

Complaint

92 F.T.C.

IN THE MATTER OF

MOORE & ASSOCIATES, INC., ET AL., TRADING AS UNI-CHECK, ETC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING
ACTS*Docket C-2933. Complaint, Oct. 24, 1978 — Decision, Oct. 24, 1978*

This consent order, among other things, requires a Honolulu, Hawaii firm engaged in providing various businesses with consumer credit information and other services, to cease furnishing reports containing obsolete, inaccurate, or disputed information; providing such reports for improper purposes; or otherwise failing to comply with statutory requirements.

Appearances

For the Commission: *Harold G. Sodergren.*

For the respondent: *Peter G. Wheelon, Honolulu, Hawaii.*

COMPLAINT

I

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 Moore & Associates, Inc., a corporation, doing business as Uni-Check, and Rentcheck, and R. Donald Moore, individually and as an officer of said corporation, hereinafter referred to as "respondents," have 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 in that respect as follows:

PARAGRAPH 1. Respondent Moore & Associates, Inc. is a Hawaii corporation, with its principal office at 677 Ala Moana Boulevard, Suite 211, Honolulu, Hawaii.

Respondent R. Donald Moore is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

II

PAR. 2. A. Respondents, in the ordinary course and conduct of their

business under the tradename "Uni-Check," guarantee personal checks presented by consumers to merchants and banks. A subscriber to the service telephones respondents' computerized record system, provides a consumer's identifying number (e.g., driver's license number, credit card number), and receives a coded response indicating, among other things, whether respondents will guarantee the consumer's check which has been tendered to the subscriber.

B. Respondents, in the ordinary course and conduct of their business under the tradename "Rentcheck," guarantee landlords against financial loss resulting from non-payment of rent, malicious damage, or breach of lease. A subscriber to the service, prior to occupancy of the dwelling by a prospective tenant, follows the procedure described above in conjunction with the Uni-Check service, and receives a coded response indicating, among other things, whether respondents will guarantee the landlord against financial loss caused by the prospective tenant.

C. Respondents, in the ordinary course and conduct of their business, in conjunction with their Rentcheck service, provide landlords not desiring a guarantee against financial loss pursuant to a "Non-Guarantee Plan," with adverse information relating to a prospective tenant, where respondents have adverse information on file. The landlord follows the procedure described above in conjunction with the Uni-Check service, and receives a coded response. If the response indicates adverse information is on file, the landlord obtains detailed information regarding the prospective tenant from respondents in a subsequent communication.

D. Respondents, in the ordinary course and conduct of their business, provide banks with information regarding consumers making application for checking accounts. The bank follows the procedure described above in conjunction with the Uni-Check service, and receives a coded response. If the response indicates adverse information is on file, the bank obtains detailed information regarding the applicant from respondents in a subsequent communication.

PAR. 3. The data regarding consumers which is utilized by respondents in supplying the above information to subscribers is contained in a single computer data base, and consists of information relating to dishonored checks, cancellation of credit cards, termination of checking accounts, non-payment of rent, damage to property, breach of lease, and other information.

A. The communication by respondents to a subscriber, in connection with the Uni-Check service described in Paragraph 2A, that respondents will not guarantee a consumer's check, is the

communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

B. The communication by respondents to a subscriber, in connection with the Rentcheck service described in Paragraph 2B, that respondents will not guarantee that a prospective tenant will not cause the landlord financial loss, is the communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

C. The communication by respondents to a subscriber, in connection with the Rentcheck "Non-Guarantee Plan" described in Paragraph 2C, that respondents possess adverse information regarding a prospective tenant, or the communication of such adverse information, is the communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

D. The communication by respondents to a subscriber in connection with persons making application for the bank checking account service described in Paragraph 2D, that respondents possess adverse information regarding a prospective account holder, or the communication of such adverse information, is the communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 4. Respondents are, and have been, for monetary fees, regularly engaged in the practice of assembling information on consumers for the purpose of communicating such information to third parties, as described in Paragraphs Two and Three above, and regularly use, and for some time last past have regularly used, a means of facility of interstate commerce for the purpose of preparing and/or furnishing such communications. Therefore, respondents are a consumer reporting agency as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 5. In the course and conduct of their business of communicating information to third parties, as described in Paragraphs Two, Three, and Four, above, respondents have:

A. Failed to maintain reasonable procedures designed to prevent, in accordance with Section 605 of the Fair Credit Reporting Act, the inclusion in consumer reports of certain items of obsolete information, as required by Section 607(a) of the Fair Credit Reporting Act.

