

IN THE MATTER OF

AUTOMATIC DATA PROCESSING, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3399. Complaint, Aug. 27, 1992--Decision, Aug. 27, 1992*

This consent order prohibits, among other things, a New Jersey-based company that sells computer software programs and its subsidiary from making misrepresentations concerning the advantages of financing purchases, and from selling or licensing software or printed materials the firm knows or should know are likely to be used to misrepresent comparative costs.

Appearances

For the Commission: *John F. Lefevre.*

For the respondents: *Resa T. Drasin*, in-house counsel, Roseland, N.J.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Automatic Data Processing, Inc., a corporation, and ADP, Inc., a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in public interest, hereby issues its complaint stating as follows:

PARAGRAPH 1. Respondents Automatic Data Processing, Inc., and ADP, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondents have their principal office and place of business at One ADP Boulevard, Roseland, N.J.

Respondent Automatic Data Processing, Inc., dominates and controls the acts and practices of its wholly-owned subsidiary, ADP, Inc.

PAR. 2. Respondents are now engaged in, and for some time in the past have engaged in the business of computer software and hardware licensing, sales, and service, including the provision of computer software for use by motor vehicle dealers in providing financing and insurance services to consumers.

PAR. 3. Respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, that are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents offer for license or sale and sell or license a package of computer software programs entitled "ADP Onsite Plus Finance & Insurance," designed to assist automobile dealers in completing finance and insurance contracts, disclosures, and other forms and in promoting the sale of finance and insurance services. The software allows the user to select from a menu of computer screens, each of which can be used to produce contracts, disclosures, or other forms or printouts.

PAR. 5. Respondents have included in their ADP Onsite Plus Finance & Insurance computer software package a screen entitled "Cash Comparison." The screen allows an automobile dealer to provide computer printouts to consumers. Typical and illustrative of such printouts, but not all-inclusive thereof, is the following:

===== CASH COMPARISON=====

17 SEP 1989

1) AMOUNT FINANCED.....	\$6,469.31	4) SAVINGS AMOUNT.....	\$6,469.31
2) CONTRACT TERM.....	36	5) SAVINGS RATE	7.5%
3) APR	13%		

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YEAR	TOT. PMTS	TOT.INT. PD	PRIN. BAL	PRINCIPLE ¹	INT.	BALANCE
1	\$ 434.14	\$172.14	\$6,203.51	\$6,469.31	\$100.47	\$6,569.78
2	\$2,628.84	\$693.83	\$4,268.29	\$6,569.78	\$510.03	\$7,079.81
3	\$2,628.84	\$426.73	\$2,066.18	\$7,079.81	\$549.62	\$7,629.43
4	\$2,190.70	\$124.52	\$ 0.00	\$7,629.43	\$490.48	\$8,119.91
TOTAL	\$7,882.52	\$1,417.22	\$ 0.00	\$6,469.31	\$1,650.60	\$8,119.91
NET DIFFERENCE (INTEREST EARNED-INTEREST PAID) = \$233.39						
NET MONTHLY DIFFERENCE = \$6.48						

PAR. 6. In conjunction with the promotion of their software package, respondents have made the following statements in writing to prospective customers, such as automobile dealers, concerning the meaning of the Cash Comparison printout shown in paragraph five above. Typical and illustrative of such statements, but not necessarily all-inclusive thereof, is the following: "Calculates and prints document detailing savings possible by financing vehicle versus paying cash."

PAR. 7. Through the use of the statements referred to in paragraphs five and six and others in advertisements and promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that:

(a) Customers of automobile dealers will save money by financing or arranging for financing rather than paying cash even when the interest rate for the financing higher than the rate the customers would receive on the funds to be used to make the cash payment;

(b) The number shown as "NET DIFFERENCE" on such printouts is an amount that a consumer would save by financing or arranging for financing through respondents' clients rather than redeeming a certificate of deposit and paying cash; and

(c) Such printouts are a valid comparison of the cost of financing or arranging for financing through respondents' clients rather than redeeming a certificate of deposit and paying cash.

¹ *Sic.*

PAR. 8. In truth and in fact,

(a) Customers of automobile dealers will not save money by financing or arranging for financing rather than paying cash when the interest for the financing is higher than the rate the customers would receive on the funds to be used to make the cash payment;

(b) The number shown as "NET DIFFERENCE" on such printouts is not an amount that a consumer would save by financing or arranging for financing through respondents' clients rather than redeeming a certificate of deposit and paying cash; and

(c) Such printouts are not a valid comparison of the cost of financing or arranging for financing through respondents' clients rather than redeeming a certificate of deposit and paying cash. A valid comparison of the cost of financing rather than paying cash would, in most if not all cases, show that it is to the customer's advantage to pay cash rather than finance.

Therefore, the representations set forth in paragraph seven above were, and are, false and misleading.

