

IN THE MATTER OF

CITICORP CREDIT SERVICES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3413. Complaint, Jan. 29, 1993--Decision, Jan. 29, 1993*

This consent order prohibits, among other things, a New York-based processor of credit card transactions to determine each month whether the chargeback rate for each of its merchants exceeds a certain percentage of all credit card transactions for two of the preceding three months. The respondent is required to stop processing the credit card sales of merchants with excessive chargeback rates or determine whether each merchant's chargebacks are the result of fraudulent, deceptive or unfair activity relating to the sale, advertising, promotion, or distribution of goods or services to consumers, and if so, to stop processing credit card transactions for the merchant at that point.

Appearances

For the Commission: *David Medine* and *Stephen Cohen*.

For the respondent: *Christopher Lipsett, Wilmer, Cutler & Pickering*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Citicorp Credit Services, Inc., a corporation hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, and alleges as follows:

PARAGRAPH 1. Respondent, Citicorp Credit Services, 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 1 Court Square, Long Island City, New York.

PAR. 2. Respondent has been engaged in the business of contracting with merchants to process credit card transactions and chargebacks and provide settlement services by funding those transactions processed.

PAR. 3. The acts and practices of respondent alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act.

PAR. 4. Respondent, in the course and conduct of its business, entered into an agreement with Credit Card Travel Services, Inc., d/b/a BankCard Travel Club ("BankCard") to provide settlement services, including the processing of credit card transactions.

PAR. 5. During the course of its business as a travel club, BankCard was engaged in unfair and deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a), by, *inter alia*, billing consumers after they cancelled their memberships and failing to issue refunds.

PAR. 6. Respondent, in the course and conduct of its business, continued to process credit card transactions for BankCard when it knew or should have known that such transactions resulted from unfair and deceptive acts or practices.

PAR. 7. By providing the services described in paragraphs four and six above, respondent substantially assisted and aided and abetted BankCard in its unfair and deceptive acts or practices.

PAR. 8. Respondent's aforesaid practices violate Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent Citicorp Credit Services, Inc., a corporation, and respondent having been furnished thereafter with a copy of the draft of complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 5(a) 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 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 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 Citicorp Credit Services, 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 1 Court Square, Long Island City, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

DEFINITIONS

1. "*Credit Card*" means all credit cards and charge cards for which respondent, pursuant to contract with the merchant, processes transactions and Chargebacks and provides the merchant with settlement services (funding for transactions processed);
2. "*Merchant*" means a business (in whatever legal form) for which respondent processes Credit Card transactions;

3. “*Chargeback*” means a sales draft or transaction record, whether in print or electronic form, returned after presentment by a credit card issuer to a merchant’s credit card processor;

4. “*Consumer Dispute Chargeback*” means a chargeback that arises under any of the Visa or Master Card Chargeback codes, or chargeback codes for other credit card companies, that are equivalent to the categories described in the Fair Credit Billing Act, Sections 226.13(a) (1), (2), (3), and (6) of Regulation Z, 16 CFR 226.13(a) (1), (2), (3), and (6). A chargeback that is initiated by a person other than the cardholder before the transaction is placed on the cardholder’s account is not a consumer dispute chargeback;

5. “*Excessive Chargebacks*” means chargebacks that exceed six percent (6%) of all credit card transactions for any single credit card company for two (2) out of three (3) consecutive months. In determining the chargeback rate, respondent may exclude any month in which there are fewer than fifty (50) credit card transactions or fifteen (15) chargebacks. Respondent may assume that the merchant’s chargeback rate is the same for all credit card companies, unless respondent knows or should know that the merchant’s chargeback rate is higher for one credit card company than for the others;

6. “*Excessive Consumer Dispute Chargebacks*” means consumer dispute chargebacks that exceed three percent (3%) of all credit card transactions for any single credit card company for two (2) out of three (3) consecutive months. In computing this consumer dispute chargeback rate, respondent may exclude any month in which there are fewer than fifty (50) credit card transactions or fifteen (15) consumer dispute chargebacks. Respondent may assume that the merchant’s consumer dispute chargeback rate is the same for all credit card companies, unless respondent knows or should know that the merchant’s consumer dispute chargeback rate is higher for one credit card company than for the others;

7. “*Chargeback Reduction Plan*” means a plan that reduces the merchant’s rate of consumer dispute chargebacks below three percent (3%) for transactions occurring during the plan by the fourth month, as reported in the fifth month, after the plan begins, and maintains the

consumer dispute chargeback rate below three percent (3%) for the three (3) consecutive months thereafter. In computing the consumer dispute chargeback rate, respondent may exclude any month in which there are fewer than fifty (50) credit card transactions or fifteen (15) consumer dispute chargebacks;

8. “*Terminate*” means to cease processing credit card transactions for a merchant. Termination does not require that respondent cease processing chargebacks or consumer disputes with respect to prior transactions, or cease other business relationships with a merchant. Termination does not require that respondent cease processing credit card transactions for a merchant that has lines of business that are not subject to an investigation and are separate and distinct from the line of business currently under investigation;

