IN THE MATTER OF

WM. H. WISE CO., INC., ET AL.[1]

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 6288. Complaint, Jan. 17, 1955—Decision, Nov. 1, 1956

Order requiring a New York City seller of a correspondence course in beauty care, together with its parent corporation, to cease using a fictitious trade name—such as "Publishers' Protective Service"—to collect and enforce their past-due accounts and representing it falsely as an independent organization.

Mr. William Tincher for the Commission.
Mr. Thomas B. Scott, of Washington, D.C., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The complaint in this proceeding alleges violations of the Federal Trade Commission Act, in that in substance said respondents have employed the device of a fictitious trade name, "Publishers' Protective Service" for the purpose of collecting in the course of interstate commerce allegedly delinquent accounts due to the two corporate respondents. It is established without dispute between the parties that said "Publishers' Protective Service" is in fact entirely owned and operated by the respondent John J. Crawley, who is registered under the said trade name as a collection agency in New York City. It is also undisputed that he is the president of each of the two respondent corporations, and the officer thereof who formulates, controls and manages all of their business policies. It is alleged in the complaint, however, that the use of this fictitious trade name by respondents does in fact deceive and mislead and also tends to deceive and mislead the public into believing that said "Publishers' Protective Service" is an entirely independent and separate organization from that of the corporate respondents and is employed by them as such a separate organization to collect their accounts.

This initial decision finds generally that the facts alleged in the complaint which are material to this case have been proved by a preponderance of the evidence by counsel supporting the complaint, with the single qualification that the debts sought to be collected by respondents through the use of said fictitious trade name "Publish-

[1] Charges of misrepresenting the terms of payment for the course were settled by a consent order dated August 19, 1955, 52 F.T.C. 150.

ers' Protective Service" are not merely alleged accounts due respondents as claimed in the complaint, but are in fact, to all material substance and effect, lawful, just and demandable debts due to respondent corporations. It is held herein, however, that respondents' said methods of collection are unfair and deceptive acts and practices prohibited by the Federal Trade Commission Act, Section 5(a)(1), and that they are not purged of their unlawful character either because the debts are valid, or because the fictitious name "Publishers' Protective Service" is a trade name duly registered as such by the respondent Crawley under Section 440 of the Penal Laws of New York State.

This proceeding originally included certain charges that the corporate respondent, The Charming Woman, Inc., had deceived and misled the public by certain advertising of courses of instruction in beauty care which said respondent prepared and published for sale. Such matters were alleged in Paragraphs Two to Six, inclusive, of the complaint. Those issues were fully adjudicated by the hearing examiner's initial decision and order dated June 30, 1955, upon a consent order settlement, as authorized by Section 3.25 of the Commission's current Rules of Practice for Adjudicative Proceedings, effective on and after May 21, 1955. Said initial decision was fully approved and adopted as the decision and order of the Commission on August 22, 1955, and thereby became final and effective on that date as provided by said section of the Rules. Since respondents in such consent order proceeding stated that they admitted no violation of law in consenting to the said decisions and orders, as they are fully authorized to do by subsection (b) of said Section 3.25 of the Rules, none of such issues so adjudicated by consent order have been litigated in this proceeding, nor are they considered any way in determining the findings of fact, conclusions of law and order which are set forth herein.

The complaint in this proceeding was issued on January 17, 1955. Respondents' answer was filed February 15, 1955. On April 25, 1955, the case was assigned to the undersigned hearing examiner for hearing. Thereafter, the parties negotiated and entered into the consent order settlement covering most of the issues in the case as hereinabove recited. Trial on only the disputed issues began June 28, 1955, and counsel supporting the complaint completed his evidence and a motion to dismiss the complaint on numerous grounds was made on the record that same day by respondents. Thereafter the law and facts were extensively and ably presented and briefed *pro* and *con* by the respective counsel for the parties. Such motion

was denied by the examiner on October 24, 1955, and respondent appealed therefrom to the Commission. As the Commission's order denying such interlocutory appeal was not entered until December 27, 1955, this had the necessary effect of postponing the hearing of respondents' defense until February 15, 1956. At the close of respondents' evidence, their motion to dismiss the complaint was renewed. Both hearings were held in New York, New York, and the evidence consists solely of the testimony of the respondent John J. Crawley, and the Commission's exhibits which were received in evidence at the first hearing. The record testimony of this sole witness is comparatively brief and the findings of fact herein made are based thereon, including the reasonable and fair inferences arising therefrom.

