

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

THE MAY DEPARTMENT STORES COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE TRUTH IN LENDING ACT, REGULATION Z AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3676. Complaint, July 9, 1996--Decision, July 9, 1996

This consent order requires, among other things, a Missouri-based company to cease unwarranted collection activity on certain acquired credit card accounts, to correct the inaccurate or obsolete credit data it sent to credit reporting agencies concerning these accounts, and to take steps to ensure that the information maintained and reported with respect to the acquired accounts is accurate. In addition, the consent order prohibits the respondent from sending credit cards to consumers, except: in response to an oral or written request or application for the credit card; or as a renewal of, or substitute for, an accepted credit card.

Appearances

For the Commission: *Christopher W. Keller* and *David Medine*.

For the respondent: *John M. Manos*, in-house counsel, St. Louis, MO.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The May Department Stores Company, a corporation, hereinafter sometimes referred to as respondent or May, has violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, its implementing Regulation Z, 12 CFR 226, and the FTC Act, 15 U.S.C. 41-58, 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:

DEFINITIONS

For the purpose of this complaint, the following definitions apply:

The terms "*open end credit plan*" and "*credit card*" are defined as set forth in Sections 103(i) and (k), respectively, of the Truth in Lending Act, 15 U.S.C. 1602(i) and 1602(k).

The terms "*card issuer*," "*consumer*," "*consumer credit*," and "*credit*" are defined as set forth in Sections 226.2(a)(7), (11), (12), and (14), respectively, of Regulation Z, 12 CFR 226.2(a)(7), 226.2(a)(11), 226.2(a)(12), and 226.2(a)(14).

The term "*consumer reporting agency*" is defined as set forth in Section 603(f) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a(f).

PARAGRAPH 1. Respondent The May Department Stores Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent's office and principal place of business is located at 611 Olive Street, St. Louis, Missouri.

PAR. 2. Respondent has been and is now engaged in the business of offering consumer credit to the public and is a creditor and card issuer as those terms are defined in the TILA and Regulation Z.

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.

COUNT I

PAR. 4. Paragraphs one through three are incorporated herein by reference.

PAR. 5. Respondent, from time to time in the normal course of its business, acquires other retail sellers of consumer goods or services, including the existing open end credit plan accounts of those businesses.

PAR. 6. Respondent, in the course of obtaining and converting the open end credit plan accounts of acquired businesses to its own open end credit plan accounts, including the conversion of Thalhimers' accounts to Hecht Co. accounts, performs various conversion functions. In this process, respondent, among other acts

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and practices, engages in the acts and practices alleged in paragraphs seven through twelve, inclusive, to wit.

PAR. 7. Respondent creates a new open end credit plan account and issues a new account number in the name of each consumer having an open end credit plan account in good standing with the retail company acquired by respondent.

PAR. 8. Respondent, in the normal course of its business, furnishes account information concerning its open end credit plan accounts to consumer reporting agencies.

PAR. 9. In the course of converting open end credit accounts of acquired retail companies, respondent incorporates items of information from the acquired account file into the new account file in such a fashion that some entries in the new account file inaccurately reflect the status of the account. Such items of information include but are not limited to (1) derogatory information pertaining exclusively to activity that occurred on the acquired account, and (2) derogatory information pertaining to events antedating the period of obsolescence reflected in Section 605 of the FCRA.

PAR. 10. Respondent fails to record discrete entries within individual open end credit plan accounts in such a fashion that the entries accurately reflect the status of the account, including but not limited to (1) indicating certain identical items of derogatory information more than once, and (2) showing relevant dates on items of information in such a fashion that those items are reported by consumer reporting agencies for periods beyond those permitted by Section 605(a) of the FCRA, thus stating or implying, for example, that accounts were charged to profit and loss more recently than the actual date of charge off.

PAR. 11. Respondent otherwise fails to convert acquired open end credit plan account records accurately to reflect the status of individual accounts.

PAR. 12. Respondent fails to maintain reasonable procedures to monitor, measure, or test its open end credit plan account acquisition, conversion, and maintenance systems to assure the accuracy of the account information it conveys to consumer reporting agencies.

PAR. 13. Despite the fact that respondent knew or should have known that open end credit plan account information that it transmitted to consumer reporting agencies is not accurate, respondent failed promptly to correct its computer system or

implement procedures adequate to reduce the occurrence or reoccurrence of inaccuracies.

PAR. 14. Respondent on some occasions initiates collection activity on purported delinquencies, created in error when respondent creates a second account, as alleged in paragraphs six and seven, without the knowledge or authorization of consumers, and subsequently posts payments and other credits to the incorrect account.

PAR. 15. By and through the acts and practices alleged in paragraphs nine through fourteen, and others not specifically set forth herein, respondent has caused substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.

PAR. 16. Therefore, the acts and practices alleged in paragraphs nine through fourteen constitute unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT II

PAR. 17. Paragraphs one through three are incorporated herein by reference.

