

IN THE MATTER OF
FEDERATED DEPARTMENT STORES, INC.

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

Docket C-3175. Complaint, Dec. 30, 1985—Decision, Dec. 30, 1985

This consent order requires a Cincinnati, Ohio retailer and its division operating 14 department stores in Texas (Foley's), among other things, to inform rejected credit applicants if it used information from credit reporting agencies as a basis for denying credit, and the name and address of the credit reporting agencies used. The order requires respondents to comply with the provisions of the Fair Credit Reporting Act, and is binding on all of Federated's divisions. Additionally, Foley's is required to review all credit applications rejected between January 1983 and February 1985 and send appropriate FCRA notices to all consumers who did not receive them.

Appearances

For the Commission: *Kristen L. Malmberg.*

For the respondents: *Michael Sohn, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.* and the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.* and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Federated Department Stores, Inc., a corporation, hereinafter referred to as respondent, through its Foley's Division, 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. For the purposes of this complaint and the accompanying order the following definitions are applicable:

A. The terms *consumer*, *consumer report*, *consumer reporting agency*, and *person* shall be defined as provided in Section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

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 credit applicant indicating

that the consumer reporting agency has no credit history information in its files under the name and/or other identifiers supplied by respondent.

C. The term *information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency reflecting slowly paid or delinquent credit obligations, garnishment, attachment, foreclosure, repossession, bankruptcy, suits or judgments, inquiries from creditors, an insufficient number of accounts reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit or insufficient positive information to meet such criteria.

PAR. 2. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Seven W. Seventh Street, Cincinnati, Ohio. Foley's is a division of Respondent. Foley's principal office and place of business is located at 1110 Main Street, Houston, Texas.

PAR. 3. Respondent, in the ordinary course and conduct of its business, uses information in consumer reports obtained from consumer reporting agencies in the evaluation of applications for credit to be used for personal, family or household purposes. In a substantial number of instances respondent denies credit applications from consumers applying for credit that they intend to use for personal, family or household purposes. The Commission has jurisdiction of the subject matter of this proceeding and of respondent, as provided by Section 621 of the Fair Credit Reporting Act, 15 U.S.C. 1681s, and the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*

PAR. 4. Respondent, in the ordinary course and conduct of its business, obtains consumer reports from consumer reporting agencies. In a substantial number of instances subsequent to April 25, 1971, respondent has denied consumers credit for personal, family or household purposes based wholly or partly on information in consumer reports. For example, Respondent has relied on information in more than one report and has relied on a "no file" response from the consumer reporting agency. In many such instances, at the time when such adverse action was communicated to the consumer, respondent has failed to disclose to the consumer that the credit denial was based wholly or partly on information in one or more consumer reports from consumer reporting agencies and has failed to supply to the consumer the name and address of each consumer reporting agency making such a report. By and through the use of such practices during the period from April 25, 1971 to the present, respondent has violated and

is violating the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 5. Pursuant to Section 621 of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a), the acts and practices set forth in this complaint as violations of the Fair Credit Reporting Act constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

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 Dallas 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, and having duly considered the comments filed hereafter by interested persons pursuant to Section 2.34 of its Rules, 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, Federated Department Stores, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7 West Seventh Street, Cincinnati, Ohio. Foley's is a division of respondent. Foley's principal office and place of business is located at 1110 Main Street, Houston, Texas.

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

Definitions: For the purpose of this order the following definitions are applicable:

A. The term *consumer*, *consumer report*, *consumer reporting agency*, and *person* shall be defined as provided in Section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

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 credit applicant indicating that the consumer reporting agency has no credit history information in its files under the name and/or other identifiers supplied by respondent.

C. The term *information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency reflecting slowly paid or delinquent credit obligations, garnishment, attachment, foreclosure, repossession, bankruptcy, suits or judgments, inquiries from creditors, an insufficient number of accounts reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit or insufficient positive information to meet such criteria.

I.

