

Complaint

109 F.T.C.

IN THE MATTER OF

J.C. PENNEY COMPANY, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3208. Complaint, Feb. 20, 1987—Decision, Feb. 20, 1987*

This consent order prohibits, among other things, a New York City-based retailer from bringing any debt-collection cases in judicial districts other than those in which a customer lives or signed the disputed sales contract. Further, respondent is required to either transfer to a closer court, or dismiss entirely, all pending cases brought in "distant forums."

Appearances

For the Commission: *Rachelle V. Brown.*

For the respondents: *Raymond A. Messina and Mallory Duncan,*
in-house counsel, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that J. C. Penney Company, Inc., a corporation, ("respondent") has violated Section 5(a) 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. J.C. Penney Company, Inc., is a Delaware corporation, with its principal office and place of business located at 1301 Avenue of the Americas, New York, New York.

PAR. 2. Respondent is a general merchandise and catalog sales retailer, engaged in the advertising, offering for sale, sale, and distribution of clothing, household goods, and various other articles of merchandise.

PAR. 3. The acts and practices of respondent, as alleged in this complaint, have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent regularly extends credit (hereinafter referred to as "consumer credit accounts") for the purpose of facilitating consumers' purchases of respondent's products.

PAR. 5. In the course and conduct of attempting to collect allegedly delinquent consumer credit accounts in Virginia, respondent,

through local attorneys recommended by its collection agencies, regularly sued consumers. In numerous instances, consumers were sued in judicial districts other than where those consumers reside or where they signed the contract sued upon. These suits could have been brought in courts located in the judicial district where defendants reside or where they signed the contracts sued upon. The distance, cost, and inconvenience of defending against such suits effectively deprived many of those defendants of a reasonable opportunity to appear, answer, and defend. Therefore, respondent's use of such distant or inconvenient forums was, and is, unfair.

PAR. 6. The acts and practices of respondent as alleged in this complaint were and are to the prejudice and injury of the public and constituted and now constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act. Respondent may continue to employ these acts or practices in the absence of the relief requested.

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 respondents with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 J.C. Penney Company, 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 1301 Avenue of the Americas, in the City of New York, State of New York.

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

ORDER

I.

It is ordered, That respondent J.C. Penney Company, 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 the collection, or attempted collection, of any consumer credit account, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from bringing or authorizing the bringing of, or proceeding with or authorizing the proceeding with, any action to recover any allegedly delinquent consumer credit account (other than an action to enforce an interest in real property) in any judicial district or similar legal entity that is not the one in which the consumer resides at the commencement of the action or the one in which the consumer signed the contract sued upon (hereinafter "distant forum suit"); *provided, however,* that this paragraph shall not preempt any rule of law that further limits choice of forum or that requires, in actions involving real property or fixtures attached to real property, that suit be brought in a particular county, judicial district, or similar legal entity. For purposes of this order, in open end credit transactions (for example, "revolving charge accounts"), the "contract sued upon" is either the account agreement or the document (commonly called "sales slip" or "purchase order") evidencing the actual credit sale.

II.

It is further ordered, That within thirty (30) days of the date of service of this order, respondent shall terminate or cause to be terminated any distant forum suit which is pending on the date of service of this order; *provided, however,* that, respondent may terminate or cause to be terminated such suit by having the complaint either dismissed or transferred to a judicial district or similar legal entity in

which the consumer resides or signed the contract sued upon, but in the latter instance only if respondent gives the defendant a clear written notice of such action, in substantially the same form as set forth in Appendix A of this order, and the opportunity to defend equivalent to that which defendant would receive if a new suit were being brought.

III.

It is further ordered, That whenever a suit is dismissed pursuant to Paragraph II respondent shall give, within thirty (30) days thereafter, in substantially the same form as set forth in Appendix B, clear, written notice of such dismissal to the defendant to such suit, to each "consumer reporting agency," as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a), that respondent knows or has reason to know has recorded the suit in its files, and to any other person or organization whom the consumer defendant has requested be given it.

IV.

It is further ordered, That respondent shall not be deemed to have violated this order for failure to comply with Paragraph I when such failure directly concerns:

1. a distant forum suit brought on behalf of respondent and reduced to judgment prior to the date of service of this order;
2. a distant forum suit brought in the judicial district or similar legal entity appearing from respondent's business records to be defendant's last known address unless respondent otherwise knows of a more current address;
3. a distant forum suit brought in the name of a third party to recover on a consumer credit account originated by respondent but legally assigned to the third party and with respect to which respondent, prior to the bringing of the distant forum suit, has relinquished, in fact, any and all actual or beneficial ownership and control; or
4. a distant forum suit brought in the name of a third party to recover on a consumer credit account originated by a third party but referred to respondent, prior to default, for collection, provided that the third party, in fact, retains all actual and beneficial ownership and control of the account and of the bringing of the suit.

V.

