

Complaint

92 F.T.C.

IN THE MATTER OF
AMERICAN SERVICE BUREAU, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FAIR CREDIT REPORTING ACT

Docket C-2926. Complaint, Sept. 7, 1978 — Decision, Sept. 7, 1978

This consent order, among other things, requires a Chicago, Ill. insurance investigations firm to cease soliciting or collecting impermissible information as a means of identifying consumers seeking required disclosure of file contents; and unfairly or deceptively attempting to obtain from consumers authorization to elicit excessive information. Additionally, the firm is required to provide those persons requesting or disputing file information a prescribed statement regarding their rights under the Fair Credit Reporting Act.

Appearances

For the Commission: *Dennis D. McFeely.*

For the respondent: *Richard V. Henry, Chicago, Ill.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fair Credit Reporting Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that American Service Bureau, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, 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 as follows (all allegations hereinafter made in the present tense shall include the past tense):

PARAGRAPH 1. American Service Bureau, Inc. (hereinafter referred to as "ASB") is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 211 East Chicago Ave., Chicago, Illinois.

PAR. 2. Respondent disseminates written, oral or other communications of information bearing on consumers' credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing consumers' eligibility for credit or insurance to be used primarily for personal, family, or household

purposes, or employment purposes, or other purposes listed in Section 604 of the Fair Credit Reporting Act (hereafter sometimes "FCRA").

Therefore, the respondent disseminates "consumer reports" as defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 3. Respondent, for monetary fees, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and uses means or facilities of interstate commerce for the purpose of preparing or furnishing consumer reports.

Therefore, respondent is a "consumer reporting agency" as defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 4. Respondent operates numerous branch offices throughout the United States. Respondent causes consumer reports and claims reports to be distributed through the mail from their branch offices located in many states to its customers located in other States of the United States, and in the ordinary course and conduct of its business regularly sends and receives substantial numbers of communications across state lines. "Claims reports" as used in this complaint is defined to mean all those reports prepared in connection with insurance claims.

Therefore, respondent maintains a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. When consumers request telephone disclosure of the nature and substance of information in their files, respondent, in the ordinary course and conduct of its business as aforesaid, sends to the requesting consumers a form transmittal letter, hereafter referred to as "transmittal letter," together with a questionnaire entitled "Identification and File Comparison" hereafter referred to as "identification form." The transmittal letter states, among other things:

The law requires that we exercise extreme care to insure that information in our files is not divulged to unauthorized persons. By completing the enclosed Identification Form, #134, you will be providing the necessary verification information as required.

* * * * *

Upon receipt of the Identification and File Comparison Form, #134, signed as necessary, and payment if required, we will phone you collect, person to person, and disclose all the information we have in our file in accordance with the Fair Credit Reporting Act.

The identification form states, among other things:

Complaint

92 F.T.C.

This form when completed will provide proper identification as required by Public Law 91-508 (Fair Credit Reporting Act). It will also assist in our desire to keep your costs (Telephone Toll Charge) to a minimum when disclosure is made. Thank you.

The said identification form requests certain items of information, among others, through inclusion thereon of the following inquiries:

- a. "Divorced _____";
- b. "I have _____ dependents";
- c. "I have been so employed for _____ years";
- d. "Nature of my business is _____";
- e. "My occupation for the past five years has been _____";
- f. "My appr. worth is _____";
- g. "My appr. income is _____";
- h. "I own the following real estate _____";
- i. "I have the following banking connections _____";
- j. "Checking # _____";
- k. "Savings # _____";
- l. "Court records, if any, (Including Driving) in my name are as follows _____";
- m. "References:
 1. (Name) _____ (Address) _____ (Phone) _____
 2. (Name) _____ (Address) _____ (Phone) _____
 3. (Name) _____ (Address) _____ (Phone) _____
 4. (Name) _____ (Address) _____ (Phone) _____"

PAR. 6. By and through its use of the transmittal letter and the identification form described in Paragraph Five, respondent represents that FCRA requires the completion of the identification form as a prerequisite to the providing of the telephone disclosures to consumers required by Section 610 of FCRA of the information required to be disclosed by Section 609 of FCRA. In truth and in fact, FCRA does not require the completion of the identification form as a prerequisite to the providing of the telephone disclosures to consumers required by Section 610 of FCRA of the information required to be disclosed by Section 609 of FCRA.