The only issues of fact which were actually contested are raised by Paragraph Seven of the complaint and Paragraph Five of the answer. Said paragraph of the complaint, in substance, charges that the respondents have adopted and used the said fictitious trade name "Publishers' Protective Service" in the collection of their accounts, thereby representing and implying that such fictitious trade name is an independent and separate organization from respondents, whereas in fact it is the name under which respondent Crawley operates and which is used by respondents to coerce and intimidate debtors of respondent, as well as persons who have cancelled their subscriptions to respondents' publications. Respondents have denied all such allegations and allege and claim, in substance, that ever since December 28, 1935, respondent Crawley has lawfully conducted a collection business under the name of "Publishers' Protective Service" under certificate duly issued to him under the authority of Section 440 of the Penal Laws of New York by the County Clerk of New York County, New York. Respondents therefore admit that said "Publishers' Protective Service" has since been used to collect the delinquent accounts of respondent corporations.

While the detailed findings of fact hereinafter set forth cover the basic facts as found by the examiner, it is necessary at this time to discuss certain evidence in some detail in order to show most clearly the application of the guiding principles of law thereto.

The gist of the Commission's case in support of the complaint is that the respondents in the process of collecting accounts due them use a series of letters under the said fictitious trade name of "Publishers' Protective Service" used by the respondent Crawley. The evidence shows that each of the corporate respondents originally sends out to its debtors on its own letterhead and address a series

of collection letters. There is no evidence that these letters contain any harsh or threatening language. If this earlier series of collection letters fails to effect satisfactory results, then said respondents each use a series of letters which they send out in the United States mails under the fictitious name of "Publishers' Protective Service." None of the earlier collection letters used by the respondent, The Charming Woman, Inc., were received in evidence, although Commission's Exhibits 4 and 5 sent out as collection letters by respondent Wm. H. Wise Co., Inc., appear in the record. They are certainly binding on that respondent and while its wholly-owned subsidiary, The Charming Woman, Inc., may not have used an identical series of letters, this is not a material failure of proof on the part of counsel supporting the complaint, inasmuch as it is undisputed that both corporations use the letters which are sent out to debtors under the fictitious name and masthead of "Publishers' Protective Service," after their earlier series of letters had failed. This latter type of letter is exemplified by Commission's Exhibit 3. It speaks so clearly as to its own deceptive and misleading character that any extended and detailed analysis and discussion thereof in this decision would be purely superogatory. Said letter reads as follows:

For the protection of those engaged in the distribution of books

PUBLISHERS PROTECTIVE SERVICE

Credit Investigations and Collections of Delinquent Accounts

Department of Investigations

Address Your Reply To
Grand Central Post Office, Box 633
New York 17, New York.

NOTICE:

A duplicate statement of your account is enclosed herewith. We have been instructed to take any necessary steps to effect collection.

Our clients state that some time ago you entered into a definite agreement to make regular monthly payments for merchandise which they furnished to you in good faith but that you still owe them the long overdue amount shown.

Our clients further state that you have been given every opportunity to pay this honest debt. They are convinced that you do not intend to pay unless you are sued in court. They are planning on retaining counsel to handle this case for them.

Before we proceed further, we are going to get up-to-date information on you, including your *exact present address*, your *place of employment, amount of salary*, and *amount of your real and personal property*. Do you know that court costs, interest charges, and attorney fees must be paid by the person against whom judgment is rendered? Legal action against you may result in considerable additional expense to you. If you doubt this statement, we suggest that you consult your attorney.

In order that you may avoid unnecessary publicity and expense, we urge you to send your payment today in the enclosed envelope.

Very truly yours,

PUBLISHERS' PROTECTIVE SERVICE
(S) J. M. LEAHY
Manager

JML:g

BE SURE TO RETURN THE ENCLOSED BILL WITH YOUR PAYMENT FOR PROMPT IDENTIFICATION AND CREDIT.

IF PAYMENT HAS BEEN MADE DIRECT TO OUR CLIENT WITHIN THE PAST TWO WEEKS, PLEASE DISREGARD THIS NOTICE.

It is beyond cavil that any debtor who might receive this type of letter would be led most naturally to believe that his account had been handed over for collection to an entirely independent collection agency as there is nothing on the face of a letter to indicate that any other relationship exists between the "Creditors' Protective Service" and the respondent creditor corporation it therein purports to represent than that of principal and agent, or, perhaps to the more ignorant debtor, also that of client and attorney. The most reasonable inferences arising from the use of such letters are that they were used by respondents for the express purpose of so deceiving and misleading the debtors who received such letters and to constrain them to pay by coercion and intimidation. Respondents have not demonstrated any other purpose in their use of such letters. Notwithstanding their indebtedness, debtors are still members of the public and entitled to be protected from such acts and practices. The mere existence of debts in the United States does not deprive debtors as members of the public of the protection of the Federal Trade Commission Act.