9. “*Investigation*” means a good faith attempt to obtain and review, within thirty (30) days, the following information, as relevant, to determine whether a significant cause of the merchant's chargebacks is that the merchant is engaged in fraudulent, deceptive, or unfair activity relating to the sale, advertising, promotion, or distribution of goods or services to consumers:

a. The merchant's advertisements, sales scripts, promotional materials, and operating manuals;

b. The type of service or product offered by the merchant; the terms and conditions of the sale or offer of such service or product; the truthfulness and accuracy of representations made to consumers; and the adequacy of disclosures;

c. Complaints made or referred to respondent from any third party concerning the services or products of the merchant or its principals, excluding chargeback documentation;

d. Whether the merchant or its principals have been terminated by any other credit card processor and, if so, why the termination occurred; and

e. Whether the merchant or its principals have been investigated by any applicable federal law enforcement agency or state law enforcement agency for those states in which the merchant has its principal place of business, and up to five (5) additional states in

which the merchant transacts a significant amount of business, and if such information is available, the reason the law enforcement agency initiated the investigation and the outcome of the investigation.

If the merchant refuses to provide reasonably available information in its possession, custody, or control that the respondent has requested pursuant to the investigation, respondent shall presume the information would have tended to show that the merchant engaged in fraudulent, deceptive, or unfair activity.

ORDER

I.

It is ordered, That Citicorp Credit Services, Inc., its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the processing of any credit card transaction, do forthwith cease and desist from:

A. Failing to determine, within fifteen (15) days of the later of (1) the end of each month or (2) receipt of the data upon which the monthly calculation is based, whether a merchant has excessive chargebacks;

B. Failing, for any merchant with excessive chargebacks, either to terminate the merchant immediately or to commence an investigation immediately;

C. Failing, by the close of an investigation, to conclude as to whether a significant cause for the merchant's excessive chargebacks is that the merchant is engaged in fraudulent deceptive, or unfair activity relating to the sale, advertising, promotion, or distribution of goods or services to consumers and, if respondent so concludes, to terminate the merchant promptly.

D. Failing to determine, within the later of (1) twenty-five (25) days from the end of each month or (2) fifteen (15) days from the receipt of the data upon which the monthly calculation is based, whether a merchant has excessive consumer dispute chargebacks;

E. Failing, for any merchant with excessive consumer dispute chargebacks, either to terminate the merchant immediately or to require the merchant within twenty-one (21) days of the determination under paragraph D to commence and follow a charge-back reduction plan;

F. Failing to terminate any merchant immediately whose consumer dispute chargebacks have not been reduced to or maintained at the levels required by the chargeback reduction plan, provided that respondent may, while a chargeback reduction plan is in effect, conduct an investigation, and if respondent concludes that there is not significant evidence that the merchant's excessive consumer dispute chargebacks are the result of fraudulent, deceptive, or unfair activity by the merchant relating to the sale, advertising promotion, or distribution of goods or services to consumers, then respondent need not terminate the merchant;

G. Providing processing for any merchant respondent has terminated within the last year because of excessive chargebacks or excessive consumer dispute chargebacks unless respondent has conducted an investigation and has concluded on the basis of the investigation that the merchant is not engaged in fraudulent deceptive, or unfair activity relating to the sale, advertising, promotion, or distribution of goods or services to consumers;

H. Nothing in paragraphs A through G of this part shall be construed to prohibit or restrict respondent from terminating the account of a merchant at an earlier time than required by this order and on such terms and conditions as respondent deems warranted.

II.

It is further ordered, That respondent shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order including, but not limited to, records relating to chargeback

volume, investigations, the terminations of any merchants, or any provision of part I of this order.

III.

It is further ordered, That respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

IV.

It is further ordered, That respondent, for a period of five (5) years following the date of service of this order, shall promptly 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, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

V.

It is further ordered, That respondent shall, within one hundred and eighty (180) 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

GENERAL ELECTRIC COMPANY

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

Docket C-3414. Complaint, Jan. 29, 1993--Decision, Jan. 29, 1993

This consent order prohibits, among other things, a New York-based manufacturer of lighting products from misrepresenting the relative light output or wattage of the bulbs, and from representing without certain qualifications relative energy cost savings or any environmental benefit for its bulbs.

Appearances

For the Commission: *Joel Winston, Sara Greenberg, and Phoebe Morse.*

For the respondent: *Michael Sohn and Deborah Feinstein, Arnold & Porter, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that, General Electric Company, a corporation, 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 General Electric Company is a New York corporation, with its offices and principal place of business located at One River Road, Schenectady, NY.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed throughout the United States incandescent light bulbs under the trade name "ENERGY CHOICE™."

PAR. 3. The acts or practices of respondent alleged in this complaint constitute the maintenance of a substantial course of trade