

Complaint

107 F.T.C.

IN THE MATTER OF

ALBERT SCHNEIDER

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3184. Complaint, May 23, 1986—Decision, May 23, 1986*

This consent order requires, among other things, a corporate officer of Cellular Capital Corporation to cease making misrepresentations to induce consumers to purchase application preparation services for the cellular license lottery operated by the Federal Communications Commission. Additionally, respondent is required to make two affirmative disclosures to prospective applicants: (1) that the purchase of a cellular application is a high-risk investment, and (2) that an operating cellular system is unlikely to return any profits to its owners in the first three years of operation.

*Appearances*For the Commission: *David C. Fix.*For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Albert Schneider, 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 is an individual who has his business address at The Eighth Floor, One Erieview Plaza, Cleveland, Ohio.

PAR. 2. Respondent, individually and in cooperation with others, is now and for some time last past has been engaged in the offering for sale of application preparation and filing services in connection with the Non-Wireline Cellular Telephone Lottery (the "lottery") operated by the Federal Communications Commission ("FCC"). The lottery is a random drawing used by the FCC to select the non-wireline applicant in each geographical market who is to be awarded a license to construct and operate a new type of mobile telephone system called a cellular system. From 1981 until the institution of the lottery in 1984, such licenses were awarded on the basis of public hearings.

PAR. 3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which is in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. As set forth below, in connection with the sale of his services, respondent has engaged in numerous misrepresentations of material facts and has deceptively failed to disclose material facts.

PAR. 5. Respondent misrepresents, directly or by implication, the likelihood that each of his customers will obtain an FCC cellular telephone license or an interest in such a license through the use of respondent's application preparation and filing services. Respondent represents, *inter alia*, that it is a virtual certainty that each of his customers will obtain such a license or an interest in such a license. In fact, it is unlikely that respondent's customers will obtain such a license or any interest in such a license.

PAR. 6. Respondent falsely represents, directly or by implication, that after only one year, almost one percent of the Baltimore/Washington and Chicago markets had subscribed to the local non-wireline cellular company. In fact, the subscribership in both markets after one year was only a small fraction of a percent.

PAR. 7. Respondent falsely represents, directly or by implication, that the typical cellular telephone system will be profitable in the first year of operation. In fact, a typical cellular telephone system will not be profitable in the first year of operation.

PAR. 8. Respondent falsely represents, directly or by implication, that his customers have a binding commitment from Cellular Capital Corporation (CCC) and Ameritrust Bank to provide necessary funding for construction of a cellular telephone system. In fact, CCC has only nominal assets, and CCC and Ameritrust Bank have merely agreed to consider loan applications from respondent's customers should they be awarded licenses.

PAR. 9. Respondent misrepresents, directly or by implication, the qualifications of Peter T. Lewis and the services provided by his company, Lewis Telecom, Inc., the principal preparer of the applications. Respondent falsely represents, *inter alia*, that Mr. Lewis built the cellular system for the Baltimore market and the telecommunications system for the Pershing missile sites, and that Lewis Telecom, Inc. has done all the engineering for 300 cellular markets and has completed 70% of these applications to date. In fact, Mr. Lewis did not build the cellular system for the Baltimore market or the telecommunications system for the Pershing Missile sites. Lewis Telecom, Inc. did not do all the engineering for 300 cellular markets, nor has it completed 70% of these applications to date.

PAR. 10. The false representations of material facts set forth in

Paragraphs Five through Nine are likely to mislead consumers and induce purchases of defendants' services. These representations thus constitute deceptive and unfair acts or practices prohibited as unlawful by Section 5(a) of the FTC Act.

PAR. 11. Respondent does not disclose that the purchase of his application and preparation services is a high risk investment. This non-disclosure is deceptive in light of respondent's representations that each customer is virtually certain to receive all or part of an extremely valuable cellular telephone license.

PAR. 12. Respondent does not disclose that his assessment of the value of the cellular telephone licenses to be awarded is based on assumptions which are highly optimistic or unfounded. This non-disclosure is deceptive in light of respondent's representations that these cellular telephone licenses are enormously profitable and extremely valuable.

PAR. 13. Respondent does not disclose that treatment of his application purchasing program as a tax shelter is highly questionable and is likely to be disallowed. This nondisclosure is deceptive in light of respondent's representations that, due to the income tax benefits, his customers could not lose money even in the unlikely event that no part of a license was obtained.

PAR. 14. The undisclosed material facts set forth in Paragraphs Eleven through Thirteen are necessary to dispel false assumptions likely to arise in light of stated representations. The failures to disclose such material facts are likely to mislead consumers and induce purchases of defendants services. These failures to disclose thus constitute deceptive and unfair acts or practices prohibited as unlawful by Section 5(a) of the FTC Act.

PAR. 15. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 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 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 Federal Trade Commission Act; and

The respondent 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 Albert Schneider is an individual who has his business address at the Eighth Floor, One Erieview Plaza, Cleveland, Ohio.
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

I.

It is ordered, That respondent Albert Schneider, his agents, representatives, brokers, and employees, and those persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, and each of them, directly or indirectly, in the promotion, offering for sale or sale of any non-wireline MSA cellular telephone system application preparation service, do forthwith cease and desist from the following activities:

- (1) Representing, directly or indirectly, that any applicant in the Federal Communications Commission ("FCC") nonwireline cellular telephone license lottery ("lottery") is certain or substantially certain to obtain all or part of a cellular telephone license ("license"), or otherwise misrepresenting the likelihood that an applicant will obtain all or part of a license;
- (2) Representing, directly or indirectly, that past agreements to share licenses (settlement agreements) entered into by applicants in the second and third tiers of the FCC lottery provide a basis for

concluding that future applicants in the FCC lottery are likely to receive an interest in a license through similar agreements;

(3) Misrepresenting, directly or indirectly, the value or profit potential of a license awarded through the FCC lottery. At the time of making any representation of value or profit potential, defendant must possess and rely upon a reasonable basis for the representation consisting of competent and reliable data;

(4) Misrepresenting, directly or indirectly, past or current profit performance of cellular telephone systems; or making any representation regarding past or current profit performance of cellular telephone systems unless at the time of making such representation defendant possesses and relies upon a reasonable basis consisting of competent and reliable data;

(5) Misrepresenting, directly or indirectly, any financing arrangements made for purchasers of defendant's application services;

(6) Misrepresenting, directly or indirectly, the nature of the services provided by the application preparers or the qualifications of those providing technical services;

(7) Misrepresenting, directly or indirectly, any material fact relevant to a customer's decision to purchase application preparation services for the FCC lottery; and

(8) Making any representations with respect to income tax benefits available to purchasers of defendant's products or services other than to refer the prospective applicant to their own tax accountant or attorney.

II.

It is further ordered, That respondent Schneider, his agents, representatives, brokers and employees, and those persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise and each of them, directly or indirectly, in the promotion, offering for sale or sale of any non-wireline MSA cellular telephone system application preparation service are hereby enjoined from failing to disclose to prospective applicants statements (1) and (2) below in all sales brochures, in every oral presentation, and on the front page of all sales or service contracts or agreements with ultimate consumers:

(1) "The purchase of an application for the Federal Communication Commission's cellular telephone lottery is a high-risk investment. Do not purchase an application unless you can afford and are prepared to lose all the money invested."

(2) "An operating cellular system is unlikely to return any profits to its owners in at least the first three years of operation."

It is further ordered, That the statements required above shall be set forth in a clear and conspicuous manner in print at least as large as the capitalized corporate name within the text of the brochure, contract or agreement then used by the defendant(s), but in no event smaller than 10 point type; that such disclosure shall be in 100% black ink against a light background, and boxed; that the copy of the foregoing statements set forth on the front page of each sales or service agreement or contract shall be preceded by the heading "RISK FACTORS YOU SHOULD CONSIDER PRIOR TO PURCHASE", and shall also include a signature line for the customer preceded by a declaration that the customer has read and understands the statement; and that no agreement or contract shall be deemed valid or complete unless the customer has signed and dated the required declaration.

III.

It is further ordered, That respondent Schneider shall fully comply with the Paragraphs IV and VII of the Consent Decree and Permanent Injunction entered by the United States District Court for the Northern District of California in the case *Federal Trade Commission v. The Cellular Corporation, et al.* (Civ. No. C85-8231 WHO), which paragraphs are attached hereto and incorporated herein.*

IV.

It is further ordered, That this settlement agreement is premised on the sworn financial statements of respondent Schneider previously provided to the Commission. If the Commission finds any material misstatement or misrepresentation in the sworn financial statements, that finding shall cause this order to be set aside and the Commission in that event shall be permitted to reopen this matter and proceed against respondent Schneider to the full extent of any possible monetary liability he may have for the acts and practices alleged in the Commission's complaint in this matter in excess of the liability imposed herein. Prior to the making of any such motion, the Commission will notify respondent Schneider of any alleged discrepancy and provide him with a reasonable opportunity to explain or justify the disputed entry.

* Not reproduced herein. Copies of all attachments are available from the Commission's Public Reference Branch, H-130, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

V.

It is further ordered, That respondent Schneider shall immediately provide a copy of this order to each officer, employee, sales representative, or independent contractor engaged in the promotion or sale of respondent's non-wireline MSA cellular telephone system application preparation services.

VI.

It is further ordered, That respondent Schneider shall, within sixty (60) days after the order is approved by the Commission, file with the Federal Trade Commission a report setting forth in detail the manner and form in which he has complied with this order.

Commissioners Oliver and Strenio did not participate.

IN THE MATTER OF
JOHN C. ANDERSON

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

Docket C-3185. Complaint, May 27, 1986—Decision, May 27, 1986

This consent order prohibits, among other things, a former official of Credit Establishing Bureau, a Detroit-based credit repair clinic that went out of business in February, 1984, from falsely representing in the future that he can improve credit records and arrange for consumers to receive major credit cards.

Appearances

For the Commission: *Kathleen V. Buffon.*

For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that John C. Anderson, individually and as a former partner trading and doing business as Credit Establishing Bureau, formerly a partnership, ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. John C. Anderson is a former partner of Credit Establishing Bureau ("CEB"), formerly a partnership, with its office and principal place of business located at 17344 W. 12 Mile Road, Suite 103, Southfield, Michigan. John C. Anderson, together with others, formulated, directed and controlled the acts and practices of said business, including the acts and practices alleged in this complaint. His address is 18665 Marsha, Riverview, Michigan.

PAR. 2. For purposes of this complaint, the following definitions shall apply:

A. *Credit Profile* means any written, oral or other communication of information by a consumer reporting agency bearing on a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living that is used or expected to be used or collected in whole or in part for the purpose of establishing the person's eligibility for credit;

B. *Credit Improvement Service(s)* means any service to improve a