PAR. 18. Respondent, in connection with telephone marketing of offers of pre-approved open end credit plan accounts, in some cases establishes open end credit accounts for consumers who have not received or approved the offer or who have specifically declined the offer.

PAR. 19. Pursuant to Section 132 of the TILA and Section 226.12(a)(2) of Regulation Z, no credit card shall be issued to any person except: (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card.

PAR. 20. By and through the acts and practices alleged in paragraph eighteen and others not specifically set forth herein, respondent has issued, or caused to be issued, unsolicited credit cards to consumers.

PAR. 21. Therefore, the acts and practices alleged in paragraphs eighteen and twenty violate Section 132 of the TILA, 15 U.S.C. 1643, and Section 226.12(a) of Regulation Z, 12 CFR 226.12(a).

Commissioner Starek recused.

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 violations of Section 5(a) of the Federal Trade Commission Act and Section 132 of the Truth in Lending 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. Proposed respondent May is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent's office and principal place of business is located at 611 Olive Street, St. Louis, Missouri.

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

DEFINITIONS

For the purpose of this order the following definitions apply:

The terms "*open end credit plan*," "*credit card*," and "*cardholder*" are defined as set forth in Sections 103(i), (k), and (m), respectively, of the Truth in Lending Act ("TILA"), 15 U.S.C. 1602(i), 1602(k), and 1602(m).

The term "*consumer reporting agency*" is defined as set forth in Sections 603(f) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a(f).

"*Fair Credit Billing Act*" refers to Chapter 4, Credit Billing, 15 U.S.C. 1666 *et seq.*, of the Consumer Credit Protection Act.

I.

It is hereby ordered, That respondent, The May Department Stores Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate subsidiary, division, or other device, do forthwith cease and desist from failing to follow reasonable procedures to assure the accuracy of the information that respondent maintains with respect to cardholder accounts that respondent has acquired or acquires from other retail sellers of consumer goods or services and that respondent provides to consumer reporting agencies, including but not limited to the accuracy of dates of relevant actions.

II.

It is further ordered, That, to the extent not already accomplished, within ninety (90) days of service of this order, respondent, its successors and assigns, shall identify current cardholders on whom, since January 1, 1992, respondent has reported incorrectly to any consumer reporting agency derogatory information related solely to the cardholder's open end credit plan account with an acquired creditor. Respondent shall instruct each such consumer reporting agency, in writing, to remove or correct any such derogatory information.

III.

It is further ordered, That respondent, its successors and assigns, shall, after written notice from a consumer to its Bill Adjustment Department in accordance with the Fair Credit Billing Act of a failure by respondent accurately to ascribe charges, credits, payments, or other activity to the correct account, cease collection activity as to the disputed amount, either directly or through any third party, on any outstanding balance that is due, in whole or in part, to respondent's failure accurately to ascribe charges, credits, payments, or other activity to the correct account.

IV.

It is further ordered, That respondent, its successors and assigns, in order to give effect to paragraph III of this order, shall institute reasonable procedures to train respondent's collection personnel in the obligations of the Fair Credit Billing Act, and to further train respondent's collection personnel to inform consumers who assert billing errors of the correct address of respondent's Bill Adjustment Department.

V.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate subsidiary, division, or other device, in connection with any open end credit plan, do forthwith cease and desist from violating Section 132 of the Truth in Lending Act, 15 U.S.C. 1642, and Section 226.12 of Regulation Z, 12 CFR 226.12, by issuing a credit card to any person except (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card.

VI.

It is further ordered, That respondent, its 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.

VII.

It is further ordered, That respondent, its successors and assigns, shall deliver for five (5) years a copy of this order to all present and future personnel, agents, or representatives having responsibilities with respect to the subject matter of this order.

VIII.

It is further ordered, That respondent, its successors and assigns, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in 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.

IX.

This order will terminate on July 9, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline

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for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

X.

It is further ordered, That respondent, its successors and assigns, shall, within one hundred and eighty (180) days of the date of service of this order, file with the Federal Trade Commission, Division of Enforcement, a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Starek recused.

IN THE MATTER OF

THE LOEWEN GROUP INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3677. Complaint, July 29, 1996--Decision, July 29, 1996

This consent order requires, among other things, a Kentucky-based company to divest, within 12 months, one of its three funeral homes in Brownsville, Texas, and either a large funeral home in San Benito, Texas, or two smaller funeral homes in Harlingen, Texas, to Commission-approved acquirers. If the transactions are not completed as required, the Commission may appoint a trustee to divest the properties.

Appearances

For the Commission: *Thomas B. Carter, Gary D. Kennedy and William Baer.*

For the respondents: *Deborah Feinstein, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that The Loewen Group Inc., a corporation, and Loewen Group International, Inc., a corporation, hereinafter sometimes referred to as respondents, have acquired Garza Memorial Funeral Home, Inc., a corporation, and Thomae-Garza Funeral Directors, Inc., a corporation, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45; 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: