

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

AMERICAN EXPRESS COMPANY

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

Docket C-3129. Complaint, Jan. 9, 1984—Decision, Jan. 9, 1984

This order requires a New York City credit card company, among other things, to cease failing to prevent computerized collection letters from being sent to cardholders who have written the company of a billing error and who are withholding payment pending resolution of the dispute. Respondent must forfeit the amount in dispute, up to \$50, should it fail to comply with the Fair Credit Billing Act's billing error resolution procedures and maintain for at least two years, records evidencing compliance with the Act's provisions. Further, respondent must resolve billing errors involving foreign merchants within the lesser of 90 days or 2 complete billing cycles from the date of receiving a billing error notice.

Appearances

For the Commission: *Ronald G. Issac, Jonathan D. Jerison and Arthur B. Patrizio.*

For the respondent: *Ronald J. Greene, Christopher R. Lipsett and Clifford B. Hendler, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that American Express Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending 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:

For the purposes of this complaint, the terms *billing error, card-*

holder, card issuer, credit card, and proper written notification of a billing error shall be defined as these terms are defined in Regulation Z (12 CFR 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), duly promulgated by the Board of Governors of the Federal Reserve System.¹

PARAGRAPH 1. Respondent American Express Company 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 American Express Plaza, New York, New York.

PAR. 2. For some time in the past before January 1, 1983, respondent had been engaged in the issuing of American Express Cards which could be used to charge the costs of travel and entertainment services and merchandise purchased from stores and other establishments that honor such Cards. Since January 1, 1983, such Cards have been issued by a wholly-owned subsidiary of respondent.

PAR. 3. In the ordinary course of its business as aforesaid, respondent was a "card issuer." Thus, pursuant to Section 226.2(s) of Regulation Z, respondent was a "creditor" for purposes of Section 226.14 of Regulation Z.

PAR. 4. In some instances, respondent's collection procedures provided for computer-generated collection letters to be sent automatically to cardholders whose accounts were delinquent. Upon receipt of proper written notification of a billing error from a cardholder who had withheld payment of a disputed amount, respondent instructed its computers to cease all collection activity for a specified period of time. In some instances, billing errors were not resolved within this specified period and respondent's employees failed to prevent the computer from resuming automated collection activity with respect to disputed amounts. As a result, in some instances respondent mailed or delivered or caused to be mailed or delivered to cardholders collection letters demanding payment of amounts alleged to be in error prior to resolving the dispute as required by Section 226.14(a)(2) of Regulation Z.

PAR. 5. In some instances, after receiving proper written notification of a billing error concerning a transaction outside the United States between a cardholder and a foreign business entity that honors respondent's Card, respondent failed to resolve the billing error within the lesser of ninety (90) days or two (2) complete billing cycles from the date of receipt of proper written notification of a billing error, as required by Section 226.14(a)(2) of Regulation Z.

PAR. 6. By and through the acts and practices alleged in Paragraphs

¹ All reference to the Truth in Lending Act and Regulation Z contained in this complaint shall refer to the Truth in Lending Act as amended to March 23, 1976 and Regulation Z as amended to March 23, 1977.

Four and Five, respondent forfeited the right to collect from the cardholder the amount indicated by the cardholder to be a billing error (whether or not such amount was in fact in error) and any finance charges, late payment charges, or other charges imposed thereon up to a maximum of \$50 for each item or transaction indicated by the cardholder to be a billing error. In some of these instances, respondent failed to forfeit amounts that it should have legally forfeited, in violation of Section 226.14(f) of Regulation Z.

PAR. 7. In the ordinary course and conduct of its business, respondent retained certain correspondence and computerized, microfilmed, and other records relating to its handling of billing errors. In some instances before August 1981, respondent did not retain adequate evidence of compliance with Section 226.14 of Regulation Z for a period of two (2) years, as required by Section 226.6(i) of Regulation Z.

PAR. 8. Pursuant to Section 103(s) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constituted violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder and the Federal Trade Commission Act; and

The respondent, its attorneys, 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 aforesaid draft of 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, 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 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent American Express Company 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 American Express Plaza, in the City of New York, State of New York.

