

Complaint

IN THE MATTER OF

APPLIED CARD SYSTEMS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4125; File No. 0323040*
Complaint, October 6, 2004--Decision, October 6, 2004

This consent order, among other things, prohibits Respondents Applied Card Systems, Inc., and Applied Card Systems of Pennsylvania, Inc., both debt collection firms, from communicating with any third party -- for the purpose of acquiring credit or debit cardholder location information -- more than once without a request by the third party for subsequent calls or a reasonable belief that the third party has complete or correct location information for the debtor. The order also prohibits the respondents from engaging in abusive conduct such as continued calls and the use of abusive language. In addition, the order prohibits the respondents from (1) placing collection calls after 9 p.m. and before 8 a.m. (defined as the local time of the person called); (2) placing calls to a consumer's place of employment if they have reason to know that such calls are employer-prohibited; (3) using false, deceptive, or misleading representations in collection calls; (4) collecting amounts from consumers that are not legally due; and (5) applying payments received to those accounts except as designated by consumers.

Participants

For the Commission: *Jessica D. Gray, Barbara E. Bolton, Shibani Baski, Cindy A. Liebes, Andrea L. Foster, and Andrew Smith.*

For the Respondents: *Richard M. Alexander, Arnold & Porter*

COMPLAINT

The Federal Trade Commission, having reason to believe that Applied Card Systems, Inc. and Applied Card Systems of Pennsylvania, Inc. (collectively "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:

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1. Respondent Applied Card Systems, Inc. (“ACS”) is a Delaware corporation with an office and its principal place of business located at 4700 Exchange Court, Boca Raton, Florida 33431. ACS transacts or has transacted business throughout the United States.

2. Respondent Applied Card Systems of Pennsylvania, Inc. (“ACSPA”) is a Pennsylvania corporation with an office and place of business located at 50 Applied Card Way, Glenn Mills, Pennsylvania 19342. ACSPA transacts or has transacted business throughout the United States.

3. Respondents operate business enterprises that provide services to credit card companies, including, but not limited to the collection of delinquent debts from consumers throughout the United States. Respondents’ main customer is their affiliate, Cross Country Bank, a Delaware-chartered bank. For purposes of this Complaint, “delinquent debt” means any obligation or alleged obligation of a consumer to pay money that is contractually past due, arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment. The term “Consumer” means any natural person obligated or allegedly obligated to pay any debt.

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 FTC Act, 15 U.S.C. § 44.

5. Respondents process and collect moneys due on credit card accounts from the time the credit card is issued to the Consumer through the collection of delinquent accounts.

6. When collecting delinquent debts, Respondents use an automated dialing system to initiate telephone calls to Consumers. As part of this process, Respondents call third parties seeking to speak with a Consumer and/or to acquire location information concerning a Consumer. For purposes of this Complaint the term

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“Third Party” means any person or entity that is not a Consumer including, but not limited to, any parent of a non-minor Consumer, or any child, relative, neighbor, co-worker or employer of a Consumer. The term “location information” means a Consumer’s place of abode and his or her telephone number at such place, or his or her place of employment.

7. On many occasions, when Respondents call the residences of Third Parties, those Third Parties have previously informed Respondents that either they do not know the Consumer or that the Consumer does not reside with them.

8. On many other occasions, when Respondents have contacted Third Party businesses, Respondents have been informed by the Third Party business that either the Consumer is no longer an employee, that the Consumer’s employer prohibits the receipt of personal calls, or that the Consumer cannot be reached at the telephone number contacted.

9. In many instances, Respondents continued to call these Third Parties after the Third Parties have requested, orally and/or in writing, that Respondents stop such calls to a specific telephone number.

10. In many instances, in connection with the collection of delinquent debts, Respondents communicated with Third Parties for the purpose of speaking with a Consumer and/or to acquire location information about a Consumer without a reasonable belief that:

- A. An earlier response of the Third Party was erroneous or incomplete; or
- B. The Third Party now has correct or complete location information about the Consumer.

11. In many other instances, in connection with the collection of delinquent debts, Respondents have engaged in conduct the

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natural consequence of which is to annoy, abuse, or harass the Third Parties, including, but not limited to:

- A. Using obscene or profane language or language the natural consequence of which is to abuse the hearer; or
- B. Causing a telephone to ring or engaging any Third Party in telephone conversation with intent to annoy, abuse, or harass any Third Party at the called number.

12. The acts and practices of Respondents as alleged in this Complaint constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

13. Respondents' violations of Section 5 of the FTC Act, as set forth above, are continuing and will continue absent the relief herein requested.

THEREFORE, the Federal Trade Commission this sixth day of October, 2004, has issued this Complaint against Respondents.

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Respondents named in the caption hereof, and the Respondents having been furnished thereafter with a copy of a draft 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 violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a); and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 thirty (30) days for the receipt and consideration of public comments, 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 Applied Card Systems, Inc. is a Delaware corporation with an office and its principal place of business located at 4700 Exchange Court, Boca Raton, Florida 33431.
2. Respondent Applied Card Systems of Pennsylvania, Inc. is a Pennsylvania corporation with an office and place of business

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located at 50 Applied Card Way, Glenn Mills, Pennsylvania 19342.