It is hereby ordered, That respondent Federated Department Stores, Inc., 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 by a consumer for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever such credit is denied wholly or partly or the charge for such credit is increased wholly or partly because of any information contained in a consumer report from one or more consumer reporting agencies (including a "no-file response"), to disclose to the applicant a) that the adverse action was based wholly or partly on information contained in such consumer report or reports and b)

such a report as required by Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

2. Failing to review each application for consumer credit as to which Foley's took adverse action between January 1, 1983, and February 4, 1985, to identify each of those applications as to which such adverse action was taken based wholly or partly upon information obtained from a consumer reporting agency.

3. Failing, within ninety (90) days of the date of service of this order, for each application identified according to paragraph 2 above, to send, as specified herein, the applicant a copy of the letter attached hereto as Appendix A or B, as applicable, and described herein. The letter shall be on Foley's letterhead and shall show the name and address of the applicant as shown on the application and the date of mailing. The letter shall disclose the name and address of the consumer reporting agency or agencies supplying the report(s) containing the information on which the adverse action was based. A letter need not be sent to any applicant whose application was identified pursuant to Paragraph 2 of this order, if the application file clearly shows that Foley's has previously sent the applicant an adverse action notification that complied in all respects with the provisions of Paragraph 1 of this order, nor to any applicant who subsequent to the adverse action on such application was granted credit by Foley's. Nothing in this order shall prohibit respondent from adding a paragraph to Appendices A and B that resolicits the previously rejected applicants if, preceding such paragraph, respondents insert the following language: "You may want to check your file at the credit bureau mentioned above to make sure it is accurate and complete before reapplying."

II.

It is further ordered, That respondent shall maintain for at least three (3) years, and upon request make available to the Federal Trade Commission for inspection and copying, documents that will demonstrate compliance with the requirement of this order, except that consumer application files need only be kept for the period required by Section 202.12 of Regulation B. 12 C.F.R. 202.12. Such documents include, but are not limited to, all credit evaluation criteria instructions given to employees regarding compliance with the provisions of the order, any notices provided to consumers pursuant to any provision of this order, and the complete application file to which they relate.

III.

It is further ordered, That respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change 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 that 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.

IV.

It is further ordered, That Foley's shall deliver a copy of this order to cease and desist 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, or engaged in preparing or furnishing notices to consumers as required by this order. In addition, respondent shall deliver a copy of this order to all present and future credit managers of each division, at least once per year, for a period of four (4) years from the date of this order.

V.

It is further ordered, That the respondents herein shall within one hundred fifty (150) 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.

APPENDIX A

Dear Customer:

Our records show that Foley's denied your application for consumer credit sometime after January 1, 1983. The Fair Credit Reporting Act gives persons denied consumer credit the right to be informed at the time credit is denied whether the denial was based on information supplied 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.

Consistent with an agreement we have made with the Federal Trade Commission, we have reviewed your application file. Our records show that we may not have informed you that we obtained a credit report in which we were advised by the consumer reporting agency that it showed no credit history for you. The consumer reporting agency from which we obtained the report is:

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(Name of Consumer Reporting Agency)(Street Address)

You have the right to contact the agency listed above to obtain complete information concerning your credit bureau file. However, that agency cannot tell you why credit was denied because it did not make the decision.

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.

APPENDIX B

Dear Customer:

Our records show that Foley's denied your application for consumer credit sometime after January 1, 1983. The Fair Credit Reporting Act gives persons denied consumer credit the right to be informed at the time credit is denied whether the denial was based on information supplied 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.

Consistent with an agreement we have made with the Federal Trade Commission, we have reviewed your application file. Our records show that we may not have informed you that your Foley's application was denied wholly or in part because of information contained in a credit report. The consumer reporting agency (or agencies) that furnished the report is (are) identified below:

(Name of Consumer Reporting Agency)(Street Address)

You have the right to contact the agency (or agencies) listed above to obtain complete information concerning your credit bureau file. However, that agency (or agencies) cannot tell you why credit was denied because it (or they) did not make the decision.

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.

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