

IN THE MATTER OF
THE DINERS CLUB, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2884. Complaint, April 22, 1977 — Decision, Aug. 10, 1979*

This amended order modifies an April 22, 1977 consent order issued against National Account Systems, Inc. (NAS), its owner, The Diners Club, Inc. (Diners), and three NAS subsidiaries, by including Payco American Corporation (Payco) as a respondent. Payco, who has purchased NAS and its subsidiaries from Diners, has agreed, upon transfer of interest, to assume Diners' obligations under the amended order, although Diners would still be bound by the provision prohibiting the use of independent agents or other entities to circumvent any term of the amended order.

Appearances

For the Commission: *Kenneth H. Donney.*

For the respondents: *Frank C. Christl, Gendel, Raskoff, Shapiro & Quittner*, Los Angeles, Calif.

DECISION AND ORDER

The Diners Club, Inc. and Payco American Corporation, by a petition filed April 3, 1979, withdrawing a petition filed by The Diners Club, Inc. on July 19, 1978, request, pursuant to Rule 3.72(b)(2) of the Commission's Rules of Practice, that the Commission reopen these proceedings and modify the order to cease and desist against Diners Club, Inc., *inter alia*, which has become final.

The staff of the Los Angeles Regional Office has filed an answer to the petition to reopen and modify. In the answer, it is stated that the staff joins with The Diners Club, Inc. and Payco American Corporation in urging that the order to cease and desist be modified by the Commission. The Director of the Bureau of Consumer Protection concurs with this recommendation.

In the complaint in this case issued by the Commission on April 22, 1977, Diners Club, Inc. was named as a respondent in that it was the parent corporation of National Account Systems, Inc. The complaint did not allege that Diners Club, Inc. engaged in any unlawful practices. The order required Diners Club, Inc. to be financially responsible for any civil penalties assessed and prohibited Diners Club, Inc. from knowingly using independent agents or other entities to circumvent

* Complaint previously published at 89 F.T.C. 282.

the provisions of the order. Diners Club, Inc. was specifically not bound by the substantive provisions of the order set forth in Parts I, II and III.

The Diners Club, Inc. has entered into a letter agreement dated June 22, 1978, to sell National Account Systems, Inc. and its subsidiaries, to Payco American Corporation. The petition requests that Payco American Corporation be substituted for Diners Club, Inc. insofar as financial liability might accrue for civil penalties assessed against any respondent in this case other than Diners Club, Inc. The acquisition was consummated on March 30, 1979, subject to certain conditions subsequent, including the approval of this petition by the Commission.

Moreover, in order to assure the Commission that its order will be fully and faithfully followed, Payco American Corporation has also agreed to be a respondent in this case insofar as Part IV of the order, including, but not limited to, the prohibition against knowingly using independent agents of other entities to circumvent the provisions of the order. It is also requested that Part IV of the order be modified to describe The Diners Club, Inc. as the former owner of National Account Systems, Inc.

In view of the willingness of Payco American Corporation, as the new parent of National Account Systems, Inc. to undertake the same responsibilities under the order as The Diners Club, Inc., and in view of the fact that The Diners Club, Inc. will remain as a respondent for the purpose of effectuating Part IV of the order, it is determined by the Commission that it is in the public interest to modify the order as requested. Accordingly,

It is ordered, That the proceedings be, and they hereby are, reopened, and the order to cease and desist heretofore issued in this case be, and they thereby are, modified to read as follows:

1. Respondent National Account Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of Payco American Corporation.

Respondent NAS Creditors Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent National Account Systems of Milwaukee, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago,

Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent A. B. Hartman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 53 West Jackson Boulevard, Suite 1250, Chicago, Illinois. It is a wholly-owned subsidiary of National Account Systems, Inc.

Respondent The Diners Club, 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 10 Columbus Circle, New York, New York. The Diners Club, Inc., is joined as a respondent in that it was the sole owner of National Account Systems, Inc., and will be liable for civil penalty as provided in Section IV, herein.

