

Complaint

95 F.T.C.

IN THE MATTER OF

HOOPER HOLMES, INC.

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

Docket C-3020. Complaint, June 11, 1980—Decision, June 11, 1980

This consent order requires, among other things, a Basking Ridge, N.J. firm, through its Credit Index Division, a consumer reporting and collection agency, to cease violating federal credit laws by failing to maintain reasonable procedures designed so as to ensure that reports are furnished only for lawful purposes and assure the maximum accuracy of reported information. In its role as a debt collector, the agency is required to include in collection communications prescribed notices informing consumers of their rights under federal credit laws. Consumers requesting information in their credit files must be provided with a copy of this information. Additionally, the agency is required to mail to its subscribers, each year for a five-year period, a prescribed notice informing them of their statutory obligations.

Appearances

For the Commission: *Rachel Wolkin Sesser.*

For the respondent: *Edmund Burke, Steptoe & Johnson, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hooper Holmes, Inc., a corporation, through its Credit Index Division, hereinafter 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 in that respect as follows:

PARAGRAPH 1. Respondent, Hooper Holmes, 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 170 Mt. Airy Road, Basking Ridge, New Jersey.

COUNT I

Alleging violations of the Fair Credit Reporting Act and Section 5 of

the Federal Trade Commission Act, the allegations of Paragraph One hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 2. Respondent, Hooper Holmes, Inc., operating through its Credit Index Division (hereinafter "Credit Index" or "respondent"), is now and for some time in the past has been, for monetary fees, regularly engaged in the practice of assembling or evaluating consumer credit information for the purpose of furnishing to third parties consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act. Respondent regularly uses a means or facility of interstate commerce for the purpose of preparing and furnishing said consumer reports. Therefore, respondent is a consumer reporting agency, as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Respondent in the ordinary course and conduct of its business as aforesaid is now, and subsequent to April 25, 1971 has been, engaged in the preparation, offering for sale, sale and distribution of consumer reports, as defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 4. In the ordinary course and conduct of its business, as aforesaid, respondent utilizes an automated information retrieval system which produces consumer reports containing designated information concerning all individuals having a specified mailing address and the same, or similar, last name to the person inquired upon. In a substantial number of instances, using this system respondent has furnished and is furnishing consumer reports on individuals not involved in the extension of credit or other business transaction. Respondent's system uses no identifiers in addition to the last name and street address to ensure that information concerning separate individuals with the same or similar last name at a specific mailing address are not reported and, therefore, respondent has failed to follow reasonable procedures designed to limit the furnishing of consumer reports for the purposes listed under Section 604 of the Fair Credit Reporting Act and has, therefore, violated Section 607(a) of that Act.

PAR. 5. In the ordinary course and conduct of its business as aforesaid respondent produces consumer reports which it alleges contain information on a single applicant at a specific mailing address using the same or a similar last name and a different first name for the purposes of defrauding the respondent's subscribers. Respondent uses no system of supplementary identifiers to identify with more specificity items which may relate to neighbors, relatives or spouses of the applicant, and in a substantial number of instances, the information items included in the respondent's reports relate not to the applicant but to neighbors, relatives or spouses of the applicant. By and through

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use of respondent's present information retrieval and reporting system respondent has failed and is failing to follow reasonable procedures designed to assure the maximum possible accuracy of the information concerning the individual about whom the report relates as required by Section 607(b) of the Fair Credit Reporting Act.

PAR. 6. The acts and practices set forth in Paragraphs Four and Five 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(a) of the Federal Trade Commission Act.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act in connection with respondent's debt collection activities. The allegations of Paragraphs One, Two and Three are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 7. Respondent is now, and for some time last past has been, engaged in the practice of collecting or attempting to collect debts owed or due or asserted to be owed or due another.

PAR. 8. In the course and conduct of its business as aforesaid, respondent solicits and receives accounts for collection from businesses located in the State of New Jersey and in various other States of the United States, which accounts the respondent seeks thereafter to collect from consumer debtors. In the further course and conduct of its business, respondent transmits through the mail collection messages from its place of business within the State of New Jersey to debtors located in the various States of the United States. The respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 9. In the course and conduct of its business, and at all times mentioned herein, respondent has been and now is, in competition in commerce with other corporations, firms and individuals in the attempted collection and collection of consumer debts on behalf of creditors.

