

IN THE MATTER OF

POWER'S SERVICE, INC., ET AL.

Docket C-2810. Interlocutory Order, Feb. 22, 1978

Denial of motion to reopen proceeding and modify order to cease and desist on grounds that such motion was premature given the Commission has still before it a similar case involving related issues.

ORDER DENYING PETITION TO REOPEN PROCEEDING AND
MODIFY ORDER TO CEASE AND DESIST

By letter filed on October 18, 1977, petitioners, who prepare and send debt collection forms on behalf of creditors, have requested the Commission to modify the consent order issued in the above-captioned matter on March 11, 1976. The modification sought is the deletion of the disclosure required by Paragraph 4 of the order. Petitioners' letter with supporting documents is being treated as a petition to reopen the proceeding and modify the order under Rule 3.72(b)(2) of the Commission's Rules of Practice. The Bureau of Consumer Protection opposes modification of the order as premature.

Paragraph 4 requires petitioners to disclose in each communication sent to alleged delinquent debtors the following statement: "This communication is only a reminder notice. Power's Service, Inc. cannot accept payment nor will it take legal action regarding this claim." Paragraph 4 also sets certain standards for the size and color of this required disclosure.

Petitioners' request for modification is based on their assertion that the disclosure required by paragraph 4 places them at a competitive disadvantage with various competitors who are not under any cease and desist order requiring such disclosure. Furthermore, petitioners allege that ever since they began to place the required disclosure in their debt collection communications, they have suffered a decline in sales, which they state is due to the use of the disclosure. Petitioners also cite the following two decisions rendered by Administrative Law Judges in two Commission proceedings in which order provisions similar to the one they wish modified have been rejected. *In the Matter of Trans World Accounts, Inc., et al.*, Dkt. 9059 (1977), and *In the Matter of Capax, Inc., et al.*, Dkt. 9058 (1977).

Rule 3.72(b) of the Commission's Rules of Practice provides for modification of an order upon a showing by petitioners that changed

conditions of fact or law require such modification or that the public interest so requires.

The Commission has issued a final order in *Trans World Accounts* [90 F.T.C. 350]. Complaint counsel did not appeal from the Administrative Law Judge's determination to reject a provision requiring an affirmative disclosure in respondents' collection notices. The Commission, therefore, did not consider its propriety in that case.

The appeal in *Capax* is currently pending before the Commission. Since it involves issues related to those raised by the instant petition, the Commission has determined that the petition is premature:

Accordingly, the Commission having carefully considered the petition and the answer thereto and being of the opinion that the petition is untimely:

It is ordered, That petitioners' petition be, and it hereby is, denied without prejudice.

Complaint

IN THE MATTER OF
DAMON CORPORATIONCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE
CLAYTON ACT

Docket C-2916. Complaint, Feb. 23, 1978 — Decision, Feb. 23, 1978

This consent order, among other things, bars a Needham Heights, Mass. operator of a chain of medical laboratories from acquiring, for a period of ten years, any independent medical laboratory located in, or doing 25% or more of its business in given markets, without prior Commission approval. Further, the order requires the firm to cease furnishing any means of compensation to physicians or others for referring specimens for testing to Damon laboratories, rather than to those of its competitors.

Appearances

For the Commission: *Andrew G. Stone and Randolph B. Sim.*
For the respondent: *Shearman & Sterling, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named above, as hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to the provisions of Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), stating its charges as follows:

DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply:

a. *Medical Laboratory Tests:* Tests or examinations performed on specimens drawn or otherwise taken from the human body, or on other organic material, for the purpose of assisting in the diagnosis of disease or assessment of medical condition or state of body condition; not including autopsies, x-ray and other radiographic examinations, and electrocardiographic and other electrographic examinations.

b. *Medical Laboratory Test Services:* The services performed by