Respondent Payco American Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 2401 North Mayfair Road, Milwaukee, Wisconsin 53226. Payco American Corporation is joined as a respondent in that it is the sole owner of National Account Systems, Inc., having purchased all of the stock of that corporation from The Diners Club, Inc., and will be liable for civil penalty as provided in Part IV herein in the event that any named respondent except The Diners Club, Inc. violates any of the provisions of Part IV of the order after it becomes final or in the event that National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., or A. B. Hartman, Inc., violate any of the other provisions of the order after it becomes final.

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

National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., and A. B. Hartman, Inc., for the purposes of Parts I, II, and III of this amended order are the only parties to whom reference is made when the term "respondents" is used.

Liability of The Diners Club, Inc. for civil penalty resulting from violations of this amended order shall be limited to that arising from violations by it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A.B. Hartman, Inc. of any of the provisions of Part IV of this amended order after it becomes final and before the transfer of interests set

forth and described in the Amended Agreement Containing Amended Consent Order to Cease and Desist in accordance with the terms of which this amended order has been issued, or violations by National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A.B. Hartman, Inc. of any of the other provisions of this amended order after it becomes final and before such transfer of interests; or violations by it of any of the provisions of the first paragraph of Part IV of the amended order after it becomes final and after such transfer of interests. Liability of Payco American Corporation for civil penalty resulting from violation of this amended order shall be limited to that arising from violations by it, National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A.B. Hartman, Inc. of any of the provisions of Part IV of this amended order after it becomes final and after such transfer of interests, or violations by National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc. or A.B. Hartman, Inc. of any of the other provisions of this amended order after it becomes final and after such transfer of interests. If the aforesaid transfer of interests shall fail to be consummated on or before June 30, 1979, then this amended order shall thereupon be deemed to be null and void, and the order originally issued in this proceeding shall be deemed to have theretofore and thereafter been in full and continuous force and effect.

I

It is ordered, That National Account Systems, Inc., NAS Creditors Service, Inc., National Accounts System of Milwaukee, Inc., and A. B. Hartman, Inc., their successors and assigns, their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or branch, or other device in connection with the collection of or attempting to collect consumer debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Obtaining information on consumers from a consumer reporting agency or any other source under false pretenses.
2. Failing to keep accurate records of the sources of all information obtained on all consumers.
3. Retaining on respondents' premises any books, pamphlets, or any other writings or materials containing subscriber codes or any information which would enable respondents to use subscriber codes unless respondents or their employees or agents are:

- (a) Members of a consumer reporting agency; and
- (b) Authorized to possess and use such codes; such authorization must expressly include collecting or attempting to collect debts for respondents and such authorization must be maintained in respondents' files.

Any such codes or information currently in respondents' possession or which subsequently come into respondents' possession and are not permitted as required in (a) and (b) must be destroyed or returned to the authorized user and a record kept of such action for three years, making such record available to the Federal Trade Commission for inspection and copying upon request.

4. Representing in any manner, directly or by implication, orally or in writing, that respondents have the authority or right to cause debtors to go to jail or to be defendants in criminal prosecutions for not paying their debts; or misrepresenting in any manner respondents' authority to affect debtors' legal rights or liabilities.

5. Representing in any manner, directly or by implication, orally or in writing, that respondents are serving legal or judicial documents upon debtors unless such is the case; or misrepresenting in any manner the status, significance or official nature of any papers sent to debtors.

6. Representing in any manner, directly or by implication, orally or in writing, that respondents or their agents are something or someone other than a debt collection agency or debt collector; or misrepresenting in any manner the official, professional or vocational status of respondents or their agents, or misrepresenting, in any manner, the position or function of any of respondents' agents, employees, and representatives.

7. Representing in any manner, directly or by implication, orally or in writing, that respondents will destroy or attempt to harm debtors' credit standings, or that respondents possess the authority or intend to disclose information regarding debtors to a consumer reporting agency; or misrepresenting in any manner the effect of any action taken by respondents on a debtor's credit standing.

8. Representing in any manner, directly or by implication, orally or in writing, that legal action has been initiated or is being initiated unless respondents have in fact instituted the legal action represented; or misrepresenting in any manner that legal action will be initiated, including but not limited to, attachment or garnishment proceedings, unless respondents are able to establish that, at the time the representation was made, respondents intended in good faith to institute the legal action represented.

