

IN THE MATTER OF

CBS INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2896. Complaint, July 21, 1977 -- Decision, July 21, 1977*

This consent order requires a New York publishing firm to cease mailing and billing for unauthorized magazines; sending collection letters to receivers of unordered magazines; misrepresenting the effects of nonpayment on credit ratings in such letters; and transferring unpaid accounts to recipients of unsolicited magazines to debt collection or consumer reporting agencies. Further, the order requires respondent to make proper restitution to individuals who paid for unordered magazines; and to send correction letters to consumers whose credit standings may have been adversely affected by respondent's actions. Additionally, respondent is required to maintain prescribed records; and to institute an adequate program of continued surveillance to ensure conformance with the terms of the order.

Appearances

For the Commission: *Paul P. Eyre and John M. Mendenhall.*

For the respondent: *Edward Kelman and Jerry Ebenstein, 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, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that CBS 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 CBS 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 51 West 52nd St., New York, New York. Respondent conducts its publishing of magazines through its CBS Consumer Publishing Division of the CBS Publishing Group, located at 600 Third Ave., New York, New York.

PAR. 2. Respondent, through its CBS Consumer Publishing Division, is now, and has been, engaged in the business of publishing, distributing, offering for sale, and selling various types of magazines.

PAR. 3. In the course and conduct of its magazine business, through

its CBS Consumer Publishing Division, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In late 1974 and early 1975, respondent, in the course and conduct of its magazine business through the CBS Consumer Publishing Division, in connection with the publishing, distributing, offering for sale, or selling of *Field & Stream* magazine:

(a) Ran a sweepstakes promotion in conjunction with a subscription campaign for *Field & Stream* magazine. In order to enter the sweepstakes, consumers were requested to sign an entry card and check a box to indicate whether the consumer wanted only to enter the sweepstakes or to also subscribe to *Field & Stream*. A number of people returning the card did not check either box. Respondent, through the CBS Consumer Publishing Division, sent copies of *Field & Stream* magazine to consumers who did not check either box, as well as those who checked the subscription box.

(b) Has mailed, or caused to be mailed, to persons who received such magazines without having checked either box, a bill for such magazines.

(c) Has mailed, or caused to be mailed, persistent demands for payment to persons who received such magazines without having checked either box.

Pursuant to the Postal Reorganization Act, Section 2, 39 U.S.C. 3009 (1970), the aforesaid acts and practices of respondent's CBS Consumer Publishing Division constituted a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of its business, and in connection with the publishing, distributing, offering for sale, or selling of *Field & Stream* magazine, respondent, through its CBS Consumer Publishing Division, transferred, or caused to be transferred, the purportedly due or delinquent accounts of those consumers who received copies of *Field & Stream* magazine and who did not indicate on the sweepstakes entry card whether they desired the magazine subscription to a debt collection agency or consumer reporting agency, for the purpose of collecting the subscription price for such magazines or for the purpose of including information in the consumer files of said agencies.

The aforesaid acts and practices constituted a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 6. Respondent, through its CBS Consumer Publishing Division, has used the acts and practices set forth in Paragraphs Four and Five, to induce persons who received copies of *Field & Stream*

magazine without having checked either box to pay the subscription price for such magazine. Respondent's CBS Consumer Publishing Division has received the said sums from some of such persons, and has failed to offer refunds, or refund such sums to said persons.

The use by respondent, through its CBS Consumer Publishing Division, of the aforesaid acts and practices constituted, and respondent's continued retention of said sums of money as aforesaid constitutes, a violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 7. Respondent, in the course and conduct of its business, through its CBS Consumer Publishing Division, for the purpose of inducing consumers to pay due or delinquent accounts, has transmitted, or has caused to be transmitted, to consumers, form letters demanding payment, representing that:

(a) If the consumer does not respond to a collection letter within a specified period of time, such consumer's account will be transferred to a consumer credit reporting agency for immediate inclusion in a national bad debt file;

(b) A consumer's account has been transferred to a credit collection manager of respondent's credit collection department.

PAR. 8. In truth and in fact:

(a) The failure of a consumer to respond to a collection letter within a specified period of time did not automatically result in the transferral of such consumer's account to a consumer credit reporting agency for immediate inclusion in a national bad debt file;

(b) The consumer's account was not transferred to a credit collection manager of respondent's collection department.

Therefore, the representations set forth in Paragraph Seven hereof were false, and had the tendency and capacity to mislead members of the public, and to induce the payment of delinquent accounts.

PAR. 9. In the course and conduct of its magazine business through its CBS Consumer Publishing Division, and at all times mentioned herein, respondent has been, and is now, in substantial competition in or affecting commerce with corporations, firms, and individuals engaged in the similar business of publishing, distributing, offering for sale, and selling magazines.

