

IN THE MATTER OF

ASSOCIATED DRY GOODS CORPORATION

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-3153. Complaint, May 7, 1985—Decision, May 7, 1985*

This consent order requires a New York City merchandise retailer, among other things, to cease failing to disclose to an applicant who has been denied credit on the basis of information contained in a consumer report (including non-derogatory information or no file response), that the adverse action was based wholly or partly on information reported by a credit bureau; and provide rejected applicants with the name and address of the reporting agency. The order additionally requires that a copy of the letter attached to the order as Appendix A be completed to include the name and address of the appropriate consumer reporting agency, and mailed within 90 days to credit applicants who were denied credit by Robinson's of Florida or Hahne and Company, divisions of Associated Dry Goods Corporation, between January 1, 1982, and December 31, 1983, on the basis of information submitted by a consumer reporting company.

Appearances

For the Commission: *Paul K. Davis.*

For the respondents: *Joseph J. Schumm, New York City.*

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 Associated Dry Goods Corporation, a corporation, 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 Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 417 Fifth Avenue, New York, New York.

spondent. Robinson's principal office and place of business is located at Tyrone Square, St. Petersburg, Florida.

Hahne and Company ("Hahne's") is also a division of proposed respondent. Hahne's principal office and place of business is located at 609 Broad Street, Newark, New Jersey.

PAR. 2. Respondent Associated Dry Goods Corporation, through its aforesaid Hahne's and Robinson's divisions, advertises, sells and distributes retail merchandise to the public.

PAR. 3. At all times relevant hereto, respondent in the course of business did and ordinarily does regularly extend and offer to extend consumer credit. In conjunction with the offer and extension of consumer credit, respondent has obtained and is obtaining "consumer reports" as that term is defined in Section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

PAR. 4. Respondent maintains and has maintained a substantial course of business, including the acts and practices set forth herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

DEFINITIONS

For the purposes of this Complaint, the following definitions are applicable:

A. The terms *consumer*, *consumer report*, and *consumer reporting agency* shall be defined as provided in Sections 603(b), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(b), 1681a(d) and 1681a(f) (1970).

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given applicant indicating that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied.

C. The term *non-derogatory information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency, consisting of the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit, insufficient credit history, or insufficient credit file.

PART I

Alleging violations of the Fair Credit Reporting Act and of the Federal Trade Commission Act, the allegation of Paragraphs One through Four are incorporated by reference as if fully set forth verbatim.

PAR. 5. Respondent, through its divisions, in the ordinary course

and conduct of its business, obtains and has obtained "consumer reports" from consumer reporting agencies. Respondent uses in whole or in part information contained in these reports to accept or deny applications for credit. In a substantial number of instances subsequent to January 1, 1982, respondent has denied consumers credit for personal, family, or household purposes based in whole or in part on non-derogatory information and "no file response" supplied by a consumer reporting agency. Although Robinson's of Florida and Hahne's advised the consumers that they were denied credit because they had no credit history, insufficient credit history, or insufficient credit file, in many instances, Robinson's of Florida and Hahne's failed to advise the consumer of the name and address of the consumer reporting agency making the report.

PAR. 6. By and through the use of the practices described in Paragraph Five, during the period of January 1, 1982, to December 31, 1983, Robinson's of Florida and Hahne's have denied applications for credit for personal, family or household use either wholly or partly because of information contained in a consumer report without advising the consumer of the name and address of the consumer reporting agency making the report. Therefore, respondent, through its divisions Robinson's of Florida and Hahne's, has violated the provisions of Section 615(a) of the Fair Credit Reporting Act.

PAR. 7. By its aforesaid failure to comply with Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondent has thereby engaged in unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of 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 Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission would charge respondent with violation of the Federal Trade Commission Act and the Fair Credit Reporting Act; 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 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 Acts, 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 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. Proposed respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 417 Fifth Avenue, New York, New York.

Robinson's of Florida ("Robinson's") is a division of proposed respondent. Robinson's principal office and place of business is located at Tyrone Square, St. Petersburg, Florida.

Hahne and Company ("Hahne's") is also a division of proposed respondent. Hahne's principal office and place of business is located at 609 Broad Street, Newark, New Jersey.

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

ORDER

For the purposes of this Order the following definitions are applicable:

A. The terms *consumer*, *consumer report*, and *consumer reporting agency* shall be defined as provided in Sections 603(b), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(b), 1681a(d) and 1681a(f) (1970).

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given applicant indicating that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied.

