

Complaint

126 F.T.C.

IN THE MATTER OF

MONTGOMERY WARD CREDIT CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3839. Complaint, Dec. 11, 1998--Decision, Dec. 11, 1998*

This consent order prohibits, among other things, two corporations, that extend credit to consumers, from misrepresenting that any reaffirmation agreement has been or will be filed with the bankruptcy court, or that any reaffirmation agreement is binding.

Participants

For the Commission: *John C. Hallerud and C. Steven Baker.*

For the respondents: *Max Shulman and Elizabeth Grayer,*
Cravath, Swaine & Moore, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Montgomery Ward Credit Corporation, a corporation, and General Electric Capital Corporation, a corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Montgomery Ward Credit Corporation is a Delaware corporation with its principal office or place of business at 4246 South Riverboat Road, Taylorsville, Utah.

2. Respondent General Electric Capital Corporation is a New York corporation with its principal executive office or place of business at 260 Long Ridge Road, Stamford, Connecticut.

3. Respondents are engaged in, among other things, the offering and servicing of credit cards, including private label credit cards. In the course and conduct of their businesses, respondents have regularly extended credit (hereinafter referred to as "consumer credit accounts").

4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

THE UNITED STATES BANKRUPTCY CODE

5. Under the United States Bankruptcy Code (11 U.S.C. 1-1330), a debtor may be granted a discharge in a Chapter 7 bankruptcy proceeding from debts that have arisen prior to the filing of the bankruptcy petition (hereinafter referred to as "pre-petition debts"), meaning that the debtor is no longer individually liable for these debts. The granting of a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived. . . ." 11 U.S.C. 524(a)(2). The purpose of the injunction is to protect the debtor's "fresh start" by ensuring that no debt collection efforts are taken against the debtor personally for pre-petition debts.

6. The United States Bankruptcy Code provides, however, that a debtor may agree with a creditor that the creditor can enforce what would otherwise be a discharged debt. In other words, a debtor may reaffirm his or her pre-petition debts, as long as certain requirements are met. These so-called "reaffirmation agreements" are enforceable only if, among other things, the agreement is filed with the bankruptcy court. If the debtor is not represented by an attorney, the bankruptcy court must hold a hearing to determine that the reaffirmation agreement would not impose an undue hardship on the debtor and is in the best interest of the debtor, and must approve the reaffirmation agreement before it becomes enforceable. 11 U.S.C. 524(c) and (d).

7. If the requirements of 11 U.S.C. 524(c) and (d) are not met, an agreement to reaffirm a debt is not binding and a creditor violates the bankruptcy code if it attempts to collect that debt. 11 U.S.C. 524(a).

VIOLATIONS OF SECTION 5(a) OF THE
FEDERAL TRADE COMMISSION ACT

8. From at least January 1, 1993, to June 30, 1997, respondents regularly solicited consumers who had filed for protection under Chapter 7 of the United States Bankruptcy Code to enter into agreements reaffirming some or all of their debt arising from pre-petition consumer credit accounts that would otherwise be discharged through bankruptcy proceedings.

9. In numerous instances, respondents represented, expressly or by implication, to consumers that their reaffirmation agreements

would be filed with the bankruptcy courts, as required by the United States Bankruptcy Code.

10. In truth and in fact, in many cases respondents did not file the reaffirmation agreements with the bankruptcy courts. Therefore, the representation made in paragraph nine was, and is, false or misleading.

11. In numerous instances, respondents represented, expressly or by implication, to consumers that their reaffirmation agreements were legally binding on the consumers and that the consumers were legally required to pay their pre-petition debts.

12. In truth and in fact, in many cases, the reaffirmation agreements were not legally binding on the consumers and the consumers were not legally required to pay their pre-petition debts for reasons including, but not necessarily limited to, the following: (a) respondents did not file the reaffirmation agreements with the bankruptcy courts; or (b) respondents filed the reaffirmation agreements, but the agreements were then not approved by the bankruptcy courts. Therefore, the representation made in paragraph eleven was, and is, false or misleading.

13. In the course and conduct of their businesses relating to consumer credit accounts, respondents regularly collected from consumers debts that had been legally discharged in bankruptcy proceedings and that respondents were not permitted by law to collect. Respondents' actions have caused or were likely to cause substantial injury to consumers that is not offset by any countervailing benefits and is not reasonably avoidable by these consumers. 15 U.S.C. 5(n). Therefore, respondents' collection of debts that they were not permitted by law to collect was, and is, unfair.

14. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission 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 Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an 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 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 Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1.a. Respondent Montgomery Ward Credit Corporation is a Delaware corporation with its principal office or place of business at 4246 South Riverboat Road, Taylorsville, Utah.

1.b. Respondent General Electric Capital Corporation is a New York corporation with its principal executive office or place of business at 260 Long Ridge Road, Stamford, Connecticut.

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

3. 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

DEFINITIONS

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

1. Unless otherwise specified, "*respondents*" shall mean Montgomery Ward Credit Corporation, a corporation, General Electric Capital Corporation, a corporation, their successors and assigns, and their officers, agents, representatives, and employees.

2. "*Debt*" shall mean any obligation or alleged obligation of a consumer to pay money arising out of an extension of open-end credit under a plan to finance the purchase of goods or services, such goods or services not including real estate or motor vehicles.

3. "*Debtor*" shall mean any person who owes or is claimed to owe a Debt.

4. "*Reaffirmation Agreement*" shall mean any written agreement between a respondent and a Debtor who has filed a petition under Chapter 7 of the Bankruptcy Code, the consideration for which, in whole or in part, is based on all or a part of any dischargeable prepetition Debt incurred by a Debtor.

5. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of any Debt, shall not:

A. Misrepresent, expressly or by implication, to Debtors who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that Reaffirmation Agreements have been or will be filed in bankruptcy court;

B. Misrepresent, expressly or by implication, to Debtors who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that any Reaffirmation Agreement is legally binding on the consumer; or

C. Collect any Debt (including any interest, fee, charge, or expense incidental to the principal obligation) that has been legally discharged in bankruptcy proceedings and that respondents are not permitted by law to collect.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, shall not make any material misrepresentation, expressly or by implication, in the collection of any Debt subject to a pending bankruptcy proceeding.

III.

It is further ordered, That respondents, for five (5) years after the date of issuance of this order, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating their compliance with the terms and provisions of this order, including but not limited to all Reaffirmation Agreements in connection with Debt and records sufficient to show that such Reaffirmation Agreements were filed in bankruptcy courts and were subsequently approved by bankruptcy courts as part of the underlying bankruptcy proceedings, if required by the United States Bankruptcy Code.

IV.

It is further ordered, That respondents, for five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future officers, directors, managerial employees, and bankruptcy court representatives having responsibilities for the collection of any Debt subject to a pending bankruptcy proceeding ("Covered Persons"), and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall, for five (5) years after each such statement acknowledging receipt of the order is signed and dated, maintain and upon request make available to the Federal Trade Commission for inspection and copying such statements. Respondents shall deliver this order to current Covered Persons within thirty (30) days after the date of service of this order, and to future Covered Persons before any new Covered Person makes contact with a respondent's customer or a respondent's customer's attorney for the collection of any Debt subject to a pending bankruptcy proceeding.

V.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) in each case that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or

a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VI.

It is further ordered, That respondents shall provide notification of all proposed settlement terms relating to allegations made by the Attorneys General of various states, any other legal actions by government entities not cited herein, and all class action lawsuits against respondents or any of their predecessors or affiliates, pending on the date that proposed respondents sign this order, that challenge conduct similar to that challenged by the Commission in this proceeding, to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, in writing, at least ten (10) days before any such proposed settlement is submitted to a court for final approval.

VII.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on December 11, 2018, or twenty (20) 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 Part in this order that terminates in less than twenty (20) 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 Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondents 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 Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF
CARE TECHNOLOGIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3840. Complaint, Dec. 14, 1998--Decision, Dec. 14, 1998

This consent order prohibits, among other things, a Connecticut-based corporation, that manufactures and distributes pharmaceuticals, from making unsubstantiated claims concerning the efficacy of its over-the-counter head lice treatments. The consent order requires the respondent to make certain disclosures in advertisements concerning the use and effectiveness of its head lice treatment products. In addition, the consent order prohibits the respondent from misrepresenting the existence, contents, or interpretations of any test, study, or research.

Participants

For the Commission: *Linda Badger, Kerry O'Brien, Jeffrey Klurfeld, and Carolyn Cox.*

For the respondent: *Daniel Manelli, Farkas & Manelli, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Care Technologies, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Care Technologies, Inc. is a Connecticut corporation with its principal office or place of business at 10 Corbin Drive, Darien, Connecticut.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed over-the-counter pharmaceuticals to the public, including "Clear Lice Killing Shampoo" and "Clear Lice Egg Remover." Clear Lice Killing Shampoo and Clear Lice Egg Remover are "drugs," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.