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

IT IS ORDERED that for purposes of this order, the following definitions shall apply:

1. “Respondents” mean Applied Card Systems, Inc. and Applied Card Systems of Pennsylvania, Inc., their successors, assigns, officers, directors, employees and agents.

2. “Collection of debts” means any activity the principal purpose of which is to collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due.

3. “Consumer” means any natural person obligated or allegedly obligated to pay any debt.

4. “Delinquent debt” means any obligation or alleged obligation of a Consumer to pay money that is contractually past due, arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

5. “Location information” means a Consumer’s place of abode and his or her telephone number at such place, or his or her place of employment.

6. “Third Party” means any person or entity that is not a Consumer including, but not limited to, any parent of a non-minor Consumer, or any child, relative, neighbor, co-worker or employer of a Consumer.

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INJUNCTIVE PROVISIONS**I.**

IT IS THEREFORE ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of any delinquent debt, shall not engage in any unfair or deceptive act or practice in violation of Section 5 of the FTC Act including, but not limited to:

A. Communicating with any Third Party, for the purpose of acquiring location information about the Consumer, more than once unless requested to do so by such person or unless Respondents reasonably believe that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.

B. Engaging in any conduct the natural consequence of which is to annoy, abuse or harass any person including, but not limited to:

1. Using obscene or profane language or language the natural consequence of which is to abuse the hearer; or
2. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

II.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of any delinquent debt, are hereby prohibited from:

A. Communicating with any Consumer, in connection with the collection of any delinquent debt, without the prior consent of

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the Consumer given directly to Respondents or the express permission of a court of competent jurisdiction:

1. At any unusual time or place or a time or place known to be inconvenient. In the absence of knowledge of circumstances to the contrary, Respondents shall assume that the convenient time for communicating is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time of the person called; and

2. At any Consumer's place of employment if Respondents know or have reason to know that the Consumer's employer prohibits the receipt of such communication; and

3. If Respondents know the Consumer is represented by an attorney with respect to such debt and have knowledge of, or can readily ascertain from the Consumer or the Consumer's attorney, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the Respondents or unless the attorney consents to direct communication with the Consumer. Provided, however, this provision does not prohibit Respondents from mailing, directly to the Consumer, periodic billing statements, as required by the Truth in Lending Act, 15 U.S.C. § 1637(b) and the Fair Credit Billing Act, 15 U.S.C. § 1666-1666j. All other communication with the Consumer in violation of this part shall be suspended within a commercially reasonable period of time, not to exceed five (5) business days.

B. Communicating, except as permitted in subpart I.A., without the prior consent of the Consumer given directly to the Respondents, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, with any person other than a Consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the

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Respondents' attorney, or any individual or business entity used by Respondents in the normal course of business for the purpose of collecting delinquent debts. For purposes of subparts II.A. and II.B., the term "Consumer" includes the Consumer's spouse, parent (if the Consumer is a minor) guardian, executor, or administrator.

C. Using any false, deceptive, or misleading representation or means including, but not limited to:

1. The false representation of the character, amount, or legal status of any debt;
2. The threat to take any action that cannot legally be taken or that is not intended to be taken; and
3. Any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a Consumer.

D. Collecting or attempting to collect any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

E. If any Consumer owes multiple debts and makes any single payment to Respondents with respect to such debts, applying such payment to any debt which is disputed by the Consumer. Where applicable, Respondents shall apply such payment in accordance with the Consumer's directions.

III. DISTRIBUTION OF ORDER BY RESPONDENTS

IT IS FURTHER ORDERED that Respondents, their successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees and agents having responsibilities with respect to the subject matter of this order,

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and shall create and maintain appropriate records to evidence the delivery of this order to each such persons specified herein. Respondents 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.

IV. MONITORING COMPLIANCE OF PERSONNEL

IT IS FURTHER ORDERED that for a period of three (3) years from the date this order becomes final, in connection with any business operated by Respondents which is engaged in the collection of delinquent debts, Respondents shall:

A. Take reasonable steps sufficient to monitor and ensure that all of Respondents' employees and agents engaged in the collection of delinquent debts comply with parts I and II of this order. Such steps shall include, at a minimum, the following:

1. Listening regularly to a selection of communications relating to the collection of delinquent debts made by Respondents' employees and agents to Consumers and Third Parties;
2. Establishing and following a procedure for receiving and responding to complaints received by Respondents relating to the collection of delinquent debts; and
3. Ascertaining, when a collection complaint is received by Respondents, the number and nature of complaints received regarding any employee or agent engaged in the collection of debts who is involved in the complained about transaction or communication;

B. Promptly investigate any collection complaint received by Respondents;

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C. Take appropriate corrective action with respect to any officer, manager, employee, or agent of Respondents' who, as determined by either Respondent, is not complying with this order. Corrective action may include training, warning, disciplining, or terminating such officer, manager, employee or agent; and

D. Promptly document the results of each collection complaint investigation conducted by Respondents and any corrective action taken, as set forth in part V.

V. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that Respondents and their successors and assigns, for a period of three (3) years from the date this order becomes final, with respect to Respondents' businesses and any other business entity owned by each Respondent that is engaged in the collection of delinquent debts, shall create, maintain, and upon request, make available to the Federal Trade Commission for inspection and copying:

A. Personnel records accurately reflecting: the name, address, and telephone number of each person engaged in the collection of delinquent debts, including any independent contractor; that person's job title or position; the date upon which the person commenced working; and the date and reason for the person's termination, if applicable;

B. Records that evidence the delivery of this order to all principals, officers, directors, managers, employees, and agents having responsibility with respect to the subject matter of this order, as required by part III;

C. Copies of all scripts, training manuals, and any other materials used by Respondents to train and evaluate the job performance of their employees engaged in the collection of delinquent debts; and

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D. Records regarding complaints relating to the collection of delinquent debts, including, but not limited to: (1) each complaint letter or other form of written communication received by Respondents; (2) telephone complaints received by Respondents from Third Parties; (3) nature of the complaint and a description of the alleged conduct, as reflected in any written records pertaining to such complaints; (4) name and position of each employee, where possible, whose conduct is the subject of the complaint; (5) disposition of any complaint, including records of all contacts with the complainant regarding the complaint; and (6) any action taken to correct alleged conduct that violates this order.

VI. COMPLIANCE REPORTING BY RESPONDENTS

IT IS FURTHER ORDERED that Respondents and their successors and assigns shall:

A. Notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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(s) 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 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. 20589.

B. 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

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in detail the manner and form in which they have complied with this order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to subpart A. above; and
2. Copies of the records that were created and maintained pursuant to part III to evidence Respondents' dissemination of this order.

Provided, further, for purposes of the compliance reporting required by this part, the Commission is authorized to communicate directly with Respondents.

VII. SUNSET PROVISION

This order will terminate on October 6, 2024, or twenty (20) years from the 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 Respondent 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

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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.

Analysis

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 Applied Card Systems, Inc. and Applied Card Systems of Pennsylvania, Inc. (collectively “respondents” or “ACS”).

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

This matter concerns the debt collection practices of ACS in attempting to collect delinquent debt owed or allegedly owed to its affiliate, Cross Country Bank (“CCB”). The complaint alleges that respondents used unfair debt collection practices in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45. The proposed complaint alleges two counts regarding ACS’s debt collection practices. First, the complaint alleges that ACS has repeatedly called non-debtor third parties in an attempt to either speak with a CCB cardholder or get location information about a cardholder, after the third parties have informed ACS that they do not know the cardholder or that the cardholder does not live at their residence. ACS makes these repeated calls without a reasonable belief that the third parties now have correct or complete information about CCB’s cardholders. Second, the complaint alleges that ACS has engaged in conduct purposely designed to harass third parties at the number called.

The proposed consent order tracks the complaint and contains injunctive provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the proposed order contains two injunctive provisions. The first

Analysis

prohibits respondents from communicating with any third party, for the purpose of acquiring cardholder location information, more than once without a request by the third party for subsequent calls or a reasonable belief that the third party has complete or correct location information for the debtor. The second injunctive provision of Part I prohibits respondents from engaging in abusive conduct such as continued calls and the use of abusive language.

Part II of the proposed order contains a broad fencing-in provision that pertains to all consumers. Among other things, it bars respondents from (i) placing collection calls after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time of the person called; (ii) placing calls to a consumer's place of employment if they have reason to know that such calls are employer-prohibited; (iii) using false, deceptive, or misleading representations in collection calls; (iv) collecting amounts from consumers that are not legally due; and (v) applying payments received to those accounts except as designated by consumers.

Part III of the proposed order requires the respondents to distribute copies of the order to certain company officials and employees. Parts IV through VI of the proposed order are monitoring, record keeping, and compliance provisions. Part VII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

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

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IN THE MATTER OF

BONZI SOFTWARE, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4126; File No. 0423016*
Complaint, October 7, 2004--Decision, October 7, 2004

This consent order, among other things, prohibits Respondents Bonzi Software, Inc., Joe Bonzi, and Jay Bonzi from misrepresenting the extent to which their product InternetALERT -- or any other software product or service that is marketed as enhancing security -- will reduce the risk of unauthorized access into a computer. The order also prohibits the respondents from misrepresenting the extent which any such product or service will maintain, protect, or provide security features that will enhance the security or privacy of any computer -- or any data that is stored in a computer, including personally identifiable information -- and from misrepresenting the performance, benefits, or efficacy of any computer software product or service that is marketed as enhancing security or privacy. In addition, the order requires the respondents to pay refunds to current InternetALERT subscribers who opt to cancel their subscriptions.

Participants

For the Commission: *Laura M. Sullivan, Dean C. Forbes, Thomas B. Pahl, Mary K. Engle, and Hajime Hadeishi.*

For the Respondents: *Saro Rizzo, and Barry J. Reingold, Perkins Coie, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Bonzi Software, Inc., a corporation, and Joe Bonzi and Jay Bonzi, individually and as officers of said 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: