

## IN THE MATTER OF

## MARSHALL FIELD &amp; COMPANY

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-3453. Complaint, Aug. 3, 1993--Decision, Aug. 3, 1993*

This consent order requires, among other things, a Chicago-based retail chain to comply with the disclosure provisions of the Fair Credit Reporting Act (FCRA) for future applicants denied employment based on information obtained from a consumer reporting agency, regardless of whether alternative employment is offered. It also requires the company to send a letter to past job applicants denied employment, since August 1990, but not previously given the requisite disclosure, so that recipients can check the information for accuracy and seek to correct any errors.

*Appearances*

For the Commission: *Cynthia S. Lamb* and *Donald E. d'Entremont*.

For the respondent: *John D. French, Faegre & Benson*, Minneapolis, MN.

## 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 Marshall Field & Company, a corporation, hereinafter referred to as respondent, has 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, Section 15 U.S.C. 1681, 1681a(c), 1681a(d) and 1681a(f).

PARAGRAPH 1. Respondent Marshall Field & Company is a corporation organized existing and doing business under and by virtue of the laws of the State of Delaware, with offices located at 777 Nicollet Mall, Minneapolis, Minnesota and principal place of business in Chicago, Illinois.

PAR. 2. Respondent, in the ordinary course and conduct of its business, uses information in consumer reports obtained from consumer reporting agencies in the consideration, acceptance, and denial of applicants for employment with respondent.

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 ordinary course and conduct of its business, has denied applications or rescinded offers for employment which respondent based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications or offers for employment, and has 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, respondent has violated the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

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

## DECISION AND ORDER

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

The respondent, its attorney, 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 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 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 the respondent has 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 Marshall Field & Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with offices at 777 Nicollet Mall, Minneapolis, Minnesota and principal place of business located in Chicago, Illinois.

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

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. 1681, 1681a(c), 1681a(d), and 1681a(f).

## I.

*It is ordered*, That respondent Marshall Field & Company, a corporation, its successors and assigns, and its 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, regardless of whether alternative employment is offered, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and street address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of Section 615(a) 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 supplying the report to each applicant who was denied employment by Marshall Field & Company, between August 1, 1990, and the date this order is issued, based in whole or in part on information contained in a consumer report from

a consumer reporting agency, such copies of the letter to be sent by first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondent. Copies of the letter attached as Appendix A need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent Marshall Field & Company, has 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 respondent, its successors, and assigns shall for at least five (5) years maintain for one (1) current year and upon request shall make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of part I of this order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, written or electronic instructions given to employees regarding compliance with the provisions of this order, all notices or a written or electronically stored notation of the description of the form of notice and the date such notice was provided to applicants pursuant to any provisions of this order, and the complete application files for all applicants for whom consumer reports were obtained to 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 respondent for at least five (5) years shall distribute a copy of this order to each present and future officer and to every present and future employee, agent and representative responsible for the respondent's compliance with Section 615(a) of

the Fair Credit Reporting Act and shall secure from each such person a signed statement acknowledging receipt of the copy of the order.

IV.

*It is further ordered,* That respondent shall for at least five (5) years hereafter notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, the emergence of a successor corporation, the creation or dissolution of a subsidiary, transfer of the business by assignment to another entity, or any other change in the corporation that may affect compliance obligations under the order.

V.

*It is further ordered,* That respondent shall, within one hundred twenty (120) days 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 it has complied with this order.

APPENDIX A

Dear Employment Applicant:

Our records show that you applied for employment at Marshall Field & Company at some time after August 1, 1990. In assessing your job application our decision was based, at least in part, on information obtained from the credit bureau identified below:

[Name of Consumer Reporting Agency]

[Street Address]

It is important for you to know that a federal law, the Fair Credit Reporting Act, gives persons who are denied employment the right to know if the denial was based, in whole or in part, on information supplied by a consumer reporting

agency, commonly known as a "credit bureau." If so, the name and street address of the credit bureau must be disclosed to the applicant.

Information in your credit report led us, at least in part, to deny your application. Based on our actions you are entitled to a free disclosure of your credit report if you contact the credit bureau within (30) days. An extra copy of this notice is enclosed so that you may give it to the agency when you request to review your file.

A brochure explaining your rights under the federal credit laws is enclosed. If you want more information about your rights, write to the Federal Trade Commission, Correspondence Branch, Washington, D.C.

Thank you.

## APPENDIX B

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# FACTS

*for consumers*

from the Federal Trade Commission

February 1992

## Fair Credit Reporting

If you have 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 "CRA's." The most common type of CRA is the credit bureau. The information sold by CRA's 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 CRA's. 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 CRA's.

### 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.

### Fast Facts

- The Fair Credit Reporting 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.
- You have the right to know what information is in your credit report.
- Credit bureaus are required to conduct an investigation if you claim their information on you is inaccurate or incomplete.
- Legitimate adverse credit information generally stays on your credit report for seven years; information on bankruptcies can be reported for 10 years.
- Credit reports can only be given to those persons, other than yourself, who have a legitimate business need for the information.

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 my 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 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 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 will 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 also will 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 fact sheet. 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 judgement 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 for the free fact sheet, *Women and Credit Histories*. Public Reference, Federal Trade Commission, Washington, D.C. 20580.

**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: Correspondence Branch, Federal Trade Commission, Washington, D.C. 20580.

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IN THE MATTER OF

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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

*Docket C-3454. Complaint, Aug. 6, 1993--Decision, Aug. 6, 1993*

This consent order prohibits, among other things, a Virginia-based organization from restricting or limiting truthful and nondeceptive advertising claims by its members that refer to the quality of professional services or from encouraging or inducing any non-governmental person to engage in any practice that would violate the Commission's order. In addition, the respondent is required to remove from its Code of Ethics any provision that is inconsistent with the Commission's order.

*Appearances*

For the Commission: *Jonathan Banks* and *Randall Marks*.

For the respondent: *Arthur Schwartz* and *Donald Weinert*,  
in-house counsel, Alexandria, VA.

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 respondent National Society of Professional Engineers, a corporation, has violated the provisions of said Act, 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 as follows:

PARAGRAPH 1. Respondent National Society of Professional Engineers ("NSPE") is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at