Therefore, the acts and practices alleged in Paragraph Five are unfair, misleading and deceptive.

PAR. 7. In a substantial number of instances respondent has failed to provide the disclosures required by Sections 609 and 610 of FCRA because some or all of the information sought to be elicited by requests "a" through "m" contained in the identification form described in Paragraph Five was not provided by the consumer. Inasmuch as the supplying by the consumer of such information is not a condition permitted by the Fair Credit Reporting Act to respondent's obligations under Sections 609 and 610 of that Act, the

stated failure of respondent to provide the disclosures is a violation of Sections 609 and 610 of FCRA.

PAR. 8. In addition to the identification form described in Paragraph Five, respondent, in the ordinary course and conduct of its business as aforesaid, encloses with the transmittal letter described in Paragraph Five an agreement form, hereafter referred to as "agreement," which is captioned as follows:

AGREEMENT

(To be signed and returned to the American Service Bureau)

The said agreement includes the following provision:

To assist me and the American Service Bureau, Inc. to resolve any items in question or in dispute in accordance with Public Law 91-508 (Fair Credit Reporting Act) I authorize the American Service Bureau, Inc. to conduct an investigation at its own expense and hereby authorize any business, any organization, any professional man, or anyone else, to disclose full information about me and to give to the American Service Bureau, Inc. copies of any records about me.

At the bottom of the agreement there is a place for the signature of the consumer.

PAR. 9. By and through their use of the transmittal letter and agreement described in Paragraph Eight, respondent represents that consumers seeking telephone disclosure of the information required to be disclosed by Section 609 of FCRA are required by respondent's internal procedures and/or FCRA to sign the agreement to obtain the disclosures.

In truth and in fact, it is not required by either respondent's internal procedures or FCRA that consumers seeking telephone disclosure of the information required to be disclosed by Section 609 of FCRA sign the said agreement to obtain the disclosures.

Therefore, the acts or practices alleged in Paragraph Eight are unfair, misleading, and deceptive.

PAR. 10. In the ordinary course and conduct of its business as aforesaid, when consumers appear in person to obtain disclosure of the information required to be disclosed by Section 609 of FCRA, respondent presents to the consumers a document captioned "STATEMENT CONCERNING CONTENTS OF FILE," hereafter sometimes referred to as "statement form." This document provides consumers with the option of accepting by signature the information in the file as disclosed or, alternatively, provides a space for consumers to

dispute statements in the file by providing a written statement of their own.

The statement form includes the following provision (hereafter referred to as the "dispute investigation authorization").

To assist me and the American Service Bureau, Inc. to resolve any items in question or in dispute in accordance with Public Law 91-508 (Fair Credit Reporting Act) I authorize the American Service Bureau, Inc. to conduct an investigation at its own expense and hereby authorize any business, any organization, any professional man, or anyone else, to disclose full information about me and give to the American Service Bureau, Inc. copies of any records about me.

At the bottom of the statement form there is a place for the signature of the consumer.

PAR. 11. By and through its use of the statement form described in Paragraph Ten, respondent represents that the Fair Credit Reporting Act requires the signing of the statement form and assent to the dispute investigation authorization contained therein as a prerequisite to consumers' rights to dispute the completeness or accuracy of any item of information on themselves contained in respondents' files.

In truth and in fact, the signing of the statement form and assent to the dispute investigation authorization is not a prerequisite to consumers' rights to dispute the completeness or accuracy of any item of information on themselves contained in respondent's files.

Therefore, the acts and practices alleged in Paragraph Ten are unfair, misleading and deceptive.

