

Complaint

IN THE MATTER OF

DBC FINANCIAL, INC.

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

Docket C-3931; File No. 9923228
Complaint, March 13, 2000--Decision, March 13, 2000

This consent order prohibits Respondent DBC Financial, Inc. in connection with the advertising or sale of Delaware Bank Card or any back card or related services from making and misrepresentations or material omissions regarding the costs, benefits, or conditions of a bank card or related services including that 1) that the card has no up-front fees if there is an Account set-up fee or other initial charge, 2) that the card provides over-draft protection free of charge if there is an over-draft protection fee. The consent order also prohibits respondent from making misrepresentations in connection with the advertising and sale of bank card or related services of any connection or affiliation with any United States government agency, institution, or program. The consent order also requires that Respondent conspicuously disclose in connection, in connection with any representation about the availability of electronic fund transfers from any government entity "NOTICE: The [Delaware Bank Card or Name of Bank Card] is NOT affiliated in any way with any federal government agency or program". The order requires Respondent to pay \$250,000.00 for a redress program and administrative costs.

Participants

For the Commission: *Rolando Berrelez, Michelle Chua,*
Jessica Rich, David Medine.

For the Respondents: *Sylvia Kochler, Nelson Mullins Riley &*
Scarborough, LLP.

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COMPLAINT

The Federal Trade Commission, having reason to believe that DBC Financial, Inc., a corporation (“respondent” or “DBC Financial”), 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 DBC Financial is a Delaware corporation with its principal office or place of business at 75 Piedmont Ave., Suite #202, Atlanta, GA 30303.
2. Respondent has advertised, offered for sale, sold, and distributed automated teller machine (“ATM”) bank card services to the public, including the Delaware Bank Card. The Delaware Bank Card is a direct deposit ATM bank card.
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.
4. Respondent has disseminated, or has caused to be disseminated, advertisements and promotional materials for the Delaware Bank Card in direct mailings and on television, including but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statements:
 - A. “Because you receive a Government Benefits Check, here is your **PRE-APPROVED** Delaware Bank Card: The Card that puts **CASH** in your hands. With this card, you get the following benefits: Automatic Deposit of Your Check! . . . \$1,000 Overdraft Protection per Year! With the Delaware Bank Card you have access to Extra Cash when you need it (even when your account balance is \$0.00)”
 - B. “Best of all, because you are Pre-Approved, there are **no up front fees** required to take advantage of this offer.”

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C. "If you receive social security, SSI or VA benefits, you are preapproved to receive the Delaware Bank Card. The card that puts cash in your hands. With the Delaware Bank Card, your money gets direct deposited automatically on checkday. No waiting for the mailman. Instant access to your money at thousands of ATM's. With the card you also get a thousand dollars per year of overdraft protection. Call 1-800-784-2600 to sign up today. Guaranteed approval. No upfront Fees. It's simple, it's fast, it's that easy."

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

A. Use of the Delaware Bank Card requires no upfront fees.

B. The Delaware Bank Card is affiliated with a United States government agency, institution or program.

C. Use of the Delaware Bank Card automatically provides free overdraft protection services of up to \$1,000 a year.

6. In truth and in fact:

A. Use of the Delaware Bank Card requires an "Account Set-Up Fee" of \$19.95, as well as a monthly service fee in the amount of \$9.95.

B. The Delaware Bank Card is not affiliated with any United States government agency, institution or program.

C. The Delaware Bank Card charges an overdraft protection fee of \$19.95 for every month in which the consumer's account is overdrawn by up to \$80.00. Therefore, the representations set forth in Paragraph 5 were, and are, false or misleading.

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7. The acts and practices of respondent 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.