B. Failed, as to subscribers to respondents' services, to establish procedures requiring said subscribers to certify the purposes for which the information on consumers is sought, and to certify that the information will be used for no other purpose. Therefore, respondents failed to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes specified under Section 604 of the Fair Credit Reporting Act, as required by Section 607(a) of the Fair Credit Reporting Act.

C. Failed, when the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer, to clearly note in any subsequent consumer report containing the information in question, that it is disputed by the consumer, and to provide either the consumer's statement or a clear and accurate codification or summary thereof, as required by Section 611(c) of the Fair Credit Reporting Act.

Therefore, respondents have violated, and are violating, Sections 607(a) and 611(c) of the Fair Credit Reporting Act.

III

PAR. 6. Respondents, in the ordinary course and conduct of their business, provide by telephone to subscribing hotels in the State of Hawaii, the uncoded identity of a person who has been reported by another subscribing hotel to have failed to pay a hotel charge. Such communication is made by respondents to a subscribing hotel prior to the subscribing hotel's need for such information, premised upon a request by such person for services at the subscribing hotel to which such person's identity is communicated.

PAR. 7. The communication of the identity of persons who have failed to pay a hotel charge to other hotels in the aforesaid manner is the communication of information which bears on said person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 8. Respondents are, and have been, for monetary fees,

regularly engaged in the practice of assembling such information on consumers for the purpose of communicating such information to third parties, as described in Paragraphs Six and Seven above, and regularly use a means or facility of interstate commerce for the purpose of preparing and/or furnishing such information. Therefore, respondents are a consumer reporting agency as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 9. At the time respondents furnish each of the consumer reports described in Paragraphs Six, Seven, and Eight, above, respondents do not have reason to believe that each person to whom the consumer report is furnished has a legitimate business need for the information in such report in connection with a business transaction involving the consumer reported upon, nor do respondents have reason to believe that each recipient otherwise intends to use the information contained in such report for a purpose set forth in Section 604 of the Fair Credit Reporting Act. Further, the furnishing of such consumer report is neither in response to a court order nor in accordance with the written instructions of the consumer to whom the report relates.

Therefore, respondents, in the ordinary course and conduct of their business, as aforesaid, furnish consumer reports to persons, as "person" is defined in Section 603(b) of the Fair Credit Reporting Act, who do not have a legitimate business need or other permissible purpose to receive the consumer reports furnished to them, as required by Section 604(3) of the Act.

Therefore, by furnishing consumer reports in the manner described above, respondents have violated, and are violating, Section 604 of the Fair Credit Reporting Act.

PAR. 10. By and through the acts and practices described in Paragraphs Six, Seven, Eight, and Nine, above, respondents have failed to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act, and have furnished consumer reports to persons under circumstances in which there are reasonable grounds for believing that such reports will not be used for a purpose listed in Section 604 of such Act.

Therefore, respondents have violated and are violating, Section 607(a) of the Fair Credit Reporting Act.

IV

PAR. 11. The acts and practices set forth in Paragraphs Two through Ten, above, were and are in violation of the Fair Credit

Reporting Act, and, pursuant to Section 621(a) of that Act, said 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 San Francisco 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, as amended, and the Fair Credit Reporting 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 Acts, 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 Moore & Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its office and principal place of business located at 677 Ala Moana Boulevard, Suite 211, Honolulu, Hawaii.

Respondent R. Donald Moore is an officer of said corporation. He formulates, directs, and controls the policies, acts and practices of said corporation, and his personal office and place of business is located at the above-stated address.