PAR. 12. In a substantial number of instances respondent has failed to permit consumers to dispute items of information in its files pursuant to Section 611(a) of FCRA unless they sign their name to the statement form described in Paragraph Ten. Inasmuch as the signing of the statement form requires assent to the dispute investigation authorization and such assent is not a permitted condition to the right of the consumer to dispute information or obtain a reinvestigation pursuant to Section 611(a) of FCRA, the above-stated failure of respondent is a violation of Section 611(a) of the Fair Credit Reporting Act.

Therefore, the acts or practices alleged herein are unfair, misleading and deceptive.

PAR. 13. The acts and practices set forth in Paragraphs Five, Six, Eight, Nine, Ten, and Eleven are in violation of Section 5 of the Federal Trade Commission Act. The acts and practices set forth in Paragraphs Five, Seven, Ten and Twelve are in violation of the Fair Credit Reporting Act, and pursuant to Section 621(a) thereof such acts and practices constitute unfair or deceptive acts or practices in

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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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:

A. Proposed respondent American Service Bureau, Inc. is a corporation organized and doing business under the laws of the State of Illinois, with its principal office located at 211 East Chicago Ave., Chicago, Illinois.

B. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

IT IS ORDERED, That respondent American Service Bureau, Inc., a corporation, its successors and assigns, and its officers, respondent's agents, representatives and employees, directly or through any

corporation, subsidiary, division or other device, in connection with the operation of a consumer reporting agency as such is defined in the Fair Credit Reporting Act (hereafter sometimes "FCRA"), Pub. Law 91-508, (15 U.S.C. 1681, *et seq.*), do forthwith cease and desist from:

A. Obtaining or attempting to obtain from consumers seeking disclosure of the information required to be disclosed by Section 609 and 610 of the Fair Credit Reporting Act, any of the following items of information:

1. number of dependents,
2. past employment history,
3. approximate or actual worth,
4. approximate or actual income,
5. banking connections,
6. real estate owned by the consumer,
7. court records pertaining to the consumer,
8. names and addresses of references,
9. length of employment, or
10. nature of consumer's business.

B. Obtaining or attempting to obtain from consumers seeking disclosure of the information required to be disclosed by Section 609 and 610 of the Fair Credit Reporting Act, any information in excess of that which is necessary to establish the identity of the consumer who is seeking disclosure. *Provided, however*, that with respect to the requirements of this paragraph and Paragraph I.A., respondents may, as necessary only to comply with provisions of the Fair Credit Reporting Act, and after disclosure pursuant to Sections 609 and 610 of FCRA, inquire about the above items of information.

C. Obtaining or attempting to obtain from consumers who dispute the completeness or accuracy of any item of information contained in their files, or who seek disclosure of information which is required to be provided by Sections 609 and 610 of FCRA, an agreement or writing signed by the consumer which authorizes an investigation concerning the consumer or which authorizes anyone to give information or records about a consumer to respondents; *provided, however*, that if respondents are denied information in connection with a re-investigation under Section 611 of the Fair Credit Reporting Act after contacting a specific source, respondent may seek from the consumer a separate authorization to obtain from a specific source named in the authorization, specific items of information (other than medical information) which are relevant to the subject matter of the re-investigation; *provided further*, that the authorization permitted by this provision shall clearly and conspicu-

ously disclose to the consumer in writing: (1) that executing the authorization is not a condition to the re-investigation of the disputed item; and (2) that the consumer's failure to execute the authorization does not affect his or her right to have information deleted which is found to be inaccurate or which can no longer be verified.

D. Failing to provide each consumer who either requests disclosure of information in his or her file or who disputes the completeness or accuracy of information in his or her file, an exact facsimile of Exhibit A attached hereto without utilizing language additional to that which is contained in Exhibit A.

II

IT IS FURTHER ORDERED, That respondent American Service Bureau, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with complying with the requirements of the Fair Credit Reporting Act, the preparation of consumer reports, investigative consumer reports, claims reports, or other reports containing information about consumers, in or affecting commerce, do forthwith cease and desist from:

Representing that consumers are required by the Fair Credit Reporting Act to provide information, fulfill conditions, execute documents, authorize actions or assent to provisions, when such are not required by the Fair Credit Reporting Act; or otherwise misrepresenting directly or indirectly the requirements of the Fair Credit Reporting Act.