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

For purposes of this Order, the terms *billing error*, *billing-error notice*, *cardholder*, *consumer credit*, *credit card*, and *state* shall be defined as these terms are defined in Regulation Z (12 CFR 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).¹

It is ordered, That respondent American Express Company, a corporation, its successors and assigns in any state, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in any state, in connection with any consumer credit transaction involving the use of any credit card issued by respondent to a resident of any state, do forthwith cease and desist from:

1. Failing, following respondent's receipt of a billing-error notice from a cardholder who has withheld payment of a disputed amount, to prevent respondent's computerized collection procedures from causing collection letters to be mailed to the cardholder to collect any portion of an amount indicated in the cardholder's notice as being a billing error (or any finance charge, late payment charge, or other charge computed on such disputed amount) prior to resolving the dispute, as required by Section 226.13(d)(1) of Regulation Z.

2. Failing, following respondent's receipt of a billing-error notice from a cardholder concerning a transaction outside the United States between the cardholder and a foreign business entity that honors any credit card issued by respondent, to resolve the billing error within

¹ All reference to the Truth in Lending Act and Regulation Z contained in this Order shall refer to the Truth in Lending Act as amended to March 31, 1980 and Regulation Z as amended to April 1, 1981.

the lesser of ninety (90) days or two (2) complete billing cycles from the date of receipt of the billing-error notice, as required by Section 226.13(c)(2) of Regulation Z.

3. Failing to establish procedures which will require that, if correspondence is received from cardholders alleging, or reciting facts which on their face show, noncompliance with Sections 226.13(c) or (d)(1) of Regulation Z, such correspondence will be forwarded to personnel with authority to take appropriate action to comply with the forfeiture provision of Section 161(e) of the Truth in Lending Act.

4. Failing to keep evidence of compliance with Section 226.13 of Regulation Z for a period of two (2) years, as required by Section 226.25(a) of Regulation Z.

Provided, That respondent shall not be liable for a civil penalty for any violation of this Order if it shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error or mistake notwithstanding the maintenance of procedures reasonably adapted to avoid any such error or mistake.

It is further ordered, That respondent distribute a copy of this Order to each of respondent's present and future supervisory personnel who are responsible for operations relating to resolution of credit card billing errors, and that respondent secure a signed statement acknowledging receipt of a copy of this Order from each such person.

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 changes in the corporation that may affect compliance obligations arising out of this Order.

It is further ordered, That respondent herein shall, within ninety (90) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

IN THE MATTER OF
AMERICAN HOME PRODUCTS CORPORATION

Docket 8918. Interlocutory Order, Jan. 12, 1984

ORDER DENYING PETITION TO REOPEN AND ORDER TO SHOW CAUSE

On September 9, 1981, the Commission issued an opinion and order to cease and desist against American Home Products Corporation ("AHP") and the C.T. Clyne Co., Inc., corporate successor to AHP's advertising agency. In its opinion, the Commission held that AHP had engaged in various deceptive practices in violation of Section 5 of the FTC Act in connection with advertising for the aspirin-based pain relievers Anacin and Arthritis Pain Formula. The Commission's order contained provisions designed to secure cessation of these violations and prevent related ones. 98 F.T.C. 362.

AHP sought review of portions of the Commission's order in the United States Court of Appeals for the Third Circuit. On December 3, 1982, the court of appeals affirmed the Commission's order in all respects, save for paragraph II(D), which it ordered deleted. On December 28, 1982, the court denied AHP's petition for rehearing and suggestion of rehearing *en banc*.

On April 8, 1983, no petition for certiorari having been filed by AHP, the Commission entered its modified order to cease and desist, pursuant to the mandate of the Third Circuit. The modified order was identical to the order of September 9, 1981, save for court-ordered deletion of paragraph II(D). By separate order of April 8, 1982, the Commission stayed its modified order as to AHP until the later of September 30, 1983, or 90 days following disposition of a petition to reopen filed no later than April 15, 1983.¹

On April 15, 1983, AHP filed a petition to reopen the modified order of April 8, 1983, asking that it be stayed until the orders in *Bristol-Myers Company*, Docket No. 8917 [102 F.T.C. 21 (1983)], and *Sterling Drug Inc.*, Docket No. 8919 [102 F.T.C. 395 (1983)], became final. In the alternative, AHP requested that paragraph I(B) of the order, the so-called "substantial question" provision, be stayed pending the outcome of the *Bristol* and *Sterling* cases, and that paragraph III, requiring disclosure that Anacin and Arthritis Pain Formula contain aspirin in advertisements that make performance claims for the products, be modified to require disclosure of aspirin content for a

¹ The Commission's stay was issued in response to AHP's letter request of March 15, 1982. In a letter of March 18, 1982 responding to that request, the Commission advised AHP that upon expiration of the time for Supreme Court review of the order, and in the event that no review had been sought, the Commission would enter a stay on the terms of that ultimately entered.