2. 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

It is ordered. That respondents Moore & Associates, Inc., a corporation, d/b/a Uni-Check, Rentcheck, or under any other name, its successors and assigns, and its officers, and R. Donald Moore, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with collecting, preparing, assembling and/or furnishing of consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law 91-508, 15 U.S.C. 1601, *et seq.*), shall forthwith cease and desist from:

1. Failing to maintain reasonable procedures designed to prevent, in accordance with Section 605 of the Fair Credit Reporting Act, the inclusion in consumer reports of obsolete information, as required by Section 607(a) of the Fair Credit Reporting Act.

2. Furnishing any consumer report to any person, unless such report is furnished:

a. In response to the order of a court having jurisdiction to issue such order; or

b. In accordance with the written instructions of the consumer to whom the report relates; or

c. To a person whom respondents then have reason to believe intends, at the time the information is furnished, to use the information:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) For employment purposes; or

(3) In connection with the underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a business transaction involving the consumer.

Provided, however, a consumer report may be furnished prior to a time when respondents have reason to believe a person intends to use the information for a purpose enumerated in subsection c, above, if the identity of the consumer(s) to whom the information relates is not disclosed on such consumer report and cannot be determined

without the use of a unique identifier, such as a social security number, driver's license number, or bank account number. The identifier used must be provided by the consumer at the time of the transaction with the user. Communication of information pursuant to this proviso does not relieve respondents of responsibility to comply with all order requirements of the order in connection with such transaction.

3. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Act, as provided by Section 607 of the Act.

4. Failing to require prospective users of consumer reports to certify the purposes for which the information in such reports is sought, and that it will be used for no other purpose, in accordance with Section 607(a) of the Fair Credit Reporting Act.

5. Furnishing consumer reports to any user or prospective user of such reports who does not first provide the identification and the certification of purpose for which information in such reports is sought, as required by Section 607(a) of the Fair Credit Reporting Act.

6. Failing, when the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer, to clearly note, in any subsequent report containing the information in question, that it is disputed by the consumer, and to provide either the consumer's statement or a clear and accurate codification or summary thereof, as required by Section 611(c) of the Fair Credit Reporting Act.

7. Failing to comply with all requirements relating to consumer reporting agencies contained in Sections 604, 605, 607, 609, 610, 611, 612, 613, and 614 of the Fair Credit Reporting Act.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the preparation and/or furnishing of consumer reports, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

It is further ordered, That the corporate 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 each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new

business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities involve consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law 91-508, 15 U.S.C. 1601, *et seq.*), or of his affiliation with a new business or employment in which his own duties and responsibilities involve consumer reports. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

IN THE MATTER OF
BEDE AIRCRAFT, INC., ET AL.

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

Docket C-2934. Complaint, Oct. 26, 1978 — Decision, Oct. 26, 1978

This consent order, among other things, requires a Washington, D.C. manufacturer and marketer of aircraft and related products, and its subsidiaries, to provide and administer as prescribed an approximately \$9,000,000 redress fund for consumers who purchased or made deposits on its products. The firm is required to cease misrepresenting the availability, performance, reliability, and safety of its aircraft; or using any other unfair or deceptive act or practice in the advertising and sale of its products. Additionally, until such time that existing obligations are satisfied, the order requires that all of the firm's stock be placed in the hands of an approved trustee who would oversee its operations, and invoke the provisions of the federal Bankruptcy Act if necessary.

Appearances

For the Commission: *Kenneth R. Bennington.*

For the respondents: *Dale Curtis Hogue* and *William R. Bernard*,
Hogue, Crothers & Bernard, 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 Bede Aircraft, Inc., a corporation, Bede General Corporation, a corporation; Bede Wing, Inc., a corporation; James R. Bede, individually and as an officer, director and stockholder of said corporations; hereinafter referred to as respondents, have violated 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 the enumerated paragraphs below.

Allegations of respondents' present acts and practices include respondents' past acts and practices. Allegations in the present tense include the past tense. Allegations of respondents' representations or statements include those made directly or by implication, those made in sales contracts, advertising, promotional materials and sales communications, and representations made orally, visually, or in writing.

For purposes of the allegations enumerated herein, the following definitions apply: