and copying.

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

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 this order.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it 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.

IN THE MATTER OF
PROVIDENCE WASHINGTON INSURANCE COMPANY,
ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket 9063. Complaint, Nov. 24, 1975—Final Order, May 3, 1977

This order, among other things, requires a Providence, R.I., insurance company and its subsidiary, Providence Premium Service, Inc., to cease misrepresenting to delinquent debtors that legal action is imminent or that delinquent accounts have been referred to third parties for collection. Further, the firm is required to cease violating the Truth in Lending Act by failing, in connection with the extension of consumer credit, to use proper terminology and to provide such disclosures as are required by Federal Reserve Board regulations. Additionally, the order dismisses the complaint issued against Christopher F. Kempf in his individual capacity and as a named officer of the two firms.

Appearances

For the Commission: *Harold F. Moody* and *William P. McDonough*.

For the respondents: *John J. Curtin, Jr.* and *Daniel L. Goldberg*, *Bingham, Dana & Gould*, Boston, Mass. and *William P. Thornton*, in-house counsel for Christopher F. Kempf.

COMPLAINT

[1] Pursuant to the provisions of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Providence Washington Insurance Company, a corporation, Providence Premium Service, Inc., a corporation, and Christopher F. Kempf, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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:

[2] PARAGRAPH 1. Respondent Providence Washington Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 20 Washington Place, Providence, Rhode Island.