

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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In the Matter of	)	
	)	FILE NO. 962 3086
	)	
BRUNO'S, INC.,	)	AGREEMENT CONTAINING CONSENT
a corporation.	)	ORDER TO CEASE AND DESIST
	)	

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The Federal Trade Commission having initiated an investigation of certain acts and practices of Bruno's, Inc., a corporation, and it now appearing that Bruno's, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, without acknowledging the violation of any law or rule or regulation, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

IT IS HEREBY AGREED by and between Bruno's, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Bruno's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 800 Lakeshore Parkway, Birmingham, Alabama 35235.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it,

together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that any law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

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

### I.

IT IS ORDERED that respondent Bruno's, Inc., 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 failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, 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 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.

### II.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall for at least five (5) years from the date of issuance of this Order, maintain and upon request 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, instructions given to employees regarding compliance with the provisions of this Order, all written notices or a written or electronically stored notation of the description of the form of notice and 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 for 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 shall deliver a copy of this Order at least once per year for a period of five (5) years from the date of issuance this Order, to all persons responsible for the respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate structure of respondent such as dissolution, assignment, or sale resulting in the emergence of a successor operation, the creation or dissolution of subsidiaries or divisions, or any other change in the corporation which may affect compliance obligations arising out of the Order.

V.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) 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 is has complied with this Order.

VI.

IT IS FURTHER ORDERED that this Order will terminate twenty (20) years from the date of its issuance, 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 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 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 for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

BRUNO'S, INC.,  
a corporation

By: \_\_\_\_\_  
R. MICHAEL CONLEY  
Corporate Counsel  
Bruno's, Inc.

By: \_\_\_\_\_  
RICHARD MARTY  
Vice President, Human Resources  
Bruno's, Inc.

FEDERAL TRADE COMMISSION

By: \_\_\_\_\_  
W. DAVID GRIGGS  
Counsel for the Federal Trade  
Commission

APPROVED:

\_\_\_\_\_  
THOMAS B. CARTER, Director  
Dallas Regional Office

CONCUR:

\_\_\_\_\_  
JOAN Z. BERNSTEIN  
Director  
Bureau of Consumer Protection



PARAGRAPH FOUR: Respondent, in the ordinary course and conduct of its business, has denied applications or rescinded offers for employment with 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.

PARAGRAPH FIVE: By and through 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).

PARAGRAPH SIX: 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this            day of            , 1997, issues this complaint against respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL



## **Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Bruno's, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, 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 notification requirements under the Fair Credit Reporting Act, 15 U.S.C. § 1681. That statute requires, among other things, that employment applicants, who are denied employment, either in whole or in part, because of information in consumer reports obtained from consumer reporting agencies, be provided with the name and address of the agency making the consumer report. The failure to provide the notice required by the statute lessens consumers' access to information that may have led to the denial of employment. Proper notice assists consumers in discovering inaccurate or obsolete information in consumer reports that the consumers can subsequently dispute and correct. The use of consumer reports to assist in evaluating employment applications has become increasingly popular in recent years and, consequently, the significance of this notification requirement has heightened.

The Commission's complaint alleges that Bruno's, Inc., has denied employment applications based, in whole or in part, on information contained in consumer reports, failed to advise such job applicants that the denial was based in whole or in part on information contained in a consumer report, and failed to supply such applicants with the name and address of the agency making the report, as required by Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681m(a). The complaint also alleges that the failure to advise these job applicants constitutes a violation of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681m(a). The complaint further alleges that, pursuant to Section 621(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681s, a violation of Section 615(a) constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the consent agreement requires Bruno's, Inc., to cease and desist failing to provide the notice required by Section 615(a) to employment applicants whose applications were denied in whole or in part because of information in a credit report. Part I provides that Bruno's, Inc., may not be held liable for the failure to provide such notices if it demonstrates by a

preponderance of evidence that it had instituted reasonable procedures to comply with Section 615(a).

Paragraph II requires Bruno's to maintain documents demonstrating its 615(a) compliance for a period of five years from the issuance date of the order and to make the documents available upon request to the FTC for inspection and copying. Paragraph III requires Bruno's to deliver copies of the Order, at least once per year for a period of five years from the date of issuance, to all persons responsible for its compliance. Paragraph IV requires Bruno's to notify the Commission within 30 days of changes in corporate structure for the duration of the order. Paragraph V provides for the filing of a compliance report with the Commission within 60 days of the issuance date of the order. Finally, Paragraph VI contains a sunset provision, which terminates the order 20 years after issuance.

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