

Complaint

116 F.T.C.

IN THE MATTER OF

INTER-FACT, 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-3424. Complaint, April 14, 1993--Decision, April 14, 1993

This consent order requires, among other things, an Ohio corporation and two of its officers to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information for any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished; or from furnishing any consumer report under any other circumstances not permitted by Section 604 of the Fair Credit Reporting Act. In addition, respondents are required to notify the consumer whenever a consumer report is furnished for employment purposes and contains information that may adversely affect the consumer's ability to obtain employment.

Appearances

For the Commission: *David Medine, Ronald G. Isaac and Barry Cutler.*

For the respondents: *Nancy Noall, Water, Haverfield, Buescher & Chockley, Cleveland, OH.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Inter-Fact Inc., a corporation, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, 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 purpose of this complaint, the following definitions apply:

"Person," "consumer," "consumer report," "consumer reporting agency," and *"employment purposes"* are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

"Subscriber" means any person who is approved for or obtains a consumer report from respondents;

"Permissible purpose" means any of the purposes listed in Section 604 of the Fair Credit Reporting Act, 15 U.S.C. 1681b, as amended, for which a consumer reporting agency may lawfully furnish a consumer report. These purposes are:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe:

(A) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) Intends to use the information for employment purposes; or

(C) Intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other

benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

PARAGRAPH 1. Respondent Inter-Fact Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 20676 Southgate Park Boulevard, Maple Heights, Ohio.

Respondents James Polgar and Bruce R. Marks are officers of the corporate respondent. They formulate, direct, and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of said corporation.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now and have been regularly engaged in the practice of procuring and assembling information on consumers for the purpose of furnishing, for monetary fees, consumer reports to third parties. Respondents furnish these consumer reports to third parties through the means or facilities of interstate commerce. Hence, respondents are consumer reporting agencies, as defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Respondents regularly furnish consumer reports to subscribers under circumstances in which respondents cannot reasonably conclude that the reports will be used for a permissible purpose. Typical and illustrative, but not all inclusive, of these circumstances are the following:

A. In certain instances, respondents furnish consumer reports to new subscribers without first having made a reasonable effort to verify the identities of these subscribers and the purposes for which they will use the reports.

B. Respondents regularly furnish consumer reports to new subscribers without first having them certify the purpose for which they seek to obtain consumer reports and that the reports will be used for no other purpose.

C. Respondents regularly furnish consumer reports to subscribers who typically have both permissible and impermissible purposes for using consumer reports. Among such subscribers are attorneys and private investigators. Respondents provide consumer reports to these subscribers without having them certify, at the time of each request, the purpose for which the report is to be used and that the report will be used for no other purpose.

D. Respondents make no effort to verify that consumer reports are in fact used for the purposes stated by subscribers for obtaining the reports.

PAR. 4. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 604 of the Fair Credit Reporting Act by furnishing consumer reports to persons whom respondents have no reason to believe intend to use the information for a permissible purpose under Section 604.

PAR. 5. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604.

PAR. 6. Respondents regularly furnish consumer reports for employment purposes that contain items of information on consumers which are matters of public record and are likely to have an adverse effect on a consumer's ability to obtain employment.

PAR. 7. At the time respondents furnish the consumer reports described in paragraph six, respondents, in many instances, do not notify the subject consumers that respondents are reporting public record information about them, nor do they apprise these consumers

of the names and addresses of the subscribers to whom the information is being reported.

PAR. 8. Respondents do not maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported, it is complete and up to date.

PAR. 9. By and through the acts and practices alleged in paragraphs six, seven, and eight, respondents have violated Section 613 of the Fair Credit Reporting Act.

PAR. 10. The acts and practices set forth in this complaint as violations of the Fair Credit Reporting Act constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act, pursuant to Section 621(a) of the Fair Credit Reporting 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 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 Fair Credit Reporting Act and the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, and 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 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. Respondent Inter-Fact Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 20676 Southgate Park Boulevard, in the City of Maple Heights, State of Ohio.

Respondents James Polgar and Bruce R. Marks are officers of said corporation. They formulate, direct, and control the policies, acts, and practices of said corporation, and their principal office and place of business is located at the above stated address.

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 following definitions apply:

“Person,” “consumer,” “consumer report,” “consumer reporting agency,” and “employment purposes” are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

“Subscriber” means any person who is approved for or obtains a consumer report from respondents;

"Mixed-use subscriber" means a subscriber who in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

"Permissible purpose" means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

I.

It is ordered, That respondents, Inter-Fact Inc., a corporation, its successors and assigns, and its officers, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the furnishing of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report under any circumstances not permitted by Section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current-subscribers, within six months after the date of this order:

(i) Obtaining from each subscriber a written certification stating the nature of the subscriber's business, the projected number of consumer reports the subscriber expects to obtain from respondents on a monthly basis, and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person

signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under Section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a written record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not verified through other means (*e.g.*, through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under Section 604 of the FCRA that is substantially identical to the summary attached to this order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to \$5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers:

(i) Requiring, any time a subscriber requests a consumer report for employment purposes pursuant to Section 604(3)(B) of the FCRA, that the subscriber identify and certify that purpose, unless the subscriber has previously certified that purpose to respondents, pursuant to subparagraph 2.a.(i) above, as the only purpose for which it requests consumer reports.

