

IN THE MATTER OF

MACY'S NORTHEAST, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FAIR CREDIT REPORTING ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3362. Complaint, Jan. 3, 1992--Decision, Jan. 3, 1992*

This consent order requires, among other things, the respondents to comply with the consumer disclosure provisions of the Fair Credit Reporting Act for job applicants, and to mail to applicants denied employment, based on a consumer report from a consumer credit reporting agency, letters stating the name and address of the consumer reporting agency that supplied the respondent with the reports.

Appearances

For the Commission: *Cynthia S. Lamb* and *David Medine*.

For the respondents: *Herbert M. Hellman*, New York, N.Y.

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 Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., I. Magnin, Inc., and Macy's Data and Credit Services Corp., corporations (hereinafter sometimes referred to as "respondents" or as "the named subsidiaries"), wholly owned subsidiaries of R. H. Macy & Co., Inc., a Delaware corporation, have 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:

DEFINITIONS

For the purposes of this complaint, the following definitions are applicable. The terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d) and 1681a(f). The term "consumer reporting agency" shall include retail loss prevention organizations or associations that compile and disseminate consumer reports on theft incidents. The term "consumer report" shall include reports disseminated by loss prevention organizations or associations.

PARAGRAPH 1. Respondent Macy's Northeast, 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 151 West 34th Street, New York, NY.

Respondent Macy's South, 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 180 Peachtree Street, N.W., Atlanta, GA.

Respondent Macy's California, 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 50 O'Farrell, San Francisco, CA.

Respondent I. Magnin, 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 135 Stockton Street, San Francisco, CA.

Respondent Macy's Data and Credit Services Corp. 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 61 Myrtle Street, Cranford, NJ.

PAR. 2. Respondents, in the ordinary course and conduct of their businesses, use information in consumer reports obtained from consumer reporting agencies in the consideration, acceptance, and denial of applicants for employment with respondents.

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

PAR. 4. Respondents, in the ordinary course and conduct of their businesses, have denied applications or rescinded offers for employment with a respondent based in whole or in part on information supplied by a consumer reporting agency, but have failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications or offers for employment, and have failed to advise consumers of the name and address of the consumer reporting agency that supplied the information.

PAR. 5. By and through the use of the practices described in paragraph four, respondents have violated the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 6. By their aforesaid failure to comply with Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondents have engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

Commissioner Yao not participating.

CONCURRING STATEMENT OF COMMISSION MARY L. AZCUENAGA

I have voted to accept the consent orders, which prohibit Kobacker and Macy's from violating Section 615(a) of the Fair Credit Reporting Act. I would have preferred, however, that the orders make the proposed consumer redress -- free copies of credit reports -- more clearly available.

Under the Act, a consumer may obtain a free copy of his or her credit report if the credit report was the basis for adverse employment action. Without this link, the credit reporting agencies are permitted by the Act to "impose a reasonable charge." Because neither Kobacker nor Macy's is required by the order to tell consumers that adverse action may have been based on a credit report, consumers must depend on the willingness of the reporting agencies voluntarily to provide free copies.

The difference between Paragraph IV in the Kobacker, McDonnell Douglas and Macy's orders and the same paragraph in the

Keystone order raises a question about fairness to respondents. Certain reporting requirements that are standard in Commission orders are limited to four years for Kobacker and McDonnell Douglas and to six years for Macy's, but Keystone's obligation is not limited in time. There is no apparent justification for treating these similarly situated respondents differently. This inconsistency, with its potential for unfairness to respondents, is just one of the costs of treating standard Commission order provisions as negotiable.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 Section 615(a) of the Fair Credit Reporting Act and Section 5(a) of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 respondents have 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, 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 Macy's Northeast, 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 151 West 34th Street, New York, NY.

Respondent Macy's South, 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 180 Peachtree Street, N.W., Atlanta, GA.

Respondent Macy's California, 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 50 O'Farrell, San Francisco, CA.

Respondent I. Magnin, 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 135 Stockton Street, San Francisco, CA.

Respondent Macy's Data and Credit Services Corp. 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 61 Myrtle Street, Cranford, NJ.

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

ORDER

For the purpose of this order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d) and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d), and 1681a(f).

I.

It is ordered, That respondents Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., I. Magnin, Inc. and Macy's Data and Credit Services Corp, their successors and assigns and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. A respondent shall not be held liable for a violation of Section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this order, to mail two (2) copies of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency from which a report was obtained, to each job applicant who was denied employment by a respondent between January 1, 1990, and the date of service of this order, based in whole or in part on information contained in a consumer report from a consumer reporting agency. Such copies of the letter shall be sent by first class mail to the last known address of the applicant that is reflected in the files of the applicable respondent, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondents. Copies of the letter attached as Appendix A need not be sent to any applicant who was denied employment with a respondent during the time period specified above if the respondent demonstrates that it had

previously given the applicant notification that complies in all respects with the provisions of paragraph I.1 of this order.

