

Interlocutory and Modifying Orders

IN THE MATTER OF

CAPAX, INC. - DOCKET D. 9058
 TRANS-AMERICAN COLLECTIONS, INC. - DOCKET D. 8901
 UNITED COMPUURED COLLECTIONS INC. - DOCKET C-2906
 TRANS NATIONAL CREDIT CORPORATION - DOCKET C-2806
 CONTINENTAL COLLECTION BUREAU OF AMERICA, INC. -
 DOCKET C-2808
 NORTH AMERICAN COLLECTIONS, INC. - DOCKET C-2809
 POWER'S SERVICE, INC. - DOCKET C-2810
 CONTINENTAL COLLECTION SERVICE - DOCKET C-2811

Interlocutory and Modifying Orders, Nov. 28, 1978

This order denies a petition of Capax, Inc. requesting reconsideration of its order issued on May 25, 1978, 91 F.T.C. 1048, 43 FR 27782. Additionally, the order reopens and modifies, by deleting the disclosure requirement, the order issued on September 26, 1973 in Dkt. D. 8901, 83 F.T.C. 525, 38 FR 28933; and the orders issued on March 11, 1976 in Dkt. C-2806, 87 F.T.C. 542, 40 FR 19206; C-2807, 87 F.T.C. 549, 40 FR 19205; C-2808, 87 F.T.C. 557, 40 FR 19202; C-2809, 87 F.T.C. 566, 40 FR 19203; C-2810, 87 F.T.C. 574, 40 FR 19204; and C-2811, 87 F.T.C. 582, 40 FR 19201.

ORDER DENYING PETITION FOR RECONSIDERATION OF FINAL
 ORDER OR REOPENING OF PROCEEDING IN DOCKET NO. 9058
 AND REOPENING AND MODIFYING FINAL ORDERS IN DOCKET
 NOS. 8901 AND C-2806 - C-2811

On May 25, 1978, the Commission issued its final order and opinion in *Capax, Inc.* The Commission held that respondents had engaged in certain misrepresentations in the course of their service to assist creditors in the collection of alleged delinquent debts, and prohibited these misrepresentations in its final order. The Commission rejected complaint counsel's request that respondents be required to provide an affirmative disclosure¹ in each communication sent to alleged debtors, stating:

[W]e do not consider the affirmative disclosure sought here by complaint counsel to be necessary, under the circumstances of this case, in light of the order's ample prohibitions on misrepresentations. Moreover, we believe that the proposed disclaimer could lull recipients into a false sense of security by giving them the impression that failure to pay the claimed debt will not result in legal action or harm to their credit standing. Because creditors might pursue an alleged delinquent debt by bringing suit or could report the matter to a consumer reporting agency, debtors who

¹ "We are an independent company employed by your creditor solely for the purpose of reminding you of your outstanding obligation. We are not authorized to engage in typical debt collection activity, to institute suit or to take any action which may affect your credit rating."

decided not to make payment on the basis of the disclaimer could suffer harm. Therefore, our order will not include the proposed affirmative disclosure.

Previously, the Commission had ordered disclosures similar to that sought by complaint counsel in *Trans-American Collections, Inc.*, Dkt. D. 8901, 83 F.T.C. 525 (1973); *United Compucard Collections, Inc.*, Dkt. C-2806, 87 F.T.C. 542 (1976); *Trans National Credit Corp.*, Dkt. C-2807, 87 F.T.C. 549 (1976); *Continental Collection Bureau of America, Inc.*, Dkt. C-2808, 87 F.T.C. 557 (1976); *North American Collections, Inc.*, Dkt. C-2809, 87 F.T.C. 566 (1976); *Power's Service, Inc.*, Dkt. C-2810, 87 F.T.C. 574 (1976); and *Continental Collection Service*, Dkt. C-2811, 87 F.T.C. 582 (1976). On the date of issuance of the final order and opinion in *Capax*, the Commission issued orders to show cause why the above-cited orders should not be modified to delete the mandated affirmative disclosures, pursuant to Commission Rule 3.72(b). In its orders to show cause, the Commission stated that the reasoning articulated in *Capax* for rejecting complaint counsel's request for an affirmative disclosure may be equally applicable to the above-cited orders and that their requirement of an affirmative disclosure should be reconsidered.²

Complaint counsel have petitioned for reconsideration of the Commission's order in *Capax* pursuant to Rule 3.55, or in the alternative, for reopening of the proceeding in order to modify the Commission's decision not to require *Capax* to use an affirmative disclosure in its communications, pursuant to Rule 3.72. In support of their petition, complaint counsel argue that (1) since the Fair Debt Collection Practices Act became effective on March 20, 1978, "many complaints have been received pointing out the inherently deceptive nature of dunning letters sent by flat rate letter writing services," (2) an affirmative disclosure requirement is necessary to avoid the deception most certain to occur in the use of dunning notices, and (3) insertion of a modified version of the affirmative disclosures proposed in complaint counsel will prevent any misleading impression.

In a separate pleading, the Bureau of Consumer Protection has filed an opposition to the modification of the orders in Dkts. D. 8901 and C-2806 - C-2811 pending determination of complaint counsel's petition in *Capax*.