PAR. 10. In the course and conduct of its business as aforesaid, and for the purpose of inducing consumers to pay allegedly delinquent accounts, respondent has transmitted and caused to be transmitted, and is now transmitting and causing to be transmitted unsolicited form letters demanding payment which are attached hereto as Exhibits 1 and 2.

Typical and illustrative of the statements and representations made

in said forms and printed materials, but not all inclusive, are the following:

1. We have received a report from your creditor on your overdue account. This information is being included in our computerized national delinquent debtor file, and will be reported to any one of the credit granting firms using our service should they order a credit report on you.
2. *Your record will remain in our system for at least five years unless you take action now to settle this account.*
3. Your credit file will show this seriously past due amount with. . . .
4. *Enclose this letter, with payment in full today.*
5. Your creditor must notify us of any change in the status of your credit record.
6. You must realize how very important it is to protect a most valuable asset . . . *your credit rating.*
7. Credit Index is a consumer credit reporting agency which maintains a computerized national delinquent debtor file. *Delinquent accounts are included in this file and reported to credit granting organizations using our service.*
8. We have been requested by your creditor to advise you that because of the seriousness of your delinquency, *your credit record may be placed in our national delinquent debtor file.*
9. Our information shows your very serious delinquency with. . . .
10. You can still avoid this unnecessary and unpleasant action by paying the total balance of your overdue account. *Enclose this letter with payment in full today, using the envelope provided.*

PAR. 11. By and through the use of said forms and the aforesaid statements and representations set forth therein, respondent, operating by utilizing its position as a consumer reporting agency for debt collection purposes, is acting in an oppressive or coercive manner by intimidating consumers while it is engaged in debt collection activities and has failed to exercise its responsibilities as a consumer reporting agency in a fair and impartial manner. Respondent's use of said forms therefore constitute unfair acts or practices.

PAR. 12. By and through the use of said forms and the aforesaid statements and representations set forth therein, respondent, when utilizing its position as a consumer reporting agency for debt collection purposes, has failed to apprise collection-letter addressess of their statutory rights to obtain disclosure of the information in their files and to dispute inaccurate or incomplete information in respondent's file under the Fair Credit Reporting Act. By and through the use of said forms and the aforesaid statements and representations set forth therein, respondent threatens that if a consumer not act immediately to settle his account, the consumer's record will remain in its system for at least five years and will be reported to any one of the credit-granting firms utilizing its services. Respondent, by emphasizing the importance of one's credit rating and the injury to it that may result from failure to pay the amount alleged due while at the same time

failing to apprise collection-letter addressees of their rights under the Fair Credit Reporting Act has failed to disclose material facts to consumers concerning the nature of its responsibilities as a consumer reporting agency engaged in debt collection activities. Respondent thereby, has engaged in unfair acts and practices.

PAR. 13. The use by respondent of the aforementioned statements, representations and forms and the failure to apprise collection-letter addressees of their rights under the Fair Credit Reporting Act has had, and now has, the tendency and capacity to coerce the recipients of these forms into the payment of accounts to respondent or its subscribers without exercising their statutory right to dispute debts they do not owe or have an offsetting claim or defense to paying.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public, and constituted, and now constitute, unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act in connection with respondent's consumer reporting activities. The allegations of Paragraphs One, Two and Three are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 15. Respondents in the ordinary course and conduct of its business as a consumer reporting agency includes in its consumer reports a "Summary Item" which indicates the aggregate number of items of derogatory information in respondent's file at the mailing address of the person inquired on and which contains the derogatory information received by respondent in a form not identifiable to an individual consumer. In a substantial number of instances information in the Summary Item is used by creditors to deny credit to the individuals inquired on based on the paying habits of other individuals who have or sometime in the past had the same mailing address. Since the Summary Item results in the exclusion of some consumers from credit transactions based on the paying habits of prior residents, neighbors and relatives, its use by respondent constitutes an unfair act or practice.

PAR. 16. Respondent in the ordinary course and conduct of its business as a consumer reporting agency includes in its consumer reports a "Activity Summary Item" which records the number of creditor inquiries made concerning persons with names which are not the same or similar to the person inquired upon but who have the same

mailing address specified for the person inquired on during the last six months. In a substantial number of instances information in the Activity Summary Item is used by creditors to deny credit to individuals inquired on based on information concerning other individuals who have, or sometime in the past had, the same mailing address. Since the Activity Summary Item results in the exclusion of some consumers from credit transactions based on information concerning prior residents, neighbors and relatives, its use by respondent constitutes an unfair act or practice.

PAR. 17. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public, and constituted, and now constitute, unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 agreement on the public record for a period of sixty (60) days, 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. Hooper Holmes Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 170 Mt. Airy Road, in the City of Basking Ridge, State of New Jersey.

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

ORDER I

It is ordered, That respondent, Hooper Holmes, Inc., a corporation, through its Credit Index Division, its successors and assigns, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection, assembling or furnishing of consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law No. 91-508, 15 U.S.C. 1681, *et seq.*), shall forthwith cease and desist from:

(1) Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports for the purposes listed under Section 604 of the Fair Credit Reporting Act.

(2) Failing, when preparing a consumer report, to follow reasonable procedures designed to assure maximum possible accuracy of the information concerning the individual about whom the report relates as required by Section 607(b) of the Fair Credit Reporting Act.

(3)(a) Providing reports containing information concerning accounts of individuals having inconsistent courtesy titles, different first names, different last names, different mailing addresses or inconsistent suffixes from the creditor's inquiry unless the respondent can show on a statistically valid basis that its reporting system is reasonably designed to retrieve and report such information only in instances in which the individual consumer inquired on is using different first names and identical or similar last names as a means of deceiving respondent or its subscribers. Respondent shall provide the Commission with copies of any such statistical studies not less than 90 days prior to implementing changes to its system based on such studies and if requested by the Commission will delay implementation of changes an additional 120 days.

(3)(b) For the purposes of this order:

(i) The last name of the individual reported upon shall not be considered different from the last name of the inquiry if;

(A) the last name contains five or more letters and all but two of the letters are identical to the letters of the last name of the inquiry; or,

(B) the last name has four letters and all but one are identical to the letters of the last name of the inquiry; and

(C) the address used in the inquiry under either A or B is a full street address (specific house or building number plus street name) or post

office box number, and does not contain an inconsistent apartment number, a rural route number, general delivery or similar mailing address, and

(D) the inquiry contains a full first name, not initials, which, subject to the tolerances provided in (A) and (B) for last names, is not inconsistent with the first name or initial on the report.

(ii) A first initial which is not inconsistent with the individual's first name shall not be considered a different first name, if respondent:

(A) instructs its subscribers to use the full first name, whenever available, in making inquiries or submitting information to the file; and

(B) the address used in the inquiry is a full street address (specific house or building number plus street name) or post office box number, and does not contain an inconsistent apartment number, general delivery, rural route number or similar mailing address; and

(C) the inquiry is not made with an inconsistent courtesy title or suffix.

(iii) A first name which is a commonly accepted nickname for the first name of the individual inquired upon shall not be considered a different first name.

(4) Including in any consumer report a "Summary Item", "Activity Summary Item" or other information concerning the creditworthiness of other individuals with the same mailing address as, but with a different last name from, the individual inquired on, provided that the above restriction on Summary Items and Activity Summary Items does not apply to summary or activity reports generated by respondent internally for use by respondent identifying credit applications for which respondent will conduct additional investigation but respondent shall not reject, recommend rejection or otherwise directly or indirectly issue a negative report based solely on a summary or activity item, or on the applicant's failure to respond to a request for additional information from respondent.

ORDER II

It is ordered, That respondent, Hooper Holmes, Inc., a corporation, through its Credit Index Division, its successors and assigns, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of consumer debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Failing to disclose to consumers, in any communication relating to debt

collection activities, their rights under the Fair Credit Reporting Act and Fair Debt Collection Practices Act as set forth in the exact facsimile of Exhibit A attached hereto.

A. *It is further ordered*, That respondent, each year for a five year period, mail to each subscriber the following notice in not less than 12 point boldface type:

IMPORTANT NOTICE

Credit Index is a consumer reporting agency subject to the provisions of the Federal Fair Credit Reporting Act. As a user of these reports you also are subject to the requirements of this law. If you use any information reported by Credit Index in whole or in part in your decision to deny credit, employment or insurance, you must notify the rejected applicant of that fact and provide our name, street address and phone number. Your failure to do so would violate Federal law.

