

Complaint

107 F.T.C.

IN THE MATTER OF

JAMES F. HERNDON, JR.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3188. 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 James F. Herndon, Jr., 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. James F. Herndon, Jr., 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. James F. Herndon, Jr., 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 20576 Vaughan, Detroit, 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

person's credit profile by removing negative information appearing therein, changing the rating of such information from negative to positive, or otherwise enhancing said credit profile in return for the payment of money; and

C. *Credit Card Procurement Service(s)* means any service to obtain a credit card on behalf of a person in return for the payment of money.

PAR. 3. CEB has engaged in the advertising, solicitation, offering for sale and sale of credit improvement services and credit card procurement services to the public by means of newspaper, radio and television advertisements, by direct personal contact with prospective clients, and through letters, contracts and other documents.

PAR. 4. The acts and practices of CEB alleged in this complaint have been in or affecting commerce.

PAR. 5. In the course and conduct of its business, CEB has made numerous statements in advertisements, contracts and other written documents, examples of which are attached hereto as Exhibits 1 through 4,* and has made numerous oral statements to prospective clients through employees and sales agents for the purpose of inducing the purchase of its credit improvement service.

PAR. 6. Typical of CEB's statements referred to in Paragraph Five, but not necessarily inclusive thereof, are the following:

A. Television and radio advertisements:

1. Credit problems? No problem! Stop being rejected time and again.
2. If you have no credit, bad credit or if you have declared bankruptcy, Credit Establishing Bureau in Southfield can help. Their friendly, qualified counselors can challenge negative entries on your credit profile and improve your credit rating.

B. Contracts:

1. Credit Establishing Bureau shall assist in obtaining a credit profile. . . .
2. Credit Establishing Bureau will dispute all negative entries on client's credit profile. . . .
3. Work to be conducted by Credit Establishing Bureau is under the Federal Fair Credit Reporting Act.
4. Credit Establishing Bureau agrees to improve client's profile, or money back Guaranteed.

C. Oral statements to the effect that:

1. CEB can remove bankruptcies, judgments, and other negative information from clients' credit profiles and has done so frequently in the past.
2. Removal of bankruptcies from credit profiles is CEB's specialty.

* See pages 442-445. Identical exhibits were used in *John C. Anderson*, Dkt. C-3185.

3. Many people who have had bad credit profiles now have A-1 ratings and are able to obtain credit because of CEB's services.

4. After CEB disputes negative information in a client's credit profile, the credit bureau will remove the information or improve its rating in order to meet the requirements of the Fair Credit Reporting Act.

PAR. 7. Through the use of the statements referred to in Paragraph Six, and other statements not specifically set forth herein, CEB has made the following material representations, directly or by implication:

A. CEB sought and obtained credit profiles and performed credit improvement services on behalf of all clients.

B. The Fair Credit Reporting Act enabled CEB to remove adverse information appearing in clients' credit profiles or to improve the rating of such information regardless of its accuracy or date.

C. Through its credit improvement services, CEB improved the credit profiles of many clients with bad credit histories regardless of the accuracy or date of the information appearing in the credit profiles.

D. CEB provided refunds to all clients whose credit profiles were not improved by its credit improvement services.

PAR. 8. In truth and in fact:

A. CEB did not seek and obtain credit profiles and did not perform credit improvement services on behalf of all clients.

B. The Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, which regulates the information that may be reported in a person's credit profile, did not enable CEB to remove adverse information appearing in clients' credit profiles or to improve the rating of such information regardless of its accuracy or date.

C. Through its credit improvement services, CEB did not improve the credit profiles of many clients with bad credit histories regardless of the accuracy or date of the information appearing in the credit profiles.

D. CEB did not provide refunds to all clients whose credit profiles were not improved by their credit improvement services.

Therefore, the representations set forth in Paragraph Seven were and are false and misleading.

PAR. 9. In the course and conduct of its business, CEB has made numerous statements in advertisements, contracts, and other written documents, examples of which are attached hereto as Exhibits 1 through 4, and has made numerous oral statements to prospective clients through employees and sales agents for the purpose of inducing the purchase of its credit card procurement service.

PAR. 10. Typical of CEB's statements referred to in Paragraph Nine, but not necessarily inclusive thereof, are the following:

A. Advertisements:

If you have no credit, bad credit or if you have declared bankruptcy, Credit Establishing Bureau in Southfield can help! Their friendly, qualified counselors can get you Master & Visa credit cards.

B. Contracts:

Credit Establishing Bureau guarantees that the heresaid client will obtain a MasterCard or Visa credit card or 80% of your total fee will be refunded.

C. Oral statements to the effect that:

1. CEB works in conjunction with a local bank. An agent of CEB will go to the bank on the client's behalf and submit a credit card application. CEB will represent its client to the bank as a creditworthy individual. With CEB's backing, the client has a much better chance of obtaining a credit card.

2. Because of the prospective client's circumstances (*e.g.*, employment, age, length of time in area), CEB will be able to obtain a credit card for him or her on an unsecured basis through a local bank.

3. CEB will refund the fee if it is unable to obtain a credit card on an unsecured basis through a local bank.

PAR. 11. Through the use of the statements referred to in Paragraph Ten, and other statements not specifically set forth herein, CEB has made the following material representations, directly or by implication:

A. CEB regularly obtained Master or Visa credit cards on an unsecured basis for its clients regardless of clients' prior credit histories.

B. CEB had an established connection with a local bank through which it regularly arranged for the issuance of credit cards on an unsecured basis.

C. CEB performed services for all clients that contributed substantially to its clients' ability to obtain a credit card.

D. There was good reason to believe that CEB's clients would obtain a credit card through its services.

E. CEB provided refunds to clients who did not obtain a credit card through its services.

PAR. 12. In truth and in fact:

A. CEB did not regularly obtain Master or Visa credit cards on an unsecured basis for their clients regardless of clients' prior credit histories.