THEREFORE, the Federal Trade Commission this thirteenth day of March, 2000, has issued this complaint against respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (the "Commission") having initiated an investigation of certain acts and practices of respondent DBC Financial, Inc., incorporated in Delaware ("DBC Financial"), named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft 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 DBC Financial with violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45; 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 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's rules; and

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The Commission having thereafter considered the matter and having determined that it has reason to believe that respondent DBC Financial has violated the said Act, and that a 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 thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent DBC Financial, Inc. is a Delaware corporation, with its principal office or place of business located at 75 Piedmont Avenue, Suite 1200, Atlanta, Georgia 30303.
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

DEFINITIONS

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

1. "Account" shall mean a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution, and established primarily for personal, family, or household purposes.
2. "Account Set-up Fee" shall mean any fee charged by respondent to any customer to open or activate a Delaware Bank Card Account.

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3. "Bank card" or "Bank card-related service or product" shall mean any form of direct deposit bank card service offered by or through respondent, including but not limited to any card, code, or other means of access to an Account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.
4. "Clearly and prominently" shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence and location sufficient for an ordinary consumer to hear and comprehend it, prior to purchase of the service or product. The videodisclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it, prior to purchase of the service or product.
 - B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, prior to purchase of the service or product, in print that contrasts with the background against which it appears. In multi-page documents, the disclosure shall appear on the cover or first page.

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The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

5. "Current Eligible Customers" shall mean all customers who, as of the Effective Date of this order, have an open Delaware Bank Card Account, and whose Accounts have been charged an Account Set-up Fee.
6. Unless otherwise specified, "DBC" or "Respondent" shall mean DBC Financial, Inc., and each of its successors and assigns, and officers, agents, representatives, and employees.
7. "Electronic Fund Transfer" shall mean any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:
 - a. point-of-sale transfers;
 - b. automated teller machine transfers;
 - c. direct deposits or withdrawals of funds;
 - d. transfers initiated by telephone; and
 - e. transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.
8. "ETA" shall mean the U.S. Treasury-designated electronic transfer account made available by a federally-insured financial institution acting as a Financial Agent in accordance with the requirements set out in 31 C.F.R. Section 208.5

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9. "Overdraft Protection Fee" shall mean any fee charged by respondent to any customer for overdraft protection services.
10. "Past Eligible Customers" shall mean all customers who had an open Delaware Bank Card Account on August 31, 1999, and who were charged an Account Set-up Fee, but who, between August 31, 1999 and the Effective Date of this Order, have closed their Delaware Bank Card Account.

I.

IT IS ORDERED that respondent DBC, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the Delaware Bank Card or any Bank Card or Bank Card-related service or product in or affecting commerce, shall not, orally or otherwise, directly or indirectly, make any misrepresentation or material omission concerning the costs, benefits, or conditions of the Bank Card or Bank Card-related service or product, including but not limited to the following:

- A. That use of the Bank Card requires no up-front fees, if in fact DBC is charging an Account Set-up Fee or any other initial fee; and
- B. That use of the Bank Card provides free of charge any overdraft protection services, if in fact DBC is charging an overdraft protection fee.

II.

IT IS FURTHER ORDERED that respondent DBC, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, promotion, offering for sale,

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sale, or distribution of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, shall not, orally or otherwise, directly or indirectly, make any misrepresentation that DBC or any of its Bank Card or Bank Card-related services or products are affiliated in any way with any United States governmental agency, institution, or program.

III.

IT IS FURTHER ORDERED that respondent DBC, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, shall not make any representation, in any manner, expressly or by implication, about the availability of electronic transfer of funds from any government entity, including but not limited to social security payments, unless DBC discloses, clearly and prominently, and in close proximity to the representation, the following:

"NOTICE: The [Delaware Bank Card or Name of Bank Card] is **NOT** affiliated in any way with any federal government agency or program"

Provided, however, that to the extent DBC is advertising or promoting the ETA, as defined herein, on behalf of a financial institution that is offering that product, the above disclosure shall not be required.

IV.