PAR. 10. The aforesaid acts and practices of respondent, through its CBS Consumer Publishing Division, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Cleveland 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent CBS Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 51 West 52nd St., in the City of New York, State of New York, and one of its components is the CBS Publishing Group.

CBS Consumer Publishing Division, a division of the CBS Publishing Group, with its principal office and place of business located at 600 Third Ave., New York, New York, is engaged in the manufacture, distribution, and sale of consumer publications, including magazines.

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

I

It is ordered, That respondent CBS Inc., a corporation, its succes-

sors and assigns, and respondent's agents, representatives, and employees, directly or through the CBS Consumer Publishing Division, or any other corporation, subsidiary, division, or other device in connection with the advertising, publishing, distributing, offering for sale, or selling of magazines in commerce or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do continue to, and forthwith, cease and desist from:

A. Mailing, or causing to be mailed, magazines without the prior expressed request or consent of the recipient.

B. Mailing, or causing to be mailed, a bill to recipients of magazines mailed without the recipient's prior expressed request or consent.

C. Mailing, or causing to be mailed, collection letters to recipients of magazines mailed without the recipient's prior expressed request or consent.

D. Transferring, or causing to be transferred, the alleged delinquent accounts of recipients of magazines mailed without the recipient's prior expressed request or consent, to a debt collection or consumer reporting agency.

Provided, that respondent may act in accordance with the exceptions extended by the Postal Reorganization Act, Section 2, 39 U.S.C. 3009 (1970), as amended or modified.

II

It is further ordered, That respondent CBS Inc., a corporation, its successors and assigns, and respondent's agents, representatives, and employees, directly or through the CBS Consumer Publishing Division, or any other corporation, subsidiary, division, or other device in connection with the collection of consumer debts in commerce or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do continue to, and forthwith, cease and desist from:

A. Using any forms, letters, or materials which represent directly or indirectly, by any means, that where payment due from a consumer in purported receipt of magazines is not received, the information of said delinquency is referred to a debt collection or consumer reporting agency, unless such agency is notified as represented.

B. Misrepresenting, by any means, the manner, extent, and consequences of the referral of debt delinquency information, compiled as a result of the purported receipt of magazines, to debt collection or consumer reporting departments or agencies.

C. Misrepresenting, by any means, that failure to pay the alleged

debt or delinquency, as a result of the purported receipt of magazines, will result in the consumer's credit rating being adversely affected.

D. Misrepresenting, in any manner, the names, roles, functions, relationship to respondent, or titles of individuals who are engaged in the collection of money purportedly due and payable as a result of the purported receipt of magazines, or who transfer information regarding particular consumers to debt collection or consumer reporting departments or agencies as a result of money purportedly due and payable as a result of the purported receipt of magazines.

III

It is further ordered, That:

A. Respondent deliver a copy of this order to each of its present and future operating groups, magazine publishers, and employees directly responsible for magazine circulation marketing activities, and to each of its present and future independent contractors engaged in magazine subscription fulfillment activities or magazine subscription advertising activities.

B. Respondent, through its CBS Consumer Publishing Division, institute a program of continuing surveillance adequate to reveal whether the business practices of individuals or entities described in Section III, paragraph A, conform to the requirements of this order.

C. Respondent, through its CBS Consumer Publishing Division, 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 inspection and copying by the Federal Trade Commission or its staff upon request.

IV

It is further ordered, That:

A. Respondent CBS Inc., through its CBS Consumer Publishing Division, shall offer a choice, at the option of the consumer, of full restitution (\$2.98) or a free one (1) year subscription to *Field & Stream* magazine to any consumer who paid in full for an unordered subscription to *Field & Stream* magazine in connection with the *Field & Stream* Sweepstakes/Subscription promotion conducted in late 1974 and early 1975, after the receipt by such consumer of the letter signed by Ken Edwards or Vince Dema, which letter stated in part:

Dear Friend,

When you sent us your FIELD & STREAM subscription order I accepted it in good faith, and billed you as you requested.

Since that time I've sent you three action-packed issues of FIELD & STREAM, but have not received your payment. You are long overdue. . . .

This offer of full restitution or a free one (1) year subscription shall be made in the following manner:

(1) Within thirty (30) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, shall identify all consumers described in Section IV, paragraph A.

(2) Within sixty (60) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, shall notify in writing by first-class, post-paid mail, all consumers identified in Section IV, paragraph A(1), at their last known addresses, of their right to restitution in the language, manner, and form shown in Appendix A.

(3) The letter set forth in Appendix A shall request a response to respondent's offer by a certain date. Such date shall be at least one hundred twenty (120) days after the date this order becomes final. Any response to such offer postmarked after such date shall be null and void.

(4) Within one hundred fifty (150) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, will, in accordance with consumers' replies to Appendix A, either refund, by first-class, post-paid mail, all monies paid by consumers identified in Section IV, paragraph A(1), or initiate, in accordance with the terms of said letter, a free one (1) year subscription to *Field & Stream* magazine on behalf of said consumer.