PAR. 9. Respondents' dissemination of the false and misleading representations as alleged in this complaint, and placement in the hands of others of the means and instrumentalities by and through which others may have used said false and misleading representations, constitute an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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 a 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 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 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 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. Respondents Automatic Data Processing, Inc., and ADP, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware, with their principal office and place of business located at One ADP Boulevard, in the City of Roseland, State of New Jersey. Respondent Automatic Data Processing, Inc., dominates and controls the acts and practices of its wholly-owned subsidiary, ADP, Inc.

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

I.

It is ordered, That respondents Automatic Data Processing, Inc., a corporation, ADP, Inc., a corporation, and their successors and assigns, agents, representatives, and employees, directly or through any corporation, partnership, unincorporated association, division, or

other device, in connection with the licensing, sales, and service of computer software and hardware, do forthwith cease and desist from:

(1) Representing in any manner, directly or by implication, that a consumer can save money by financing rather than paying cash for a purchase, when the interest rate for the financing is higher than the rate the consumer would receive on the funds to be used to make the cash payment;

(2) Misrepresenting in any manner, directly or by implication, through the use of terms such as "cash comparison," "net difference," or other terms used in any computer printout or other statement, that the printout or other statement accurately describes the amount (if any) that the consumer can save by financing or arranging for financing through respondents' clients rather than by paying cash for a purchase;

(3) Misrepresenting in any other manner, directly or by implication, the comparative cost to a consumer of financing a purchase as opposed to paying cash for it; and

(4) Selling, licensing, continuing to license or otherwise providing software or printed materials to any person when respondents know or should know that the software or printed materials are likely to be used to misrepresent in any manner, directly or by implication, the comparative cost to a consumer of financing a purchase as opposed to paying cash for it.

II.

It is further ordered, That respondents shall, in conjunction with their next Routine Release of their "Onsite Plus Finance & Insurance" computer software (the "Software"), but in any case within ninety (90) days of the date of service of this order, notify, through a letter in the form set out in Attachment A, all purchasers or licensees of the Software that:

(1) Respondents have entered into a consent agreement with the Federal Trade Commission to cease and desist from the use of the "Cash Comparison" screen and printout in the Software, and they will no longer be available as part of the software package;

(2) Because use of such screen and printout may mislead consumers, the purchaser or licensee should immediately discontinue such use.

For purposes of this paragraph, the term "Routine Release" means an update of respondents' computer software package, containing improvements, additions, and/or corrections, that is or may be periodically provided to purchasers and licensees of respondents' software and which such purchasers and licensees are contractually obligated to install on their computer systems.

III.

It is further ordered, That respondents shall maintain for at least three (3) years and, upon request, make available to the Federal Trade Commission for inspection and copying, documentation of their compliance with this order.

IV.

It is further ordered, That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations that may affect compliance obligations arising out of this order.

V.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

ATTACHMENT A

Dear Client:

Automatic Data Processing, Inc., and its subsidiary, ADP, Inc. (collectively referred to as "ADP"), have entered into a consent agreement with the Federal Trade Commission (FTC) to stop providing, selling, licensing or otherwise supplying you with the "Cash Comparison" screen and printout in our Onsite Plus Finance & Insurance software. According to the FTC, use of the screen and printout conveys the erroneous impression that a consumer will save money by financing or arranging for financing rather than paying cash. The FTC alleges that, because the consumer will not save money by financing, this representation is false and misleading and a violation of the Federal Trade Commission Act. The FTC has not otherwise challenged the software.

As of (date), ADP updated its Onsite Plus Finance & Insurance software and removed the "Cash Comparison" screen and printout from this software package. As you know, your licensing agreement with ADP requires you to promptly install all such updates. Therefore, you are not authorized to use the "Cash Comparison" and continued use of the "Cash Comparison" will be a violation of your license. Because the screen and printout may be misleading to consumers, you should immediately stop using them. You should also be aware that the FTC has taken the position that the use of any such comparison, whether manually created or computer generated, may be deceptive and misleading and a violation of federal law.

Sincerely yours,

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* * *

IN THE MATTER OF

PATRICIA WEXLER, M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3400. Complaint, Aug. 31, 1992--Decision Aug. 31, 1992*

This consent order prohibits, among other things, a New York doctor from misrepresenting the efficiency of Omexin, a hair loss treatment, or any similar treatment concerning the curtailment of hair loss or the promotion of hair growth, and from making certain representations unless she possesses competent and reliable scientific evidence to substantiate such representations. The respondent also is prohibited from disseminating or assisting with the dissemination of a program-length advertisement regarding baldness.

Appearances

For the Commission: *Lesley A. Fair, Lisa B. Kopchik and Michael J. Bloom.*

For the respondent: *Mary D. Dorman*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Patricia Wexler, M.D., hereinafter sometimes referred to as 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. Respondent Patricia Wexler, M.D. ("Wexler") is or was at relevant times herein a medical doctor licensed to practice by the State of New York, with a specialty in dermatology. Dr. Wexler's business address is 568 Broadway, New York, New York. Dr. Wexler has aided in the promotion of the Omexin System for Hair ("Omexin"), a purported treatment for hair loss, by providing an endorsement of the product on the program-length television