C. The term *non-derogatory information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency, consisting of the presence of new credit accounts

with credit histories too short to meet the respondent's criteria for granting credit, insufficient credit history, or insufficient credit file.

I.

It is ordered, That respondent Associated Dry Goods Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever credit for personal, family or household purposes involving a consumer is denied wholly or partly because of information contained in a consumer report from a consumer reporting agency (including non-derogatory information or no file response), to disclose to the applicant at the time the adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report.

2. Failing, within ninety (90) days after the date of service of this Order, to mail a copy of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency supplying the report, to each applicant who was denied credit by Robinson's of Florida or Hahne's between January 1, 1982, and December 31, 1983, based in whole or in part on information contained in a consumer report from a consumer reporting agency (including applicants denied credit based in whole or in part on non-derogatory information or no file response). The letter shall be sent by first class mail to the last known address of the applicant which is reflected in respondent's files. *Provided, however*, if the applicant was later extended credit or given the notice required by Section 615(a) of the Fair Credit Reporting Act, a copy of the letter attached as Appendix A need not be sent. Nothing in this Order shall prohibit respondent from adding to Appendix A a paragraph that resolicits the previously rejected applicants.

II.

It is further ordered, That respondent, its successors, and assigns shall maintain the following:

1. For at least two (2) years, documents that will demonstrate compliance with the requirements of Paragraph I.1. of this Order

2. For at least three (3) years, documents that will demonstrate compliance with the requirements of Paragraph I.2. of this Order.

Upon request, such documents shall be made available to the Federal Trade Commission for inspection and copying. Such documents shall include, but are not limited to, all credit evaluation criteria instructions given to employees regarding compliance with the provisions of this Order, any notices provided to consumers pursuant to any provisions of this Order, and the complete application file to which they relate.

III.

It is further ordered, That Robinson's of Florida and Hahne's shall deliver a copy of this Order to all present employees engaged in reviewing or evaluating consumer reports in connection with applications for credit to be used for personal, family or household purposes. In addition, respondent shall deliver a copy of this Order to all present and future Directors of Credit of each division, at least once per year, for a period of four (4) years from the date of this Order.

IV.

It is further ordered, That respondent shall 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 divisions or any other change in the corporation which may affect compliance obligations arising out of the Order. This provision shall remain in effect for a period of four (4) years from the date of this Order.

V.

It is further ordered, That respondent, within one hundred fifty (150) days after service upon it of this Order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this Order.

APPENDIX A

Dear Customer:

Our records show that [Division of Associated Dry Goods] denied your application for consumer credit within the last four years. The Fair Credit Reporting Act gives persons

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nied consumer credit the right to know whether the denial was based on information pplied by a consumer reporting agency and, if so, the name and address of such agency. Credit reports provide a variety of information to creditors, including information about how many and what type of credit accounts you have.

Our records show that we may not have informed you that your [Division of Associated Dry Goods] application was denied because of information contained in a credit report. This report showed either no credit history or an insufficient credit record for you. The consumer reporting agency that furnished the report is:

Name of Consumer Reporting Agency]

Street Address]

If you want more information about the federal credit laws, write the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.

IN THE MATTER OF
YOUNG & RUBICAM/ZEMP, INC.

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

Docket C-3154. Complaint, May 10, 1985—Final Order, May 10, 1985

This consent order requires a St. Petersburg, Fla. advertising agency, among other things, to cease, in connection with the advertising and sale of the Ecologizer CA/90 Series 2000 Air Treatment, representing falsely through the use of terms such as "eliminates," or by other means, that the portable household air cleaning appliance removes substantially all or most formaldehyde gas and tobacco smoke from the air people breathe under household living conditions. The order also bars the firm from misrepresenting the ability of any such appliance or equipment to clean the air of formaldehyde gas or tobacco smoke, and from representing the performance characteristics of any air cleaning appliance unless it possesses and relies upon competent and reliable substantiating evidence for such claims. Respondent is additionally required to cease failing to maintain written records of both substantiating materials and materials that contradict or qualify performance claims for a period of three years.

Appearances

For the Commission: *Judith Wilkenfeld*

For the respondent: *Sidney S. Rosdeitcher, Paul, Weiss, Rifkind, Wharton & Garrison*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Young & Rubicam/Zemp, Inc., hereinafter referred to as respondent, has 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. Respondent Young & Rubicam/Zemp, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1213 16th Street North, St. Petersburg, Florida.

PAR. 2. Respondent was at all times relevant to this complaint an advertising agency of Rush-Hampton Industries Inc.