9. Representing in any manner, directly or by implication, orally or

in writing, that judgment may be entered against a debtor without the debtor having notice of the legal action and an opportunity to appear and defend himself or herself in a court of law.

10. Informing a debtor of a creditor's post judgment rights without disclosing at the same time that no judgment may be entered against the debtor unless the debtor has first been given notice and an opportunity to appear and defend himself or herself in a court of law.

11. Representing in any manner, directly or by implication, orally or in writing, the post judgment rights of a creditor unless said rights are in fact as specifically represented in the jurisdiction in which collection is sought; or misrepresenting in any manner, directly or by implication, the post judgment rights of a creditor.

12. Using abusive or obscene language when talking with or writing to debtors.

13. Placing any telephone call to any debtor, or orally contacting debtors in any manner, between the hours, in the time zone of the debtor, of 9:00 p.m. and 7:00 a.m. on weekdays, including Saturdays, and between the hours of 9:00 p.m. and 12:00 noon on Sundays.

14. Initiating more than two (2) oral conversations with any debtor in any one week regarding the collection of the same debt.

It is further ordered, That respondents, their successors and assigns, with respect to oral or written communications to persons other than the alleged debtor, cease and desist from:

(a) Communicating or threatening to communicate, or implying the fact or existence of any debt to a debtor's employer prior to any judgment;

(b) Communicating with or threatening to communicate, or implying the fact or existence of any debt to any other third parties, including former employers of the debtor other than one who might be reasonably expected to be liable therefor except with the written permission of the debtor or except where legal documents are being served according to law;

(c) Reporting a debt or an alleged debt to a consumer reporting agency unless respondents also promptly report to said consumer reporting agency the subsequent payment of said debt or alleged debt, or the resolution of any dispute concerning said debt, or alleged debt.

It is further ordered, That said respondents shall maintain for a period of three (3) years with respect to each debtor, records which shall consist of copies of all collection letters, dunning notices, requests for information and similar correspondence delivered to such debtor or third parties, or any indication of what items or documents were sent; a record or tabulation of all telephone calls made to or about the debtor

showing the identity of the caller, the date of the call, the telephone number called, the purpose and result of the call and any notes or reports made in connection therewith when obtained; and copies of all documents pertaining to collection efforts such as referrals to lawyers or other agencies and legal documents utilized in collection efforts, or any indication of what items were sent.

II

It is ordered, That National Account Systems, Inc., NAS Creditors Service, Inc., National Account Systems of Milwaukee, Inc., and A. B. Hartman, Inc., their successors and assigns, their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or branch, or other device, in connection with any consumer credit transaction, including, but not limited to, transactions involving the deferment of the payment of debts and/or the refinancing of any existing extension of credit or the increasing of existing obligations, as these terms are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act [15 U.S.C. 1601-65 (1970), *as amended*, 15 U.S.C. 1601-65(a), (Supp. IV, 1974)], do forthwith cease and desist from:

1. Failing to disclose the finance charge, as "finance charge" is defined in Section 226.2 of Regulation Z, expressed and identified as an annual percentage rate, as "annual percentage rate" is defined in Section 226.2 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
2. Failing to disclose the date on which the finance charge begins to accrue, as required by Section 226.8(b)(1) of Regulation Z.
3. Failing to disclose the number, amount and due dates or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments" as is required by Section 226.8(b)(3) of Regulation Z.
4. Failing to disclose the total amount of finance charges, with a description of each amount included, using the term "finance charge", as required by Section 226.8(d)(3) of Regulation Z.
5. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
6. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
7. Failing to make the disclosures required by Section 226.8 of

Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

8. Failing in any consumer credit transaction to make all disclosures, required by Sections 226.6, 226.7, 226.8, and 226.9 of Regulation Z, and failing to make all disclosures, determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, and 226.9 of Regulation Z.