II.

It is further ordered, That for the first six (6) years, commencing with the service of this order, respondents, their successors, and assigns shall maintain for at least one (1) year, and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with this order, such documents to include, but not be limited to, all written employment evaluation criteria relating to consumer reports, written instructions given to employees regarding compliance with the provisions of this order, all notices or a written notation of the description of the form of notice and the date such notice was provided to each job applicant pursuant to any provisions of this order, and the complete application files for all applicants for whom consumer reports were obtained for whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

It is further ordered, That respondents shall, for a period of four years after the date of service of this order, deliver a copy of this order at least once per year to all employees responsible for respondents' compliance with Section 615(a) of the Fair Credit Reporting Act in respect of the use of consumer reports for employment purposes.

IV.

It is further ordered, That respondents shall, for a period of six (6) years from the date of service of this order, notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate structure of respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or

divisions, or any other change in the corporation which may affect compliance obligations arising out of the order.

V.

It is further ordered, That respondents shall, within one hundred twenty (120) days of the date of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Yao not participating.

43

Decision and Order

APPENDIX A

Dear _____:

Our records show that you applied for employment to (insert name of applicable respondent) at sometime after January 1 1990. In considering your job application, we obtained information from the consumer reporting agency identified below.

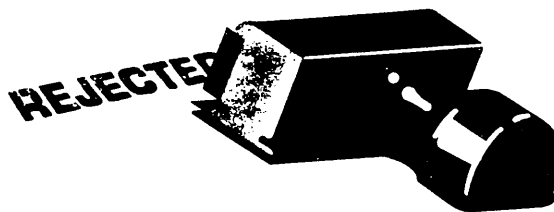
Credit Bureau of X
1234 Main Street
Anytown, USA Zip
(AC) Telephone number

Under the federal Fair Credit Reporting Act, you may learn what information is in your file by contacting this consumer reporting agency. You may obtain this information without charge if you contact the agency within the next 30 days. An extra copy of this notice is enclosed so that you may give it to the agency, should you decide to review your file.

Yours truly,

Director of Personnel

APPENDIX B



Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRAs." The most common type of CRA is the credit bureau. The information sold by CRAs to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRAs. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRAs:

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, that agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule, but you can have your physician try to obtain it for you. The CRA is *not* required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (If your inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify the report?

The new investigation may not resolve your dispute with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will also show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you

FEDERAL TRADE COMMISSION/BUREAU OF CONSUMER PROTECTION

FTC
BCP

receive notice of your application denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you do wish to visit in person, you'll need to make an appointment.

Are reports prepared on insurance and job applicants different?

If a report is prepared on you in response to an insurance or job application, it may be an *investigative* consumer report. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice will also explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a *complete* disclosure by contacting the CRA, as outlined in this brochure. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after that, with certain exceptions:

- ☐ bankruptcy information can be reported for 10 years;
- ☐ information reported because of an application for a job with a salary of more than \$20,000 has no time limitation;
- ☐ information reported because of an application for more than \$50,000 worth of credit or life insurance has no time limitation;
- ☐ information concerning a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a copy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act requires creditors to tell you the specific reasons for your denial. For example, the creditor must tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, D.C. 20580.

Federal Trade Commission
Washington, D.C. 20580

Official Business, Penalty
For Private Use: \$300

FIRST CLASS MAIL
POSTAGE & FEES PAID
Federal Trade Commission
Permit No. G-62

IN THE MATTER OF

DR. SCOTT M. ROSS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3363. Complaint, January 9, 1992--Decision, January 9, 1992*

This consent order requires, among other things, a Minneapolis cosmetic surgeon, d/b/a Mpls. Center for Cosmetic and Laser Surgery, to disclose in certain advertisements the existence of risks from -- and the expected recovery period following -- his cosmetic surgery services, and to have scientific evidence supporting results claims.

Appearances

For the Commission: *Richard Kelly, Walter C. Gross, III, and Melissa Feinberg.*

For the respondent: *James Taylor, Jr., Dorsey & Whitney,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Dr. Scott M. Ross, d/b/a Mpls. Center for Cosmetic and Laser Surgery, ("respondent" and "MPLS"), has violated certain provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41 *et. seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Dr. Scott M. Ross, d/b/a Mpls. Center for Cosmetic and Laser Surgery, is a resident of Minnesota with his principal office and place of business located at 910 E. 26th Street, Suite 425, Abbott Northwestern Medical Campus, Minneapolis, Minnesota.

PAR. 2. Respondent is a medical doctor who is currently, and has for some time, engaged in the sale and the offering for sale of