

Complaint

116 F.T.C.

IN THE MATTER OF

AMERICAN FAMILY PUBLISHERS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9240. Complaint, Apr. 16, 1990--Decision, Jan. 21, 1993*

This consent order prohibits, among other things, a New Jersey-based seller of magazine subscriptions from misrepresenting that an attorney is actively and substantially involved in the collection of any debt, and that legal action with respect to any alleged debt is about to be, or will be, initiated. Respondent also is prohibited from failing to instruct any debt collector it retains, engages or employs to comply fully with all the provisions of the Fair Debt Collection Practices Act.

Appearances

For the Commission: *David Medine, Roger J. Fitzpatrick and Christopher Keller.*

For the respondent: *Charles J. Miller and David H. Carlin, Loeb & Loeb, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Family Publishers, a joint venture partnership of The Time Incorporated Magazine Company and AFP Associates, hereinafter 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. American Family Publishers is a joint venture partnership of The Time Incorporated Magazine Company and AFP

Associates, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Four Gateway Center, Suite 1000, Newark, New Jersey.

PAR. 2. Respondent has been and is now engaged in the advertising, offering for sale, and sale of magazine subscriptions directly by mail.

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

PAR. 4. Respondent, in the course and conduct of its business, has engaged and now engages various debt collection agencies for the purpose of collecting debts allegedly owed to respondent.

PAR. 5. In the course and conduct of its business, respondent had knowledge of, and approved, the collection letters that the aforementioned debt collection agencies mailed to consumers allegedly owing debts to respondent.

PAR. 6. Typical contents of the letters referred to in paragraph five, but not necessarily all inclusive thereof, are the following:

Letter A:

Attorney's Name
Attorney's Address

Your creditor has requested that legal action be commenced in order to satisfy your lawful debt to him. . .

You are accordingly advised that unless payment is received by this office within five (5) days from the date of this letter I will instruct my client, your creditor, to retain an attorney to commence a law suit against you without further notice.

Such action would presumably result in a judgment being entered against you by the creditor, which may include court costs, interest and other disbursements, in addition to the amount presently due. In addition, if the judgment is entered, a property and/or income execution may be issued by the Sheriff's office in your County in order to effect collection of the judgment.

Attorney's Signature

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Letter B :

Attorney's Name

I am the attorney hired by American Family Publishers to protect their interests in the United States. I have filed suits and obtained judgments on small balance accounts just like yours. My authority to collect these accounts includes the enforcement of judgments when received and docketed or, I can forward your account to a collection agency.

PAR. 7. By mailing to consumers the letter referred to in paragraph six, and others not specifically set forth herein, respondent's debt collection agencies represented, directly or by implication, that:

A. An attorney is actively and substantially involved in the collection of the debt to which the letters refer;

B. Legal action with respect to the alleged debt is about to, or will, be initiated if the debt is not paid.

PAR. 8. In truth and in fact:

A. An attorney is not actively and substantially involved in the collection of the debt to which the letters refer;

B. Legal action with respect to the alleged debt is neither about to, nor will, be initiated if the debt is not paid.

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

PAR. 9. Because respondent has knowingly approved the representations made by its debt collection agencies as set forth in paragraph seven, or has acted in concert with or knowingly assisted its debt collection agencies in making such representations, respondent has engaged in unfair and deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with a violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been furnished with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent is a joint venture partnership organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Four Gateway Center, Newark, New Jersey.

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

I.

It is ordered, That respondent American Family Publishers, a joint venture partnership of The Time Incorporated Magazine Company and AFP Associates, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, agent, independent contractor, or other device, in connection with the collection or attempted collection of any debt 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, that:

- (1) An attorney is actively and substantially involved in the collection of any debt;
- (2) Legal action with respect to any alleged debt is about to, or will, be initiated.

B. Failing to instruct any debt collector it retains, engages, or employs to comply fully with all provisions of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*, as amended or as it may hereafter be amended.

II.

