

CREDIT CARD SERVICE CORP.

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Modifying Order

IN THE MATTER OF

CREDIT CARD SERVICE CORPORATION

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

Docket 8861. Final Order, Jan. 19, 1973—Modifying Order, Dec. 14, 1981

This order reopens the proceeding and modifies the Commission's order issued on January 19, 1973 (82 F.T.C. 191; 38 FR 5157) by updating the "IMPORTANT NOTICE" contained in Paragraph 5 of the order, to reflect revisions to Regulation Z, altering the conditions of cardholder liability.

ORDER REOPENING THE PROCEEDING AND MODIFYING
CEASE AND DESIST ORDER

On August 14, 1981, the respondents, whose principal service is notification to credit card issuers that a subscriber's credit cards have been lost or stolen, filed a request that the Commission reopen the proceeding in the above docketed matter for the purpose of: (1) eliminating paragraph 5 of the Order of January 19, 1973, which requires that the IMPORTANT NOTICE as set forth therein be incorporated verbatim in all written advertisements disseminated by the respondents; (2) substituting in its place only "a general disclosure that the cardholder's liability is limited to \$50, but then only if the conditions imposed by Federal regulation are met by the card issuer"; and (3) deleting John P. Ferry as an individual respondent. Respondents also requested that the 30-day public comment period be waived.

By letter dated August 27, 1981, the Secretary informed the respondents that the Commission had denied their waiver request.

Paragraph 5 of the order reads as follows:

5. Failing to incorporate the following notice clearly and conspicuously in any written material offering the sale of respondents' credit card registration service to the public:

IMPORTANT NOTICE

Effective January 24, 1971, a Federal law provides that a cardholder has no liability for unauthorized use of his credit card unless all of the following four conditions are met. If the card issuing company (1) has notified you of your new limited liability, (2) has provided you with a pre-stamped envelope by which to notify them of a loss, (3) the card contains an approved method of identification, and (4) the use occurred before the card issuer is notified, then your liability is limited to \$50 per card.

Respondents state that the IMPORTANT NOTICE is no longer "a

correct statement of the requirements for card issuers to impose the \$50 liability"; that the continued imposition of a single notice can be misleading and confusing to the consumer and often contrary to the actual practices of the credit card issuer; and that the Truth in Lending Simplification and Reform Act and the amended Regulation Z have modified some of the conditions under which a cardholder can be held liable for unauthorized use. As an example, they mention the fact that card issuers are no longer required to provide pre-stamped envelopes for notice of loss or theft, but only "adequate notice" of the "means by which the card issuers may be notified of loss or theft of the card." Respondents also state that, since Regulation Z imposes the disclosure requirements on the card issuers, they should not be required any longer to include the IMPORTANT NOTICE in their advertising, especially in view of the fact that the respondents place "virtually no emphasis on risk of loss" in their advertising and in view of the fact that there are many other companies in the credit card registration business which are not required to include such a verbatim statement in their advertising.

Respondents contend that since they market their "credit card registration service primarily through joint promotions with banks, department stores, automobile rental companies, airlines, and other credit card issuers", and "since these joint promotions are generally made under the name of the card issuer, all advertising materials must be tailored to the particular practices of that card issuer", and that since "some credit card issuers continue to provide pre-stamped envelopes, others permit telephone notification, while still others require notification of loss or theft in written form . . . [as] permitted by amended Regulation Z, it is extremely difficult to draft language which would be accurate under all circumstances." They further contend that "as more and more credit card issuers begin to determine their own specific means for notification, the adoption of a single notice becomes all but impossible."

Finally, respondents request that John P. Ferry be dropped as the named individual respondent because he "is no longer the only shareholder" and because the company has been in full compliance with the Order for eight years.

On September 14, 1981, respondents filed a memorandum in support of their request to reopen proceeding and modify the order. They state that Credit Card Service Corporation is no longer wholly-owned by Mr. Ferry; that more than one-third of its stock is held by an employee trust and an additional 12 percent by outside shareholders; that Mr. Ferry is no longer the person responsible for the formulation of its advertising practices; that for the past 5 years the

corporate respondent has had a President who is the chief operating officer with responsibility for advertising; that Mr. Ferry has served as Chairman exercising only broad policymaking authority; and that Mr. Ferry "should no longer be individually subject to the terms of the Order" in view of the change of circumstances since 1973 when the Order was issued.

After the hearing in January 1972, the Administrative Law Judge found that Mr. Ferry . . . formulated, directed and controlled the acts and practices of the corporate respondent (82 F.T.C. at 196); and that he knew of the existence and effective date of the Truth in Lending Act amendment which set the \$50 limit on liability for unauthorized use of lost or stolen credit cards (82 F.T.C. at 197) before he disseminated advertising with false, misleading and deceptive representations that cardholders would be liable for all goods and services obtained by unauthorized use of such cards and might suffer financial ruin (82 F.T.C. at 198, 202). We adopted these findings and the United States Court of Appeals for the District of Columbia Circuit affirmed our decision in its entirety on March 29, 1974. See 495 F.2d 1004. The evidence received in this matter fully supported the findings and the Order.

It is well settled that a corporation is not the only vehicle through which individuals, who have been personally involved in unlawful practices, may in the future continue to engage in such practices. *Tractor Training Service v. F.T.C.*, 227 F.2d 420, 425 (9th Cir. 1955), *cert. denied*, 350 U.S. 1005 (1956); *Consumer Sales Corp. v. F.T.C.*, 198 F.2d 404, 407-408 (2d Cir., 1952), *cert. denied*, 344 U.S. 912 (1953). Furthermore, it would seem incongruous to keep in force an order against the lifeless entity of a corporation, while exempting from its operation the living individual who was responsible for the illegal practices. See *Pati-Port, Inc. v. F.T.C.*, 313 F.2d 103, 105 (4th Cir. 1963).

