

IN THE MATTER OF
BENEFICIAL CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8922. Complaint, Apr. 10, 1973 — Decision, Sept. 12, 1979*

This consent order requires, among other things, that two sellers of personal income tax preparation services, located respectively in Wilmington, Del. and Morristown, N.J., cease, in connection with the preparation of income tax preparation services or the extension of credit, from using the terms "Instant Tax Refund" or "Immediate Tax Refund;" and misrepresenting the terms and conditions of guarantees; and the competence and ability of their tax preparing staff. The order further prohibits respondents from misusing confidential information obtained from their customers.

Appearances

For the Commission: *David C. Fix, Robert D. Friedman and R. Galler.*

For the respondent: *Edgar T. Higgins, Morristown, N.J., Timothy J. Bloomfield and George W. Wise, Hogan & Hartson, Washington, D.C. and E. Norman Veasey, Richards, Layton & Finger, Wilmington, Del.*

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, its attorney, 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 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The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such

*Complaint previously published at 86 F.T.C. 119.

agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Beneficial Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 1300 Market St., Wilmington, Delaware. Respondent Beneficial Management Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 200 South St., Morristown, New Jersey.

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 Beneficial Corporation and Beneficial Management Corporation, corporations, and their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the preparation of income tax returns or the extension of consumer credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Instant Tax Refund" or "Immediate Tax Refund" or like phrases using words of similar import or meaning, unless such phrases include the word loan in immediate conjunction therewith and further the advertising includes language which clearly and conspicuously discloses that the loan being offered has no relationship with the individual's tax refund, and that such phrases refer to a loan which is "normal", "usual", "standard" or "regular" by using such terms or their equivalents, and that prospective borrowers will be expected to meet qualifications to borrow which are described in such material as "normal", "usual", "standard" or "regular" or words having the same or equivalent meaning.

2. Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

3. Representing, directly or by implication, that respondents will reimburse their customers for any payments the customer may be required to make in addition to his initial tax payment, in instances where such additional payment results from an error by respondents in the preparation of the tax return; *provided, however*, that it shall be a defense in any enforcement proceeding for respondents to establish that they make such payments.

4. Failing to disclose, clearly and conspicuously, whenever respondents make any representation, directly or by implication, as to their responsibility for, or obligation resulting from, errors attributable to respondents in the preparation of tax returns, that respondents will not reimburse the taxpayer for any deficiency payment which results from said errors, *provided, however*, that it shall be a defense in any enforcement proceeding for respondents to establish that they make such payments.

5. Representing, directly or by implication, that the percentage of respondents' customers who receive tax refunds is demonstrably greater than the percentage of individual taxpayers at large who receive refunds; or misrepresenting, in any manner, the magnitude or frequency of refunds received by respondents' tax preparation customers.

6. Representing, directly or by implication, that respondents' tax preparing personnel are tax experts or unusually competent in the preparation of tax returns or the rendering of tax advice; or misrepresenting, in any manner, the competence or ability of respondents' tax preparing personnel.

7. Using information concerning any customers of respondents, including the name and/or address of the customer, for any purpose which is not essential or necessary to the preparation of a tax return if such information was obtained by respondents as a result of the preparation of the customer's tax return which includes any information given by the customer after he has indicated, in any way, that he is interested in utilizing respondents' tax preparation services, unless prior to obtaining such information respondents have both (1) specifically requested from the customer the right to use the tax return information of the customer and (2) have executed a separate written consent signed by the customer which shall contain:

- A. Respondent's name;
- B. The name of the customer;
- C. The specific purpose for which the consent is being signed;
- D. The exact information which will be used;

- E. The particular use which will be made of such information;
- F. The parties or entities to whom the information will be made available;
- G. The date on which such consent is signed;
- H. A statement that the tax return information may not be used by the tax return preparer for any purpose other than that stated in the consent, and;
- I. A statement by the taxpayer that he consents to the use of such information for the specific purpose described in subparagraph (C) of this paragraph.

Provided, however, that nothing herein shall prohibit respondents from using names and addresses only of customers for the purpose of communication with such customers solely concerning respondents' income tax preparation business.

Nothing in the above provision is intended to relieve respondents of any further requirements imposed on them by the Revenue Act of 1971, Pub. Law 92-178, Title III, §316(a), December 10, 1971; 26 U.S.C. 7216 or regulations issued pursuant to it.

It is further ordered, That respondents herein shall forthwith distribute a copy of this order to each office of their respective domestic consumer finance subsidiaries.

It is further ordered, That respondents shall notify the Commission at least 30 days prior to any proposed change in the structure 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 respondent corporations which may affect compliance obligations arising out of this order.

It is further ordered, That respondents shall, within 60 days after the effective date of this order, file with the Commission a written report, signed by respondents, setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

CALIFORNIA MILK PRODUCERS ADVISORY BOARD, ET
AL.FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 8988. Complaint, Aug. 1, 1974 — Final Order, Sept. 21, 1979*

This order dismisses a complaint issued against a Modesto, Calif. milk producers association and its New York City advertising agency, on grounds that it was unreasonable to condemn advertising claiming that "Every body needs milk" because of the small fraction of allergic people.

Appearances

For the Commission: *Gerald E. Wright, Jerome M. Steiner, Peter C. Lagarias and Michael C. Weisberg.*

For the respondents: *William A. Wineberg, Jr., Thomas Paine and Ross H. Schulz, Broad, Khourie & Schulz, San Francisco, Calif. and Harvey B. Sindler, Katz, Leavy, Rosenzweig & Sindler, New York City.*

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 the California Milk Producers Advisory Board, an unincorporated association, and Cunningham & Walsh, Inc., a corporation, hereinafter referred to as "respondents", have violated the 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 that respect as follows:

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

1. "Advisory Board" means respondent California Milk Producers Advisory Board.
2. "Marketing Act" means The California Marketing Act of 1937, as amended, Agricultural Code of the State of California, Para. 58,601, *et seq.*
3. "Marketing Order" means the Marketing Order for Research, Education, and Promotion of Market Milk and Dairy Products In California, promulgated by Jerry W. Fielder, Director of Agriculture, October 9, 1969, as amended.