It is further ordered, That respondent shall distribute a copy of this order to each of its present and future officers, agents, representatives, and employees having responsibility with respect to the collection of debts and to each of the present and future debt collectors that respondent retains, engages or employs and shall

secure from each such person or entity a signed statement acknowledging receipt of said order.

III.

It is further ordered, That:

A. For purposes of this order, the following definitions shall apply:

(1) “*Consumer Accounts*” shall mean a debt owed to respondent by a direct mail purchaser of magazines or other goods or products;

(2) “*Debt Collector*” shall mean an independent third party engaged in the collection of debts on behalf of itself or others.

B. Respondent is enjoined from:

(1) Encouraging, inducing, advising or coercing any debt collector to which it sells, transfers, or assigns title to consumer accounts to engage in acts or practices that are prohibited by Section I(A) of this order with respect to such consumer accounts, provided that mere negotiation of the price of sale without referring to or suggesting practices prohibited by Section I(A) of this order shall not be deemed to be encouraging, inducing, advising or coercing;

(2) Failing to take reasonable steps sufficient to determine whether any debt collector to which it sells, transfers, or assigns title to consumer accounts engages in collection activities prohibited by Section I(A) of this order with respect to such consumer accounts. Respondent shall have satisfied its duty to determine which practices are employed by a debt collector if it instructs and contractually requires such debt collector to provide regularly to respondent collection letters used by such debt collector, and investigates all consumer complaints received by respondent (including those

received from third parties such as government agencies and better business bureaus) that state or imply a violation of Section I(A) of this order by debt collectors.

(3) Selling, transferring or assigning title, or continuing to sell, transfer or assign title to consumer accounts to any debt collector when it has actual knowledge or knowledge fairly implied that such debt collector is engaged in acts or practices prohibited by Section I(A) of this order, unless respondent has a *bona fide* belief that such debt collector is immediately ceasing to engage in such prohibited acts or practices.

(4) Failing to notify the Associate Director of Enforcement that it has terminated the sale, transfer or assignment of title to consumer accounts to a debt collector pursuant to the requirements of subsection (3) above.

(5) Failing to maintain, for a period of five (5) years from the date of entry of this order, records sufficient to demonstrate compliance with the order.

IV.

It is further ordered, That notwithstanding anything herein to the contrary:

A. Respondent shall have a complete defense to any charge that it has violated Section I(A) of this order if title to the subject consumer accounts had been, at the time the alleged violations occurred, assigned or transferred to a debt collector in a *bona fide*, arm's-length irrevocable sale; and

B. A debt collector shall not be deemed retained, engaged or employed for purposes of determining compliance with Section I(B) of this order if title to the subject consumer accounts had been, at the time the alleged violations occurred, assigned or transferred to such debt collector in a *bona fide*, arm's length irrevocable sale.

V.

It is further ordered, That for a period of five (5) years from the entry of this order, respondent shall promptly notify the Federal Trade Commission at least thirty (30) days prior to any proposed change, such as relocation, dissolution, assignment, or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of this order.

VI.

It is further ordered, That respondent shall, within sixty (60) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

THE ISALY KLONDIKE COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3412. Complaint, Jan. 28, 1993--Decision, Jan. 28, 1993*

This consent order prohibits, among other things, a Florida-based, frozen dessert bar corporation from misrepresenting the amount of fat, any other nutrient or ingredient, or calories in any of its frozen food products in the future. In addition, the order prohibits the respondent from misrepresenting the effect of any frozen food product on serum cholesterol levels or the risk of heart disease through the use of terms such as "low in cholesterol" or in any other manner.

Appearances

For the Commission: *Robert C. Cheek* and *Joel Winston*.

For the respondent: *Martin L. Holton, III, Womble, Carlyle, Sandridge & Rice*, Winston-Salem, N.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Isaly Klondike Company, a corporation formerly known as Klondike (Southeast) Corporation, ("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 The Isaly Klondike Company, a corporation formerly known as Klondike (Southeast) Corporation, is a Delaware Corporation. On January 1, 1992, The Hanover Klondike Company, Inc., a Delaware corporation, and Klondike (Pacific)