(5) Within two hundred ten (210) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, will provide to the Commission the following information:

(a) A list of the consumers identified pursuant to Section IV, paragraph A(1), of this agreement.

(b) A list of the consumers to whom letters were sent pursuant to Section IV, paragraph A(2), and which were returned by the United States Postal Service to respondent's CBS Consumer Publishing Division, having been undelivered to consumers.

(c) A list of the consumers who do not return Appendix A or otherwise respond to Appendix A within the time period allowed for such response.

(d) A list of the consumers who elect to receive full two dollars and ninety-eight cents (\$2.98) restitution under the terms of the offer extended by Appendix A.

(e) A list of the consumers who elect to receive a free one (1) year subscription to *Field & Stream* magazine under the terms of the offer extended by Appendix A.

B. Respondent, through its CBS Consumer Publishing Division, shall retain in its files for a period of three (3) years after the date that this order becomes final:

(1) All letters and their respective envelopes sent pursuant to Section IV, paragraph A(2), which are returned to respondent's CBS Consumer Publishing Division by the United States Postal Service as undeliverable.

(2) All letters (including those specified by Appendix A) sent to respondent's CBS Consumer Publishing Division by consumers in response to the offer extended by respondent's CBS Consumer Publishing Division pursuant to Section IV, paragraph A.

V

It is further ordered, That, within thirty (30) days after the date this order becomes final, respondent, through its CBS Consumer Publishing Division, shall notify in writing, by first-class mail, in the language, manner, and form shown in Appendix B, those consumers whose names were forwarded by it in respect of *Field & Stream* magazine to Credit Index, a division of Hooper-Holmes.

VI

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.

It is further ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth the manner and form in which it has complied with this order.

APPENDIX A

DATE

Name, Address, City, State, ZIP Code.

Re: 1975 World of Leisure Sweepstakes- Field & Stream Magazine.

Dear _____:

Last year, we entered a subscription in your name to *Field & Stream* magazine. If you are dissatisfied with the entry of this subscription and your payment therefor, we would like to make you the following offer:

A cash refund of \$2.98 paid; or

A free one-year subscription to *Field & Stream* magazine (newsstand value of \$12.00) to begin at once or added at the end of your current subscription.

Please indicate, by checking one box only, which of the above alternatives you desire.

In order to take advantage of this offer, this letter must be postmarked by (*date*). We have enclosed a business reply envelope for your convenience.

Looking forward to hearing from you.

Very truly yours,

CBS Consumer Publishing.

By: _____

APPENDIX B

DATE

Name, Address, City, State, ZIP Code.

Re: 1975 World of Leisure Sweepstakes- Field & Stream Magazine.

Dear _____:

Due to a confusion with respect to an incompletely filled-out sweepstakes entry form/subscription order form, and the resultant billing to you with respect to copies of *Field & Stream* magazine, we referred your name to a direct-mail bad pay file with a consumer credit reporting agency.

Please be advised that we have caused your name to be removed from said file permanently.

By law (Fair Credit Reporting Act), all debt collection agencies or consumer credit reporting agencies must delete information with regard to this misunderstanding upon presentation of this letter.

Please excuse this misunderstanding, and accept our apology.

Very truly yours,

CBS CONSUMER PUBLISHING.

By: _____

Complaint

90 F.T.C.

IN THE MATTER OF
CENTRAL CALIFORNIA LETTUCE PRODUCERS
COOPERATIVE, ET AL.

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

Docket 8970. Complaint, June 10, 1974 — Final Order, July 25, 1977

This order dismisses a complaint issued against a Salinas, Calif. nonprofit cooperative and 22 of its members for alleged price-fixing practices in the lettuce market, violative of antitrust law. The Commission ruled that the price-fixing practices were exempt from the antitrust laws, under the Capper-Volstead Act, which permits producers of agricultural products to "act together in association . . . in collectively . . . marketing" their products.

Appearances

For the Commission: *Carl J. Batter, Jr.* and *David B. Loken.*

For the respondents: *Philip C. Olsson* and *James F. Rill, Collier, Shannon, Rill & Edwards*, Washington, D.C., *Andrew Church, Abramson, Church & Stave*, Salinas, California and *Max Thelen Jr., Thelen, Marrin, Johnson & Bridges*, San Francisco, California.

COMPLAINT

[2] Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C. 41, *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties listed in the caption hereof, and more particularly described and referred to hereinafter, have violated the provisions of Section 5 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 Central California Lettuce Producers Cooperative (hereafter "Central") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Central maintains its home office and principal place of business at 512 Pajaro St., Salinas, California. [3]

PAR. 2. Respondent Admiral Packing Co. (hereafter "Admiral") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Admiral maintains its home office and principal place of business at 495 Brunken Ave., P.O. Box 1089, Salinas, California.

PAR. 3. Albert C. Hansen is an individual doing business as Hansen