It is further ordered, That respondent shall maintain and upon request make available to the Federal Trade Commission:

1. Up-to-date documentation of all suits brought during the two (2) year period immediately following the date of service of this order in connection with the collection of any consumer credit account, which documentation shall contain: (a) the name of each defendant; (b) the defendant's address; (c) the judicial district(s) or similar legal entity where the defendant resides and, if relied upon for purposes of suit, the judicial district or similar legal entity where the contract, if any, was signed; (d) the judicial district or similar legal entity where suit was filed; (e) the date filed; (f) the docket number; (g) name of plaintiff (if a collection agency or other entity suing on behalf of respondent); (h) amount claimed; (i) disposition; and (j) an explanation for the choice of forum if the suit was brought in a judicial district other than where the defendant resides or signed the contract sued upon; and

2. A written summary of suits brought in the Commonwealth of Virginia by respondent's collection counsel for the one (1) year period immediately prior to the date of service of this order, with information limited to items (a), (c), (d), and (g) in subparagraph 1 above, and a notation of whether any such suit was terminated pursuant to Paragraph II.

VI.

It is further ordered, That respondent shall distribute a copy of this order to each of its subsidiaries and operating divisions dealing with consumer credit, to each collection agency or counsel with whom respondent currently places its retail credit accounts for collection, and to any other collection agency or counsel prior to referral of respondent's retail credit accounts for collection and shall secure from each such collection agency or counsel a signed and dated statement acknowledging receipt of the order and willingness to comply with it.

VII.

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, or any other change in the

corporation, including the creation or dissolution of subsidiaries, which may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That respondent shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order including, but not limited to, copies of any notices provided to consumers pursuant to any provision of this order and copies of all statements secured from respondent's collection agencies or counsel acknowledging receipt of this order.

IX.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, signed by the respondent and setting forth in detail the manner and form of its compliance with this order.

Commissioner Azcuenaga was recorded as voting in the negative.

APPENDIX A

Consumer's Name
and address or,
if applicable, Consumer's
Attorney's Name and Address

RE: [Case Name and Docket No.]

Dear [Addressee]:

On [], J.C. Penney Company, Inc., through its attorney, [attorney's name], filed suit against ["you" or, if applicable "your client, consumer's name"]. The suit was brought in [name of court], [name of county, judicial district or similar legal entity, whichever applicable].

J.C. Penney, Inc., has agreed with the Federal Trade Commission to abide by the Commission's "fair venue standard." That standard provides that if a creditor sues a consumer for a delinquent account, the creditor may sue the consumer only in the judicial district in which the consumer resides at the beginning of the action or signed the contract sued upon.

J.C. Penney, Inc., has also agreed to dismiss or transfer any suit pending on [date of service of order] that was not brought in the proper judicial district under the Commission's standard.

Our records show, that under our agreement with the Federal Trade Commission, we should have brought suit against you [or your client] in [name of applicable county or judicial district] and not in [name of "distant forum"]. For this reason, we are seeking the court's permission to transfer the suit to [name of county or judicial district].

You should receive, from our attorney or the court, copies of all legal papers relating to our request to transfer this suit.

Decision and Order

109 F.T.C.

Sincerely,

[J.C. Penney Company, Inc., Signatory]

APPENDIX B

[Addressee's Name and Address]

RE: [Case Name and Docket No.]

Dear [Addressee]:

On [], J.C. Penney Company, Inc., caused its suit against [consumer's name] to be dismissed.

Please modify your records to reflect this additional information.

[If applicable: (S)uch suit was refiled on (date) at (place suit filed).]

Sincerely,

[J.C. Penney Company, Inc., Signatory]

cc: [Consumer's Name and Address]

IN THE MATTER OF
PHYSICIANS OF MEADVILLE, ET AL.

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

Docket C-3209. Complaint, March 2, 1987—Decision, March 2, 1987

This consent order prohibits, among other things, 61 doctors in Meadville, Pennsylvania from entering into any agreement to refuse to deal with any physician, group of physicians, or hospital, or from refusing to refer patients, for the purpose of restricting or lessening competition.

Appearances

For the Commission: *L. Barry Costilo, Garry R. Gibbs and George R. Bellack.*

For the respondents: *Barbara A. Blackmond, Horty, Springer & Mattern*, Pittsburgh, Pa., for respondent Robert N. Moyers, M.D. *Pro se* for all remaining respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (Title 15, U.S.C. Section 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondents have violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. The respondents are physicians practicing in Crawford County, Pennsylvania, in or near the city of Meadville, Pennsylvania. The respondents are engaged in the business of providing health care services to patients for a fee.

PAR. 2. Except to the extent that competition has been restrained as alleged herein, respondents have been and are now in competition among themselves or with other physicians.

PAR. 3. Respondents constitute approximately eighty percent of all physicians on the active medical staffs at Meadville City Hospital and Spencer Hospital, the two hospitals in the Meadville area.

PAR. 4. Respondents' fees are often paid directly or indirectly from outside of Pennsylvania by third-party payors. Respondents purchase and use drugs, supplies, and equipment manufactured outside of