Counsel for *Capax* have filed an answer opposing complaint counsel's petition for reconsideration or reopening. That petition has also been opposed by counsel for *Trans World Accounts*, another

² In its opinion in *Capax*, the Commission noted that "(t)he appropriateness of those disclosures depends upon the facts of each case, including the prescribed language and the details of the firm's operations and authority."

company which provides debt collection services and which is an appellant from a final Commission order.

Trans-American Collections and the other respondents in Dkt. D. 8901 have filed a response to the order to show cause, expressing their acceptance of the proposed modification to the order in that matter. Powers Service and Community Systems, respondents in Dkt. C-2810, have filed a motion requesting the Commission to modify the consent order in accordance with the order to show cause. None of the other respondents who received the show cause orders has filed a response.

Although the Commission does not have authority to modify the order in *Capax* at this time,³ either in response to a petition for reconsideration or for reopening, we will address the substance of complaint counsel's arguments, since this issue is central to the orders to show cause which are opposed by the Bureau of Consumer Protection. The Commission finds that the pleadings do not raise material issues of fact, and therefore will decide the matters on the orders to show cause and answer thereto, in accordance with Rule 3.72(b)(3).

Complaint counsel argue that since the effective date of the Fair Debt Collection Practices Act, many complaints have been received indicating that dunning letters sent by flat rate letter debt collection services are inherently deceptive. According to complaint counsel, the majority of consumers are unaware that in most cases such services have "virtually no authority to proceed with what is commonly understood to be normal collection efforts," and an affirmative disclosure such as that proposed is necessary to avoid deception. The Commission has never found that third party collection letters are inherently deceptive, and has no basis for making any such finding now. We see no reason to depart from our determination that the prohibitions on misrepresentations contained in the *Capax* order render an affirmative disclosure unnecessary. Under the order, *Capax* is prohibited from misrepresenting (1) the urgency of any communication, (2) its authority to engage in certain kinds of debt collection activity, (3) the likelihood of legal action, (4) the effect of nonpayment upon a debtor's credit record, and (5) the imminency of any action that may or will be taken. A prohibition upon these misrepresentations will eliminate the deception found by the Commission in *Capax*. Similar prohibitions are contained in the consent orders subject to the orders to show cause.

The Fair Debt Collection Practices Act, which became effective on

³ 15 U.S.C. 45(b).

March 20 of this year, is relied upon by complaint counsel as a basis for reconsideration. That Act was fully taken into account in the Commission's determination, and presents no new question. The operation of that Act provides even less reason to mandate any affirmative disclosure than before, due to the requirement imposed upon debt collectors to provide a prescribed written notice within five days after the initial communication with a consumer and the requirement to cease collection of a debt after notification by the consumer. Section 809, 15 U.S.C. 1692g.

The Commission expressed concern in *Capax* that the affirmative disclosure proposed by complaint counsel may lull consumers into a false sense of security by giving them the impression that failure to pay the claimed debt will not result in legal or other action by the creditor. To remedy this possible misimpression, complaint counsel now propose the the following sentence be added to the disclaimer: "The creditor is permitted to take whatever action is available under State law." While this modification may be helpful, we nevertheless believe that no additional disclosure is necessary.

Accordingly, *it is ordered*, That:

1) The petition requesting reconsideration of reopening of the proceeding in *Capax*, Dkt. D. 9058, be denied;

2) The final order in Dkt. D. 8901 is reopened and modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is only a reminder notice. Trans-American Collections, Inc., cannot accept monies nor will it take any action, legal or otherwise, regarding this claim.

3) The final order in Dkt. C-2806 is reopened and modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. United Compucred Collections, Inc., does not accept payment. United Compucred Collections, Inc., does not ordinarily file suit.

4) The final order in Dkt. C-2807 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. Trans National Credit Corporation does not accept payment. Trans National Credit Corporation does not ordinarily file suit.

5) The final order in Dkt. C-2808 is modified by deleting the

requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. Continental Collection Bureau of America, Inc., does not accept payment. Continental Collection Bureau of America, Inc. does not ordinarily file suit.

6) The final order in Dkt. C-2809 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. North American Collections, Inc., does not accept payment. North American Collection, Inc. does not ordinarily file suit.

7) The final order in Dkt. C-2810 is modified by deleting the requirement that respondents disclose in each letter, form, or notice 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.

8) The final order in Dkt. C-2811 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. Continental Collection Service does not accept payment. Continental Collection Service does not ordinarily file suit.

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

ADVERTISING FOR OVER-THE-COUNTER ANTACIDS

TRR 215-56. Interlocutory Order, Nov. 30, 1978

ORDER AFFIRMING THE PRESIDING OFFICER'S FINAL NOTICE

The Commission, having received pursuant to Rule 1.13(c) (2)(ii) a petition from the Proprietary Association appealing from the designation of issues in the presiding officer's final notice of proposed rulemaking, hereby affirms the decision of the presiding officer. In the final notice, 43 F.R. 38849 (August 31, 1978), the presiding officer declined to designate any issues for cross-examination pursuant to Rule 1.13(d)(1). Instead, he propounded seven questions to which the attention of all interested persons was directed.

The Commission agrees that none of the issues proposed for designation meets the standard of Rule 1.13(d)(1)(i) because they are not disputed issues of material fact that are necessary to resolve, within the meaning of 15 U.S.C. 57a(c)(1)(B). Nevertheless, as an exercise of its discretion and in an attempt to create as complete a record as possible, the Commission has directed the presiding officer to afford ample opportunity for cross-examination on the important issues raised in this proceeding.