IT IS FURTHER ORDERED that respondent, its successors and assigns, jointly and severally, shall pay redress to consumers in the amount of \$ 250,000.00 (U.S. Dollars) ("Redress Fund"). Respondent shall wire transfer the sum of \$ 250,000.00 into an

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escrow account designated by the Commission, on or before five (5) days after the date of issuance of this Order. This sum shall be used to (1) provide redress to all Current Eligible Customers and Past Eligible Customers, as those terms are defined herein; and (2) pay any attendant expenses of administration. The Redress Fund shall be used to provide all Current Eligible Customers and Past Eligible Customers a full refund of the Account Set-up Fee of \$19.95, and a one-time partial refund of the Overdraft Protection Fee. The FTC shall determine, in its sole discretion, which consumers are eligible for redress as well as the amounts to be paid.

- A. Within 10 (ten) business days after the date of issuance of this order, DBC shall deliver to both the Commission and an independent agent designated by the Commission, on magnetic tape or some other electronic medium, the following data concerning all Current Eligible Customers and Past Eligible Customers: Name, Last Known Mailing Address, Bank Routing Number, and Bank Account Number.
- B. Respondent shall also provide, within ten (10) business days of receiving a written request, any additional information that the independent agent reasonably needs to carry out the redress program described herein. DBC shall deliver all data and information described in this paragraph to the independent agent in a clean format compatible with the independent agent's computers.
- C. Within ten (10) days of the date of issuance of this order, DBC shall send by first class mail the letter, attached as Appendix A hereto, informing all Current Eligible Customers concerning consumer redress.
- D. The independent agent, in administering the redress fund to Past Eligible Customers, shall send the letter, attached as Appendix B hereto, informing all Past Eligible Customers concerning consumer redress.

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If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury. Respondent shall be notified as to how funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

Notwithstanding any other provision of this Order, Respondent agrees that if it fails to meet the payment obligations set forth in Section IV of this Order, respondent shall pay the costs and attorneys fees incurred by the Commission and its agents in any attempts to collect amounts due pursuant to this Order. Respondent further agrees that the facts as alleged in this Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

V.

DBC hereby further represents, covenants, and agrees that it has waived and will waive and will not charge the Account Set-up Fee of \$19.95 for any Delaware Bank Card account opened between August 31, 1999 and January 31, 2000.

VI.

IT IS FURTHER ORDERED that, within five days after the date of issuance of this order, DBC's President shall submit to the Commission a truthful sworn statement reaffirming and attesting that, to the best knowledge and information of DBC and its President, the list of Current Eligible Customers and Past Eligible Customers, which list shall have been previously submitted to the Commission, is true, accurate and complete. The Commission's

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tentative approval of this settlement is expressly premised upon the truthfulness, accuracy, and completeness of DBC's list of customers enumerated in this Paragraph, which contain material information upon which the Commission relied in negotiating and agreeing to this tentative settlement. The sworn statement required by this Paragraph shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent DBC, a corporation, and its successors and assigns, shall, for three (3) years from the date of entry of this order, maintain and upon request immediately make available to the Federal Trade Commission for inspection and copying, all documents demonstrating compliance with this order.

VIII.

IT IS FURTHER ORDERED that respondent DBC Financial, Inc., and its successors and assigns, shall, for a period of three (3) years following the date of service of this order, deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future agents, representatives, and management employees having responsibility with respect to the subject matter of this order, as well as any independent contractor retained to market the DBC Bank Card or similar Bank Card products and services, and shall secure from each such person a signed statement acknowledging receipt of the order. Respondent shall maintain and make available upon request by representatives of the Federal Trade Commission copies of said signed statements. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

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IX.

IT IS FURTHER ORDERED that respondent DBC Financial, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation 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 change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondent DBC Financial, Inc., a corporation, its successors and assigns, and its officers, shall, within one hundred and eighty (180) days of the date of service of this order, and at such other times as the 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.

XI.

This order will terminate on March 13, 2020, 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

Analysis to Aid Public Comment

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 (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 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 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.

