

IN THE MATTER OF
BENEFICIAL CORPORATION, ET AL.

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

Docket 8922. Consent Order, Sept. 12, 1979—Modifying Order, Nov. 3, 1986

The Federal Trade Commission has modified a 1979 consent order (94 F.T.C. 425) by: (1) removing a prohibition on the use of the term "instant tax refund", but requiring respondents to disclose that a fee is involved and to make the refund within five days; (2) deleting a requirement that respondents disclose all terms of their guarantees in ads and replacing it with a provision allowing respondents to disclose that full details can be obtained by reading the guarantee; (3) requiring respondents to disclose that their offer to pay obligations resulting from the company's errors does not include payment of taxes that its customers owe; (4) modifying a prohibition against advertising the expertise of their tax preparers by allowing claims that can be substantiated; and (5) modifying a prohibition against the disclosure of confidential taxpayer information, by allowing such disclosure if IRS procedures are followed.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On May 28, 1986, Beneficial Corporation, and Beneficial Management Corporation, both Delaware corporations, filed a request to reopen and modify the order entered against them by the Commission on September 12, 1979, in Docket No. 8922 (94 F.T.C. 425).

The request to reopen and modify was placed on the public record and a press release was issued on June 12, 1986. The public comment period ended on July 14, 1986, and two comments were filed. The deadline to rule on petitioners' request has been extended to November 3, 1986.

Petitioners are engaged in the advertising and sale of an income tax preparation service for individual taxpayers. The order: prohibits use of the term "instant tax refund"; requires disclosure of all terms of a guarantee; prohibits a misrepresentation of the reimbursement petitioner will make to consumers in the event of an error and requires a disclosure that petitioner will not reimburse the consumer for additional taxes; makes absolute prohibitions against the implication that more of its customers receive refunds than taxpayers at large; and that their personnel are experts or unusually competent. The order further sets up a format to be followed pertaining to the consumers' consent to use information obtained from them.

Petitioners assert that changed conditions of fact and law and the

public interest require that certain paragraphs of the order be modified. Specifically, they request: that Paragraph 1 be modified so that they can use the term "instant tax refund" under certain circumstances; that Paragraph 2 be modified to limit the terms that must be disclosed in a guarantee; that Paragraphs 5 and 6 be modified to eliminate the absolute prohibitions regarding the percentage of customers who receive refunds and the competency of their personnel, to permit truthful and non-deceptive representations; and that Paragraph 7 be modified to conform to the Internal Revenue Code standard for obtaining the consent of the consumer to use information instead of the format provided in the order.

Paragraph 1 of the Order

Paragraph 1 of the order prohibits use of the term "instant tax refund" or like phrases, unless petitioner discloses that this refund is a "normal" loan with no relationship to the tax refund, and that the taxpayer will be expected to meet the normal qualifications for borrowing. Petitioners state that there has been a change in fact in that they are now able to participate with the Internal Revenue Service in an electronic filing program, in certain market areas, by which the IRS expects to be able to reduce the time for issuing refunds by approximately three weeks. Based on this expectation petitioner arranges with a bank and the taxpayer to have the bank grant the taxpayer an interest free loan in 3 days. There is a charge for this service. The taxpayer agrees to have his refund sent to the bank to repay the loan, and any interest charge by the bank during this period is paid by the petitioner. Petitioner proposes to modify the order so that they can advertise this procedure as an "instant tax refund" without the required disclosures, in those market areas in which they are participating with the IRS in the electronic filing program. The order provision will otherwise stay in effect in areas in which the IRS is not using the program.

When the Commission issued the order it suggested that if petitioners should begin offering a special loan service actually related to the tax refund, they might seek to reopen the order. The Commission agrees with the petitioners that Paragraph 1 should be modified to reflect the stated changed factual condition. However, since there is a charge for the service, and in order to regulate the term "instant", respondents have consented to modify Paragraph 1 to prohibit any implication that there is no charge, and to limit the time within which the taxpayer will receive his loan money.

Paragraph 2

Paragraph 2 prohibits "Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations in any such guarantee, or misrepresenting in any manner the terms and conditions of any guarantee." Petitioners state that this could be burdensome in attempting to include all details of a guarantee in a 30-second television commercial. When the order was issued the Commission was concerned about the guarantee that petitioners would reimburse consumers for any interest or penalty charges caused by petitioners' error in the preparation of a tax return but would not pay any additional tax. The Commission wanted this term disclosed and specifically required it in Paragraph 4 of the order. The proposed language would retain the disclosure that petitioners do not pay additional tax in the event of the error but that the consumer should look to the guarantee for all other terms and would read as follows:

Subject to the disclosure required by Paragraph 4, herein, using any guarantee without clearly and conspicuously disclosing the fact that any terms, conditions, or limitations are stated in the guarantee; or misrepresenting in any manner the terms and conditions of any guarantee.

The Commission agrees with the petitioners that it is in the public interest to modify Paragraph 2 since it is burdensome, and the modified paragraph will retain the main condition that the Commission was concerned about and will advise the consumer to read the guarantee for any other conditions. Such a provision should not be deceptive or misleading.

Paragraph 5

Paragraph 5 is an absolute prohibition against any representation that the percentage of respondents' customers who receive tax refunds is greater than the percentage of individual taxpayers at large who receive refunds. Petitioners request that the paragraph be modified so that they can make truthful and non-deceptive representations about the percentage of their customers who receive refunds. Accordingly, they request to add a clause stating "... *provided however*, that nothing herein shall prevent truthful and non-deceptive representations with respect to the average percentage of respondents' customers who receive tax refunds."