(ii) Requiring, any time a subscriber requests a "consumer report" for a "legitimate business need" pursuant to Section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. For example, a landlord requesting such a report in connection with rental of an apartment must specify that as his or her purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under Section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv)(A) Conducting periodic checks; not announced to the subscriber, to verify that each mixed-use subscriber is using consumer reports solely for permissible purposes. Such checks will be conducted using one of the following methods:

(1) By conducting annual checks at least once every twelve months. For each such subscriber, such checks will be performed on the greater of five reports or ten percent (10%) of the first 300 consumer reports furnished chronologically to that subscriber during the previous six-month period and two percent (2%) of all additional reports furnished to that subscriber during the same six-month period. Respondents shall check the first report within that period and every tenth report thereafter of the first 300 reports furnished chronologically within that period and then every fiftieth report of all additional reports furnished to the subscriber during that same period; or

(2) By conducting monthly checks for at least six months of each year. For each such subscriber, such checks will be performed on the greater of one report or ten percent (10%) of the total number of consumer reports furnished to that subscriber during the previous one-month period. Respondents shall check the first report within that period and every tenth report furnished chronologically thereafter until the requisite number of reports has been checked.

(iv)(B) Respondents shall conduct these checks by:

(1) Sending a questionnaire by first class mail, postage prepaid, to the report subject stating that a consumer report was furnished to a subscriber who shall be identified by name and address, the date of the report, and the purpose certified by the subscriber for obtaining it. The questionnaire shall ask whether the subscriber had such a purpose and, if not, whether the report subject knows of any other purpose for which the subscriber may have sought the report. Respondents shall provide a self-addressed, postage pre-paid envelope and request that the questionnaire be returned therein; or by

(2) Providing and obtaining the information set forth in subparagraph (1) above through an in-person or telephone interview, and by recording such information in written form.

(v) Respondents are not required to conduct the procedure set forth in subparagraph I.2.b.(iv)(B) with respect to any consumer report for which respondents have received:

(a) A copy of a court order or a federal grand jury subpoena ordering the release of such report;

(b) Documentation signed by the consumer on whom the report was furnished expressly authorizing the release of such report;

(c) In the case of a report for which the purpose certified was the collection of a judgment, a copy of the court judgment; or

(d) In the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention, a copy of an official business record (for example, a W-2 Form) clearly identifying the subscriber or the subscriber's principal as the employer of the consumer on whom the report was furnished.

(vi) Requiring each subscriber to provide on an annual basis written certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents,

and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports and any substantial change in the number of consumer reports expected to be obtained.

(vii) Desisting from furnishing consumer reports to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(iv)(A) and (B), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error -- *i.e.*, a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in Section 613(1) of the FCRA. Respondents are not required to provide this notification if they have received written confirmation directly or indirectly from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer or, alternatively, have received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in Section 613(2) of the FCRA.

II.

It is further ordered, That respondents, their successors, and assigns shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, all documents pertaining to respondents' annual checks on mixed-use subscribers' purposes for obtaining consumer reports, instructions given to employees regarding compliance with the provisions of this order, and any notices provided to subscribers in connection with the terms of this order.

III.

It is further ordered, That respondents shall deliver a copy of this order, or a synopsis thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of 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 the corporate respondent 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 corporation that might affect compliance obligations arising out of the order.

V.

It is further ordered, That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or furnishing consumer reports or access to consumer reports to third parties, or of his affiliation with a new business or employment in which his own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI.

It is further ordered, That respondents shall, within sixty (60) days of service of this order upon them, 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.

EXHIBIT A

IMPORTANT NOTICE FOR SUBSCRIBERS

The Federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason

is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that Section 604 of the Act permits.

- (1): Pursuant to court order, or a subpoena issued by a federal grand jury.
- (2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate the consumer for possible employment, promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit, employment, or insurance -- those purposes are permissible only if they meet the standards of (3)(A) - (C).

CONSUMER REPORTS WILL BE PROVIDED
ONLY FOR THESE PURPOSES

Complaint

116 F.T.C.

IN THE MATTER OF

B & J SCHOOL BUS SERVICE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3425. Complaint, April 22, 1993--Decision, April 22, 1993*

This consent order prohibits, among other things, three school bus transportation companies (B & J, Ryder, and Mayflower) that provide bus service in the Kansas City Missouri School District from entering into agreements with each other or with any other school bus transportation provider or potential provider -- with respect to school bus transportation services in the Kansas City area -- to submit jointly determined bids; to refrain from bidding; to allocate or divide jobs, markets, customers, contacts, or territories; or to set prices or other terms and conditions. In addition, the order prohibits the companies, for three years, from communicating to each other or to past, present or likely future providers of bus service to the Kansas City School District their plans to bid, or not to bid, for those services.

Appearances

For the Commission: *Thomas J. Russell* and *Catherine R. Fuller*.

For the respondents: *Ken Joyce*, in-house counsel for B & J School Bus Service, Kansas City, MO. *E. Perry Johnson*, in-house counsel for Ryder Student Transportation Services, Inc., Miami, FL. *Larry Rouse, Rouse, Hendricks, German, May & Schni, PC*, Kansas City, MO.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that B & J School Bus Service, Inc., Ryder Student Transportation Services, Inc., and Mayflower Contract Services, Inc., corporations, hereinafter sometimes collectively referred to as "respondents," have violated