III

It is further ordered, That:

(a) Respondents shall deliver a copy of this amended order to all present and future employees and their agents engaged in debt collection and to any other person or entity connected with respondents to whom respondents presently refer or assign and to whom in the future respondents may refer or assign matters for debt collection;

(b) Respondents shall provide each of their employees with a form returnable to respondents clearly stating the employee's intention to conform his or her business practices to the requirements of this amended order; respondents shall require said persons to agree in writing on said form to conform his or her business practices to the requirements of this amended order and shall retain said statement during the period said person is so engaged, and for three (3) years thereafter, and make said statement available to representatives of the Federal Trade Commission for inspection and copying upon request;

(c) In the event such person will not agree to sign and file the form set forth in paragraph (b) above with respondents and conform to the provisions of this amended order, respondents shall not use or engage or continue the use or engagement of such person to collect debts or aid or assist respondents in the collection of debts;

(d) Respondents shall inform each person and entity described in paragraph (a) above that respondents shall not use or engage or shall terminate the use or engagement of any such person or entity unless such person or entity's business practices conform to the requirements of this amended order; and that respondents are obligated by this amended order to terminate the use or engagement of those persons or entities who engage on their own in the acts or practices prohibited by this amended order;

(e) Respondents shall institute a program of reasonable surveillance of their officers, employees and their agents engaged in debt collection, adequate to reveal whether the business practices of each said person conform to the requirements of this amended order;

(f) Upon receiving information from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) indicating reasonable proof of a violation of any provision of this amended order by any person or entity described in paragraph (a) above, respondents shall within 72 hours notify such person or entity by certified mail, return receipt requested, that such violation of this amended order has occurred ("Termination Notice"), and that respondents shall forthwith discontinue dealing with said person or entity. Immediately after such notification, respondents shall permanently discontinue dealing with said person or entity;

(g) Respondents shall retain evidence of compliance with this amended order and all Termination Notices and make such evidence available to representatives of the Federal Trade Commission for inspection and copying upon request;

(h) Respondents shall prepare and maintain a list of all employees containing the names of all such persons and their aliases, if any, and their last known addresses and telephone numbers for three (3) years following the date of their last employment with respondents; such list shall be made available to representatives of the Federal Trade Commission for inspection and copying upon request.

IV

It is further ordered, That respondents National Account Systems, Inc., a corporation, NAS Creditors Service, Inc., a corporation, National Account Systems of Milwaukee, Inc., a corporation, A. B. Hartman, Inc., a corporation, Payco American Corporation, a corporation, and The Diners Club, Inc., a corporation, the former owner of the stock of National Account Systems, Inc., hereinafter referred to as respondents, shall not use independent agents or other entities knowingly for the purpose of circumventing any provision of this amended order.

It is further ordered, That respondents shall notify the Commission at last thirty (30) days prior to any proposed change in any of the corporate respondents 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 amended order.

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

It is further ordered, That no provision of this amended order shall

be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with more restrictive agreements, orders or directives of any kind obtained by any other governmental agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this amended order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by, the Federal Trade Commission.

IN THE MATTER OF
SCHERING-PLOUGH CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket C-2986. Complaint, Aug. 10, 1979 — Decision, Aug. 10, 1979

This consent order, among other things, requires a Kenilworth, N.J. manufacturer of various drugs, including athlete's foot products, to divest, within one year, the assets acquired as a result of its acquisition of Scholl, Inc. and utilized by Scholl primarily for the manufacture, distribution or sale in the United States of Solvex athlete's foot products. Additionally, the order requires the company to furnish the acquirer with specified assistance, and prohibits the firm, for ten years, from acquiring any business engaged in the manufacture, sale or distribution of athlete's foot products.

Appearances

For the Commission: *Geoffrey Walker.*

For the respondent: *Edward Wolfe, White & Case, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent, subject to the jurisdiction of the Commission, has acquired Scholl, Inc., a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITION

1. For purposes of this complaint, the following definition shall apply:

1. "Athlete's foot products" means nonprescription fungicidal or fungistatic pharmaceutical products manufactured, distributed or sold primarily for the treatment of athlete's foot (*tinea pedis*).

II. RESPONDENT

2. Schering-Plough Corporation (Schering-Plough) is a corporation organized, existing and doing business under and by virtue of the laws