

Modifying Order

101 F.T.C.

IN THE MATTER OF

G C SERVICES CORP., ET AL.

**MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND FAIR DEBT COLLECTION PRACTICES ACTS***Docket C-2511. Consent Order, April 16, 1974—Modifying Order, Feb. 8, 1983*

This order reopens the proceeding and modifies the Commission's order issued on April 16, 1974 (83 F.T.C. 1521), *modified* June 21, 1978 (91 F.T.C. 1150), by deleting Paragraph Six from the order and substituting a new Paragraph Six, which incorporates restrictions concerning the use of post-dated checks contained in Section 808(2), (3) and (4) of the Fair Debt Collection Practices Act.

**ORDER REOPENING PROCEEDING AND MODIFYING
ORDER TO CEASE AND DESIST**

By petition filed September 21, 1982, pursuant to Rule 2.51, petitioners G C Services Corporation and Jerold B. Katz, William A. Inglehart and Martin M. Katz, ("GCSC"), request the Commission to reopen this proceeding and modify Paragraph 6 of the Order to Cease and Desist issued on April 16, 1974, and amended on June 21, 1978.

Paragraph 6, as written in the original 1974 Order, prohibited GCSC from receiving from debtors post-dated checks which would not be deposited immediately or which would be held for more than 15 business days after their receipt. On June 21, 1978, the Commission modified this Order Paragraph to permit GCSC to hold debtor's checks up to 60 days provided GCSC complied with certain conditions, including the requirement that GCSC make a good faith effort to reach debtors by attempting to contact them by telephone three times to obtain their permission to deposit any post-dated checks.

The present petition seeks modification of Paragraph 6 by eliminating, 1) the 60 day period limitation for GCSC's holding of post-dated checks and 2) the telephone contact requirement. In place of the current Paragraph 6, GCSC requests that the Section 808(2), (3) and (4), of the FDCPA, as well as other requirements, be incorporated into the Order. In addition to being bound by the FDCPA requirements, GCSC requests that the Order prohibit respondents for a period of 5 years from accepting a check post-dated by more than 60 days unless the debtor is given, along with the notice required by Section 808(2) of the FDCPA, a notice, a) of the date and amount of each additional post-dated check that GCSC holds and intends to cash and b) that advises the debtor to contact GCSC in the event the debtor is unable to cover the check to arrange a revised payment schedule. Additional-

ly, GCSC would be required to return to the debtor, when so asked, any post-dated check that the debtor is unable to cover.

In support of their request, petitioners assert that the current restrictions in Paragraph 6 are unnecessary in view of the requirements and restrictions set forth in Section 808 of the FDCPA which are binding on GCSC as a debt collector. The current Order restrictions on GCSC, petitioners argue, places them at a competitive disadvantage. Further, the telephone debtor contact required by the current Paragraph 6 is not only burdensome to GCSC but bothersome to consumers as well.

The Commission, having considered the petition, is of the opinion that petitioners have made a sufficient showing of changed conditions of law and fact to reopen the proceeding, and have decided to grant their request. However, the Commission is persuaded that incorporation of Section 808(2), (3) and (4) into the Order would provide adequate protection for consumers and that the additional restrictions proposed by petitioners are not necessary. Petitioners have agreed to this change.

Accordingly, *it is ordered* that the proceeding be, and it hereby is reopened.

It is further ordered, That the Order to Cease and Desist be, and it hereby is, modified by striking Paragraph Six, amended on June 21, 1978, and substituting therefor the following:

6. (a) Accepting from any person a check or other payment instrument post-dated by more than five days unless such person is notified in writing of the intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit;

(b) Soliciting any post-dated check or other post-dated payment instrument for the purpose of threatening or instituting criminal prosecution;

(c) Depositing or threatening to deposit any post-dated check or other post-dated payment instrument prior to the date on such check or instrument.

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IN THE MATTER OF

AHC PHARMACAL, INC., ET AL.

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3017. Consent Order, April 28, 1980—Modifying Order, Feb. 8, 1983*

This order reopens the proceeding and modifies the Commission's order issued on April 28, 1980 (95 F.T.C. 528), by relieving respondent of the obligation of disseminating corrective advertisements which state that "no product can cure acne" prior to disseminating advertisements for "AHC Gel" or any acne product or regimen. In addition to the two well-controlled, double-blind clinical studies previously required for all superiority claims, the modified order now permits respondents to rely on FDA Panel recommendations as a reasonable basis for substantiating superiority claims.

ORDER REOPENING THE PROCEEDING AND MODIFYING
CEASE AND DESIST ORDER

AHC Pharmacal, Inc., and James E. Fulton, M.D., (hereinafter "Petitioners") have filed, pursuant to Rule 2.51 of the Commission's Rules of Practice, a Request for Modification of Order, including a request to vacate (hereinafter "Petition").

Petitioners seek the modification or elimination of two provisions of the Commission's Order of April 28, 1980. Petitioners also ask that the action be dismissed and the Order vacated.

The Order concerns Petitioners' representations as advertisers of an acne product and a regimen, and requires them to disseminate corrective advertisements that "no product can cure acne" before engaging in any advertising.

The initial request of July 7, 1982, seeks the modification of the Order in two respects: (1) Petitioners seek to change the format and the media of the corrective advertising required under the Order, and (2) presumably as an alternative, they allege that the basis of the Commission's Complaint is now moot in view of a recent report by a panel of FDA experts and argue that the Commission action should be dismissed and the Order vacated.

Additional issues raised by Petitioners' letter of August 27, 1982, include (3) a charge that their constitutional rights of due process and equal protection are being violated by the Order requirement of double-blind clinical studies to support efficacy claims, and (4) an allegation that a new acne product on the market may, in fact, cure acne, which renders the requirement of the corrective message "no product can cure acne" factually and legally erroneous.