[Insert Name, street address and phone number.]

Additionally, Credit Index, upon request and proper identification will disclose all information in its file to consumers by mail and we would appreciate your including this information in your notice also.

B. *It is further ordered*, That respondent make the disclosures required by Sections 609 and 610 of the Fair Credit Reporting Act for credit reports issued by its Credit Index subsidiary, by mailing a copy of all information (except medical information) in its files on the consumer at the time of the request (or a transcription of all such information) to the consumer upon request and proper identification or, in lieu thereof, in person or by telephone upon specific request by the consumer. If the consumer is provided with a copy of the actual report, he shall also be provided with all information necessary to decode the report.

C. *It is further ordered*, That respondent herein shall deliver a copy of this order cease and desist to all present and future personnel of its Credit Index division, including employees and representatives, engaged in the preparation of reports including consumer reports, and engaged in the disclosure and reinvestigation of information in said reports, and that respondent secure a signed statement acknowledging receipt of said order from each person.

D. *It is further ordered*, That respondent shall provide each consumer who requests disclosure of information in his or her file in accordance with the Fair Credit Reporting Act, with an exact facsimile of Exhibit B attached hereto.

E. *It is further ordered*, That 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.

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EXHIBIT 1



170 MT. AIRY RD. BASKING RIDGE, N. J. 07920

Credit Index is a consumer credit reporting agency which maintains a computerized national delinquent debtor file. Delinquent accounts are included in this file or reported to credit granting organizations using our service.

We have been requested by your creditor to advise you that because of the seriousness of your delinquency, your credit record may be placed in our national delinquent debtor file.

Our information shows your very serious delinquency with

You can still avoid this unnecessary and unpleasant action by paying the total balance of your overdue account. Enclose this letter with payment in full today, using the envelope provided. If the information stated is inaccurate, contact either your creditor or us, using this letter for comments.

Thank you for your cooperation.

Sincerely Yours,

FILE MAINTENANCE DEPT.
CREDIT INDEX

P.S. PLEASE USE SPACE BELOW FOR COMMENTS.

HOOPER HOLMES, INC.

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EXHIBIT 2



170 MT. AIRY RD. BASKING RIDGE, N. J. 07920

We have received a report from your creditor on your overdue account. This information is being included in our computerized national delinquent debtor file, and will be reported to any one of the credit granting firms using our service should they order a credit report on you.

Your record will remain in our system for at least five years unless you take action now to settle this account.

Your credit file will show this seriously past due amount with

Enclose this letter with payment in full today. Use the envelope provided. If the information stated is inaccurate, contact either your creditor or us, using this form for comments. Your creditor must notify us of any change in the status of your credit record. We strive to maintain accurate credit files and you must realize how very important it is to protect a most valuable asset your credit rating.

Sincerely Yours,

FILE MAINTENANCE DEPT.
CREDIT INDEX

P.S. PLEASE USE SPACE BELOW FOR COMMENTS.

FEDERAL TRADE COMMISSION DECISIONS

Modifying Order

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IN THE MATTER OF

STANDARD OIL COMPANY OF CALIFORNIA, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8827. Decision, Nov. 26, 1974—Modified Order, June 16, 1980

This order modifies a Nov. 26, 1974 order, 84 F.T.C. 1401, 40 FR 13488, against a San Francisco, Calif. distributor of gasoline and other petroleum products and its New York City advertising agency, requiring compliance with a court of appeals decision that the "blanket" order provision as to all advertising of "any" product was wholly unwarranted based on three misleading advertisements. The order is modified to cover only advertising of its additive, F-310.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Ninth Circuit petitions for review of the Commission's cease and desist order issued herein on November 26, 1974; and the Court having rendered its decision modifying the Commission's order and, as so modified, affirming and enforcing the order; and the time for filing a petition for certiorari having expired and no petition for certiorari having been filed:

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

I.

It is ordered, That respondent Standard Oil Company of California, a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising of the additive F-310, forthwith cease and desist from:

1. Representing directly or by implication that such product:

(a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or

(b) Will eliminate or reduce air pollution caused by motor vehicles; or

(c) Will eliminate or reduce emissions from all or any number or group of motor vehicles in which it is used;

that:

(d) Such gasoline additive product has any other quality, performance ability or other characteristic; or