III

IT IS FURTHER ORDERED, That respondent shall, at all times subsequent to the effective date of this order, maintain complete business records relative to the manner and form of its compliance with this order for a two-year period. Such records shall include all policy directives, complaints from consumers, and other pertinent documents. Such records shall be kept in chronological order separate from the consumer reporting files and shall be made available for inspection and photocopying by any authorized representative of the Federal Trade Commission upon reasonable notice at respondent's place of business or other properly designated location.

IV

IT IS FURTHER ORDERED, That respondent deliver a copy of this order to each present and future officer of the corporation and all present and future management personnel to and including the level of branch manager. Further, respondent shall deliver to all personnel now or hereafter engaged in the disclosure of contents of consumer reports to consumers a copy of Section I and II of this order. Further, respondent shall secure from each of these persons a signed statement acknowledging receipt of the order or the relevant portion thereof.

V

IT IS FURTHER ORDERED, That respondent notify the Commission at least thirty days prior to the effective date of any proposed change in respondent, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, the creation or dissolution of subsidiaries, or any other change in said corporations which may affect compliance obligations arising out of the order.

VI

IT IS FURTHER ORDERED, That the respondent herein shall, within sixty 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.

EXHIBIT A

This information explains your rights under the Fair Credit Reporting Act. The American Service Bureau is a consumer reporting agency. We provide "Investigative Consumer Reports," a special type of a "Consumer Report." This pamphlet describes your rights and our responsibility for all types of consumer reports.

FAIR CREDIT REPORTING ACT

If you have a charge account, a mortgage on your home, life insurance, or have applied for a personal loan or job it is almost certain there is a "file" existing somewhere that shows how you pay your bills, if you have been sued, arrested, or filed for bankruptcy, etc.

And some of these files include your neighbors' and friends' views of your character, general reputation, or manner of living.

The companies that gather and sell such information to creditors, insurers, employers, and other businesses are called "Consumer Reporting Agencies," and the legal term for the report is a "Consumer Report."

If, in addition to credit information, the report involves interviews with a third person about your character, reputation, or manner of living, it is referred to as an "Investigative Consumer Report."

THE FAIR CREDIT REPORTING ACT became law on April 25, 1971. It was passed by Congress to protect consumers against the circulation of inaccurate or obsolete information, and to insure that consumer reporting agencies exercise their responsibilities in a manner that is fair and equitable to consumers.

Under this new law you can now take steps to protect yourself if you have been denied credit, insurance, or employment, or if you believe you have had difficulties because of a consumer report on you.

Here are the steps you can take.

YOU HAVE THE RIGHT:

1. To be told the name and address of the consumer reporting agency responsible for preparing a consumer report that was used to deny you credit, insurance, or employment or to increase the cost of credit or insurance.
2. To be told by a consumer reporting agency the nature, substance and sources (except investigative-type sources) of the information (except medical) collected about you.
3. To take anyone of your choice with you when you visit the consumer reporting agency to check on your file.
4. To obtain all information to which you are entitled, free of charge, when you have been denied credit, insurance, or employment within 30 days of your interview. Otherwise, the reporting agency is permitted to charge a reasonable fee for giving you the information.
5. To be told who has received a consumer report on you within the preceding six months (two years if the report was furnished for employment purposes).
6. To have incomplete or incorrect information re-investigated, unless the request is frivolous, and, if the information is found to be inaccurate or cannot be verified, to have such information removed from your file.
7. To have the agency notify those you name (at no cost to you) who have previously received the incorrect or incomplete information that this information has been deleted from your file.
8. When a dispute between you and the reporting agency about information in your file cannot be resolved, you have the right to have your version of such dispute placed in the file and included in future consumer reports.
9. To request the reporting agency to send your version of the dispute to certain businesses if requested within 30 days of the adverse action.
10. To have a consumer report withheld from anyone who under the law does not have a legitimate business need for the information.

11. To sue a reporting agency for damages if it willfully or negligently violates the law and, if you are successful, you can collect attorney's fees and court costs.

12. Not to have adverse information reported after seven years. The major exceptions are (a) bankruptcies, which may be reported for 14 years; (b) and no limitation (1) if an application for life insurance is involved in which the face value of the policy equals \$50,000 or more, or (2) if the report concerns employment at an annual salary equaling \$20,000 or more.

13. To be notified by a business that it is seeking information about you which would constitute an "Investigative Consumer Report."

14. To request from the business that ordered an investigative report, more information about the nature and scope of the investigation.

15. To discover the nature and substance (but not the sources) of the information that was collected for an "Investigative Consumer Report."

THE FAIR CREDIT REPORTING ACT DOES NOT:

1. Give you the right to request a report on yourself from the consumer reporting agency.
2. Give you the right, when you visit the agency, to receive a copy of or to physically handle your file.
3. Compel anyone to do business with an individual consumer.
4. Apply when you request commercial (as distinguished from consumer) credit or business insurance.
5. Authorize any Federal agency to intervene on behalf of an individual consumer.

HOW TO DEAL WITH CONSUMER REPORTING AGENCIES

If you want to know what information a consumer reporting agency has collected about you, either arrange for a personal interview at the agency's office during normal business hours or call in advance for an interview by telephone.

The consumer reporting agencies in your community can be located by consulting the "Yellow Pages" of your telephone book under such headings as "Credit" or "Credit Rating or Reporting Agencies."

If you decide to visit a consumer reporting agency to check on your file the following check list may be of help.

For instance, DID YOU:

1. Learn the nature and substance of all the information in your file?
2. Learn the names of everyone who received reports on you within the past six months (or the last two years if the reports were for employment purposes)?
3. Request the agency to re-investigate and correct or delete information that was found to be inaccurate, incomplete, or obsolete?

330

Decision and Order

4. Follow-up to determine the results of the re-investigation?
5. Ask the agency, at no cost to you, to notify those you name who received reports within the past six months (two years if for employment purposes) that certain information was deleted?
6. Follow-up to make sure that those named by you did in fact receive notices from the consumer reporting agency?
7. Demand that your version of the facts be placed in your file if the re-investigation did not settle the dispute?
8. Request the agency to send your statement of the dispute to those you name who received reports containing the disputed information within the past six months (two years if received for employment purposes)?

For more detailed information on the Fair Credit Reporting Act or to report a violation of the Act contact the FTC in Washington or the nearest regional office. The FTC offices are located in the following cities:

ATLANTA, Ga.; BOSTON, Mass.; CHICAGO, Ill.; CLEVELAND, Ohio; DALLAS, Texas; DENVER, Colo.; HONOLULU, Hawaii; LOS ANGELES, Calif.; NEW YORK, N.Y.; SAN FRANCISCO, Calif.; SEATTLE, Wash.; WASHINGTON, D.C.

Look under "Federal Trade Commission" in the telephone directories of these cities for the addresses and telephone numbers of the field offices.

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

JAY NORRIS CORPORATION, ET AL.

Docket 9054. Interlocutory Order, Sept. 11, 1978

Order denying respondents' petition for ruling on thirty (30) day advance notice to FTC of any proposed change in corporate respondent.

ORDER ON PETITION FOR RULING

Respondents have filed a Petition for Ruling requesting that the Commission address the argument made in their appeal brief challenging the requirement contained in Part III of the administrative law judge's ("ALJ") order of a thirty-day advance notice to the Commission of any proposed change in the corporate respondents. The ALJ concluded that there was nothing "improper or burdensome" about this requirement. (ID p. 73) While the Commission did not specifically address respondents' argument on this point, it expressly adopted the ALJ's initial decision as the Findings of Fact and Conclusions of Law of the Commission, except to the extent modified or otherwise indicated in the Commission's opinion. (Order at 2) Accordingly,

IT IS ORDERED, That respondents' Petition for Ruling is denied.