B. CEB did not have an established connection with a local bank through which it regularly arranged for the issuance of credit cards on an unsecured basis.

C. CEB did not perform services for all clients that contributed substantially to its clients' ability to obtain a credit card.

D. There was not good reason to believe that CEB's clients would obtain a credit card through its services.

E. CEB, in many instances, did not provide refunds to clients who did not obtain a credit card through its services.

Therefore, the representations set forth in Paragraph Eleven were and are false and misleading.

PAR. 13. CEB's aforesaid false and misleading representations have induced persons to pay over to it substantial sums of money for services that CEB could not or did not perform as represented. CEB has received said sums of money and, in a substantial number of instances, has failed or refused to refund such money to such persons. Therefore, the continued retention of said money constitutes an unfair act or practice.

PAR. 14. The acts and practices of CEB as alleged in this complaint 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 the 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, and having duly considered the comments filed thereafter 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. Proposed respondent James F. Herndon, Jr., is a former partner of Credit Establishing Bureau, formerly a partnership, with its office and principal place of business located at 17344 W. 12 Mile Road, Suite 103, Southfield, Michigan. James F. Herndon, Jr., together with others, formulated, directed and controlled the acts and practices of said business. His address is 20576 Vaughan, Detroit, Michigan.

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 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 person's credit profile by removing negative information appearing in a credit profile, changing the rating of such information from negative to positive, or otherwise enhancing said credit profile in return for the payment of money; and

C. *Credit Card Procurement Service(s)* means any service to obtain a credit card on behalf of any person in return for the payment of money.

I.

It is ordered, That respondent James F. Herndon, Jr., individually and as a former partner of Credit Establishing Bureau, formerly a partnership, his successors and assigns, and his officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, solicitation, offering for sale, sale or performance of any credit improvement service in or

affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication:

1. That they will seek or obtain any credit profile or will perform any credit improvement service for any person;
2. Any right or remedy available under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, including the ability to remove adverse information in any credit profile or to change any rating of such information from negative to positive;
3. That they can or will improve the credit profile of any person regardless of the accuracy or date of the information appearing in the credit profile; or
4. That they will refund in whole or in part any fee paid by any person and the conditions upon which they will do so.

B. Offering to any person, directly or by implication, any money-back or satisfaction guarantee unless with each such offer the identity of the guarantor and all the terms and conditions of the guarantee are clearly and prominently disclosed and unless they promptly and fully honor each such guarantee offered.

C. Participating in any dispute or encouraging any person to engage in any dispute with any consumer reporting agency, pursuant to procedures authorized by Section 611 of the Fair Credit Reporting Act, 15 U.S.C. 1681i, over the accuracy or completeness of any item of information in any credit profile when they know or have reason to know, from information provided by the client or otherwise, that the item of information in the credit profile is accurate and complete.

II.

It is further ordered, That respondent, James F. Herndon, Jr., his successors and assigns, and his officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, solicitation, offering for sale, sale or performance of any credit card procurement service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication:

1. That they can or will obtain a credit card or other extension of credit on an unsecured or any other basis;
2. That they have any connection with any bank, credit card issuer or any other entity through which they can or will arrange for the issuance of credit cards or for the extension of credit;

3. That they can or will perform services for any person that will contribute in any way to that person's ability to obtain a credit card;

4. The likelihood of any person obtaining a credit card through their services; or

5. That they will refund in whole or in part any fee paid by any person and the conditions upon which they will do so.

B. Offering to any person, directly or by implication, any money-back or satisfaction guarantee unless with each such offer the identity of the guarantor and all the terms and conditions of the guarantee are clearly and prominently disclosed and unless they promptly and fully honor each such guarantee offered.

III.

It is further ordered, That respondent James F. Herndon, Jr., shall maintain and, upon request, make available to the Federal Trade Commission for inspection and copying all records and documents relating to any credit improvement service or credit card procurement service that he offers to any person for at least three (3) years from the date of such offer, including but not limited to:

1. Copies of any advertising and promotional material disseminated to any person;

2. Copies of any contracts, disclosure statements or other documents furnished to any person;

3. Copies of any material offering, directly or by implication, any money-back or satisfaction guarantee in connection with the purchase of such services;

4. Copies of any request for a refund from any person, any correspondence or other records relating to such request, and documentation sufficient to show the date, manner, amount, and recipient of any refund made; and

5. Copies of documents and records sufficient to show that, in the ordinary course of business, respondent performs the services that he represents, directly or by implication, that he can or will perform.

IV.

It is further ordered, That respondent James F. Herndon, Jr., and his successors and assigns distribute a copy of this order to any present or future officers, agents, representatives and employees having advertising, sales, or managerial responsibilities with respect to the subject matter of this order and that respondent and his succes-

sors and assigns secure from each such person a signed statement acknowledging receipt of said order.

V.

It is further ordered, That respondent James F. Herndon, Jr., promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with any new business or employment whose activities include credit improvement services or credit card procurement services. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

VI.

It is further ordered, That respondent shall, within sixty (60) days after the date of service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order, and that respondent shall file such supplemental reports as the Commission subsequently requests.

Commissioner Strenio did not participate.

IN THE MATTER OF

STEVEN M. HULL

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3189. 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. Additionally, respondent, as a company founder, is required to provide consumer redress in the form of a six-week consumer education program directed at people with credit problems similar to those of the company's clients.

Appearances

For the Commission: *Kathleen V. Buffon.*

For the respondent: *Bruce Genderson, Williams & Connally, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Steven M. Hull, 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. Steven M. Hull 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. Steven M. Hull, 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 2015 North Bush Street, Apt. 108, Santa Ana, California.

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