By the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from DBC Financial, Inc. ("DBC Financial"). The agreement would settle a complaint by the Federal Trade Commission that DBC Financial engaged in deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

Analysis to Aid Public Comment

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns representations made by DBC Financial in its advertising of the Delaware Bank Card, an automated teller machine ("ATM") bank card that offers direct deposit services with an affiliated bank. The administrative complaint alleges that DBC Financial violated the FTC Act by falsely representing: (1) that use of the Delaware Bank Card requires no upfront fees, when, in fact, use of the card requires an account setup fee of \$19.95, as well as a monthly service fee of \$9.95; (2) that the Delaware Bank Card is affiliated with a United States government agency, institution, or program, when in fact it is not; and (3) that use of the Delaware Bank Card automatically provides free overdraft protection services of up to \$1,000 a year, when in fact the card charges an overdraft protection fee of \$19.95 for every month in which the consumer's account is overdrawn by up to \$80.00.

To remedy the violations charged and to prevent respondent from engaging in similar acts and practices in the future, the proposed order contains injunctive provisions and a consumer redress program. Part I of the order prohibits respondent, in connection with the advertising or sale of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, from making any misrepresentation or material omission concerning the costs, benefits, or conditions of the Bank Card or Bank Card-related service or product, including the following: (1) that use of the Bank Card requires no up-front fees, if in fact DBC Financial is charging an Account Set-up fee or any other initial fee; and (2) that use of the Bank Card provides free of charge any

Analysis to Aid Public Comment

overdraft protection services, if in fact DBC Financial is charging an overdraft protection fee.

Part II of the order prohibits respondent, in connection with the advertising or sale of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, from misrepresenting that DBC Financial or any of its Bank Card or Bank Card-related services or products are affiliated in any way with any United States governmental agency, institution, or program.

Part III of the order requires respondent to clearly and conspicuously disclose, in connection with any representation about the availability of electronic transfer of funds from any government entity, the following: "NOTICE: The [Delaware Bank Card or Name of Bank Card] is NOT affiliated in any way with any federal government agency or program." This disclosure is not required, however, to the extent that respondent is promoting a U.S. Treasury-designated ETA on behalf of a financial institution that is participating in the government ETA program.

Part IV of the order requires respondent to pay \$250,000.00 for the redress program and administrative costs. The redress program applies to certain consumers who, as of August 31, 1999, had an active Delaware Bank Card account and who were charged an account set-up fee. In addition, Part V of the order requires respondent to waive the account set-up fee of \$19.95 for all Delaware Bank Card accounts opened between August 31, 1999 and January 31, 2000.

The proposed order also contains provisions regarding distribution of the order, record-keeping, notification of changes in corporate status, termination of the order, and the filing of a compliance report.

Analysis to Aid Public Comment

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

Complaint

IN THE MATTER OF

CERIDIAN CORPORATION**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT**

*Docket C-3933; File No. 9810030
Complaint, April 5, 2000--Decision, April 5, 2000*

This consent order addresses the acquisition by Respondent Ceridian Corporation of NTS Corporation and Trendar Corporation. The order requires Respondent to grant fleet card issuers access to Comdata's Trendstar fuel purchase desk automation system and to grant fuel purchase desk automation systems suppliers the right to process Comdata's fleet cards. The order also requires Comdata, for a period of three years, to grant a ten-year license to effect transactions on the Trendar system to any company providing, or seeking to provide, fleet card services. Comdata is required to promptly disseminate the software to all truck stops on the Trendar network. Comdata is further required to provide licensees with equal access to any upgrades or modifications to the Trendar system, and is prohibited from basing any transaction fees charged to truck stops for processing the Comdata card, as well as access to the Comdata card, on whether such truck stops accept any other firm's fleet cards. The order requires Comdata, for a period of three years, to grant a ten-year license to all incumbent suppliers of fuel purchase desk automation systems, and to the first three new system providers that request a license.

Participants

For the Commission: *Michael R. Moiseyev, Yolanda R. Gruendel, Andrew J. Topps, Robert R. Pickett, Sylvia M. Brooks, Ann Malester, Daniel P. Ducore, Christopher Garmon, Jeffrey Fischer, and Gregory Vistnes.*

For the Respondents: *Jeane Thomas and Randy Smith, Crowell & Moring, R. Dale Grimes, Bass, Berry & Sims, and Joe Warren, Michael Crimmens, and Joe Kattan, Gibson, Dunn & Crutcher.*