The Commission agrees that petitioners should be allowed to make truthful and non-deceptive representations. Any deceptive implication is prohibited, but the absolute prohibition is modified so that a

representation that does not cause a deceptive implication may be used.

Paragraph 6

This paragraph is an absolute prohibition against representations about the competence of respondents' tax preparing personnel. Respondents state that there is a change in fact as to the extent of training which the personnel are required to undergo compared to the training required at the time the order was issued. They also cite the change in law with respect to commercial or professional advertising and cite examples of competitors advertising the terms "expert" or "professional". They request that the paragraph be modified to prohibit: "Misrepresenting, in any manner, the competence or the ability of respondents' tax preparing personnel."

The Commission agrees that the extent of training which petitioners' personnel are now required to undergo constitutes a change in fact which justifies modification of the absolute prohibition of this paragraph to prohibit only misrepresentations of competence.

Paragraph 7

Paragraph 7 of the order establishes the format to be followed in obtaining the consent of taxpayers to use information obtained in preparing the tax return. Respondents state that since the order was issued, Section 7216 of the Internal Revenue Code establishes a required format. This accomplishes the same purpose and gives the consumer the same protection, but use of both formats becomes overlapping and burdensome. Moreover, respondents cite the fact that the Commission has amended the *H&R Block* order and the proposed modification is exactly the same language as in the *Block* order. [100 F.T.C. 523 (1982)]

The Commission agrees that compliance with the provisions of the Internal Revenue Code will accomplish the same purpose as the existing order and that respondents should not be required to use two formats, and therefore, agrees that this paragraph of the order should be modified.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) requires that an order be modified or set aside upon a satisfactory showing that changed conditions of law or fact require that the order be altered, modified or set aside. The Commission has concluded that respondents have adequately shown that changed conditions of law and fact require that the order be modified in the manner requested.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued on September 12, 1979, is hereby modified to read as follows:

ORDER

It is ordered, That respondents, Beneficial Corporation and Beneficial Management Corporation, corporations, and their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the preparation of income tax returns or the extension of consumer credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Instant Tax Refund" or "Immediate Tax Refund" or like phrases using words of similar import or meaning, unless such phrases are used in connection with an electronic refund program in which the respondents participate in conjunction with the United States Internal Revenue Service; *provided, however,* that such phrases will not be used if a loan is being offered that has no relationship to the individual's income tax refund, or refers to a "normal", "usual", "standard" or "regular" loan by the respondents, or is a loan with respect to which the prospective borrowers will be expected to meet qualifications to borrow which are "normal", "usual", "standard" or "regular" (or words having the same or equivalent meaning) under the respondents' loan qualification criteria; *provided further, however,* that each individual will receive the loan money within five days of applying for the loan, (respondents will not be responsible for any delay caused by the Postal Service), and that no advertisement relating to any such loan represents directly or by implication, contrary to fact, that there is no service charge for the refund program involving a loan.

2. Subject to the disclosure required by Paragraph 4, herein, using any guarantee without clearly and conspicuously disclosing the fact that any terms, conditions, or limitations are stated in the guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

3. Representing, directly or by implication, that respondents will reimburse their customers for any payments the customer may be required to make in addition to his initial tax payment, in instances where such additional payment results from an error by respondents in the preparation of the tax return; *provided, however,* that it shall be a defense in any enforcement proceeding for respondents to establish that they make such payments.

4. Failing to disclose, clearly and conspicuously, whenever respondents make any representation, directly or by implication, as to their responsibility for, or obligation resulting from, errors attributable to

respondents in the preparation of tax returns, that respondents will not reimburse the taxpayer for any deficiency payment which results from said errors; *provided, however*, that it shall be a defense in any enforcement proceeding for respondents to establish that they make such payments.

5. Representing, directly or by implication, that the percentage of respondents' customers who receive tax refunds is demonstrably greater than the percentage of individual taxpayers at large who receive refunds; or misrepresenting, in any manner, the magnitude or frequency of refunds received by respondents' tax preparation customers; *provided, however*, that nothing herein shall prevent truthful and non-deceptive representations with respect to the average percentage of respondents' customers who receive tax refunds.

6. Misrepresenting, in any manner, the competence or ability of respondents' tax preparing personnel.

7. Using information concerning any customers of respondents, including the name and/or address of the customer, obtained as a result of the preparation of the customer's tax return for any purpose which is not essential or necessary for the preparation of said tax return, except as specifically authorized by the Internal Revenue Service pursuant to Section 7216 of the Internal Revenue Code and the regulations promulgated thereunder or by future amendments thereto.

IN THE MATTER OF

ROSWIL, INC.

trading and doing business as

RAMEY SUPER MARKETS

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9172. Complaint,* Dec. 16, 1983—Decision, Nov. 12, 1986*

This consent order requires a Springfield, Mo. grocer, among other things, to cease engaging in concerted action that restricts the gathering or reporting of comparative grocery price data. Additionally, respondent is prohibited from: (1) requiring price checkers to buy the surveyed items; (2) denying price checkers the same access to Roswil's stores as customers; and (3) coercing any price checker, publisher or broadcaster into discontinuing price reporting. Further, respondent is required to take several steps to increase the likelihood that price surveys will be resumed in Springfield, Missouri. According to the order, the company must reimburse the local cable television station up to \$1,000 of its costs if it decides to broadcast a comparative grocery price program and notify the public that such program will be aired.

Appearances

For the Commission: *Patricia A. Bremer.*

For the respondent: *Donald W. Jones, Hulston, Jones & Sullivan,*
Springfield, Mo.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 com-

* Complaint previously published at 104 F.T.C. 526 (1984).