Mr. Ferry owns more than 50% of the stock of Credit Card Service Corporation and is the Chairman of its Board of Directors. As such, he would be responsible for the acts and practices of the corporation. A claim of past and current compliance with the order raises only a collateral issue on the question of whether Mr. Ferry should no longer be named, and it is not determinative. The determining factor is the likelihood of resumption of the prohibited practices. We have not been convinced by respondents' arguments to the contrary.

Respondents have represented to us in their request to reopen that the absence of the IMPORTANT NOTICE statement would not be misleading since they place "virtually no emphasis on risk of loss" in their advertising. This assertion, however, seems to be at variance

with the respondents' advertising disseminated during September and/or October 1980 to the holders of Master Charge credit cards, serviced by the Bank of Virginia. The four page letter contains the IMPORTANT NOTICE at the bottom of the first page. It is preceded by these statements:

What would you do tomorrow if you suddenly discovered that your purse or wallet—with all of your credit cards—was missing? . . . Would you know how to protect yourself in a hurry? . . . How quickly could you find the phone numbers of each credit card company and locate the right people to talk to? I ask "How quickly" because you certainly don't want to wait until some criminal starts making dishonest purchases on your cards.

And it is followed by these statements:

The whole purpose of the Credit Card Service Bureau . . . is to safeguard credit cardholders from this kind of financial worry and emotional hassle . . . Last year alone, nearly *fifteen and a half million* credit cards were reported lost or stolen—and one in sixteen of these missing cards was used to make *fraudulent purchases averaging \$410 per card!*

Other statements as to liability are interspersed throughout the letter such as:

2. . . and you will avoid even one cent of liability for fraudulent purchases that are charged subsequently to your account.

Respondents' statement that the adoption of a single notice becomes all but impossible as more and more credit card issuers "determine their own specific means for notification" of the loss of credit cards, is a misstatement of the applicable law as interpreted by the Board of Governors of the Federal Reserve System. The method of notification of a lost or stolen credit card is not left to the whims of each card issuer. Section 226.12(3) of Regulation Z, as amended, provides that "Notification may be given, at the option of the person giving it, in person, by telephone, or in writing." Finally, we are of the opinion that allowing the respondents to design their own disclosure statement would be to invite renewal of the practices which led to entry of the order in the first place. Therefore we conclude that the IMPORTANT NOTICE should be retained.

In view of the changes in the law and in Regulation Z, the remaining issue is whether the proceeding should be reopened for the limited purpose of updating the IMPORTANT NOTICE. Since the Truth in Lending Act no longer requires that a credit card issuer provide a pre-stamped envelope to its subscribers for use in reporting the loss of the credit card, we hold that it is in the public interest to

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reopen the proceeding and make the necessary changes in the IMPORTANT NOTICE to reflect the current law. Therefore:

It is ordered, That the proceeding in Docket 8861 be, and is hereby reopened; and

It is further ordered, That the IMPORTANT NOTICE of paragraph 5 of the order be rescinded and hereby replaced by the following:

IMPORTANT NOTICE

Federal law provides that a cardholder has no liability for unauthorized use of his or her credit card unless all of the following four conditions are met. If the card issuer (1) has notified you of your limited liability, (2) has provided you with adequate means to notify it of the credit card loss, (3) has provided a means of identifying the authorized user, and if (4) the unauthorized use occurred before the card issuer is notified, then your liability is limited to \$50 per card.

It is further ordered, That the foregoing modification shall be effective upon service of this order.

Interlocutory Order

98 F.T.C.

IN THE MATTER OF
KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, Dec. 18, 1982

Staying the effective date of the Initial Decision until January 15, 1982.

ORDER

On November 20, 1981, the Director of the Bureau of Competition ("Director") filed a Withdrawal of Notice of Intention to Appeal. Complaint counsel had previously filed its Notice of Intention to Appeal the Administrative Law Judge's ("ALJ") initial decision in this matter and had subsequently reaffirmed its contention that the public interest would be served by Commission review of the merits as recently as October 1, 1981. Therefore, the Commission issued an Order on December 3, 1981, that required complaint counsel to provide a "Statement as to why the public interest is no longer served by full Commission review and consideration of the substantive merits of this matter."

On December 11, 1981, the Director of the Bureau of Competition filed a statement with the Commission. The Bureau Director's statement expressly acknowledged that it is "the decision of the Commission which should ultimately govern here. . . ." Director's Statement at 2. The Commission concurs with this view. Section 5 of the Federal Trade Commission Act clearly provides that a determination as to the public interest, for the purpose of invoking this Act, rests solely within the discretion of the Commission.

The Bureau Director has articulated his belief that the theory of Docket 8883 is inconsistent with the public interest because it "unavoidably extends Section 5 to condemn some forms of conduct that rationally flow from an industry's structure, and thus, to condemn the structure itself." Director's Statement, at 3. Moreover, the Director states that the relief sought by complaint counsel would be anticompetitive, potentially resulting in inefficient behavior to the ultimate detriment of the consumer. Director's Statement at 3-4.

After reviewing the record materials, the Commission has determined to permit a brief period for further comment from those complaint attorneys and economists who have conducted this litigation. Chairman Miller opposes the extension of time and would not place this matter on the Commission's docket. He believes that the views of all parties have been clearly articulated in their briefs before the ALJ and the Commission. (See separate statement.) Commissioner Clanton also is not inclined to place this matter on the