Counsel supporting the complaint contends in substance that the evidence shows that some of the accounts sought to be collected by the said "Publishers' Protective Service" letters were either paid or questioned accounts and requests a finding to that effect. The evidence does disclose that occasionally by reasons of clerical errors a debt which had either been previously paid or had been strongly denied by the debtor might be included in the list of debtors to whom such "Publishers' Protective Service" letters were sent. But the evidence shows such occasional errors were soon rectified by respondent and such accounts were not pursued further by the use of other "Publishers' Protective Service" collection letters. That such occasional errors occurred is not surprising out of the large nation-wide business of the respondents bringing in some 25,000 remittances per week from all over the country and with current running accounts aggregating about 55,000 in number. Since the

evidence does not show that there is any substantial number of such errors occurring, these occasional errors are deemed by the hearing examiner to be entirely inconsequential and are disregarded as matters *de minimis*. The credible and probative evidence shows that substantially all the debts respondents actually attempt to collect by the use of said "Publishers' Protective Service" type of letters are undisputed debts which are actually owed to respondents.

The evidence is that from about 8 to 10 percent of the total business of each of the two respondent corporations is finally sent to various collection agencies for collection by them. Of these accounts, approximately one-fourth or some two and one-half percent of each respondent company's total business was attempted to be collected by them through the said "Publishers' Protective Service" letters, the other accounts being sent to several entirely independent collection agencies located in other large cities of the country. It is quite apparent that many thousands of these "Publishers' Protective Service" letters were and are being sent out in the mails in the course of any given year throughout the United States due to the very substantial size of the business conducted by the respondents and the very small amount involved in each of the collection items, and that it would be economically unfeasible, and in most cases impossible, for a debtor owing say $2.00 or $4.00, to investigate and discover that he was still receiving collection letters from his creditor and not from an independent collection agent. This volume of letters to numerous debtors in interstate commerce throughout the United States fully establishes the public interest in this proceeding and justifies this Commission's institution and maintenance thereof.

Respondents concede the Federal Trade Commission does have general jurisdiction over the interstate spread of false, misleading and deceptive practices of collection agencies, as well as of other businesses in interstate commerce, but contend that there is no adjudicated case precisely deciding that facts such as are presented and found here amount to violations of the Federal Trade Commission Act. The briefs and arguments presented by counsel for both sides in the course of this proceeding are replete with many of the very numerous decisions of this Commission and of the courts upholding such Commission jurisdiction and right to prohibit unfair and misleading practices by collection agencies. A careful examination of all such cases cited by counsel and many others, however, does not reveal a single one which presents exactly the same limited state of facts as in the proceeding here at bar. The Federal Trade Commission Act, however, was so broadly and flexibly framed by Congress that an exact precedent never need be found to decide

whether or not any given state of facts establishes or does not establish violations of the Act. Each case is determinable upon its own facts. The Commission has been given a very wide and sound discretion in all such matters in the public interest. Congress by the Act intended that the American public should not be unfairly treated or deceived by the use of any unfair or deceptive means in interstate commerce and never intended that mere refinements in the Act's interpretation or the generality of the alleged unlawful business practices within any given industry should defeat the basic purposes of the Act.

The cases do establish many pertinent general principles of law, however, and there is one of them which is especially applicable to the situation presented in this case and which completely refutes respondents' contention that the existence of a valid debt justifies a creditor in using the false, deceptive and unfair methods they have used to collect from the debtor.

The consistent policy of the Federal Trade Commission from its very beginning has been to interpret and enforce the Federal Trade Commission Act in all situations involving the use of simulatedly independent collection agencies to mislead and deceive the public, including situations such as that presented here where the creditor or one or more of its officers, own or control the collection agency, which is widely used in interstate commerce to collect debts due the corporation and the debtors are not clearly informed that such collection agency is but an *alter ego* of the creditor himself. Circumstances vary from case to case, of course, but it has never been held expressly or by inference in any adjudicated decision involving the collection of accounts that it is essential to establish a violation of the Act that counsel supporting the complaint must prove that the debts sought to be collected are not in fact owed, or that they have been originally incurred through any false, misleading or deceptive practice of the creditor. In addition to the numerous Federal Trade Commission cases cited or quoted from in the several respective briefs of counsel, reference is also made to Stipulation 758 (January 28, 1931), 14 F.T.C. 586–587, where respondent corporation agreed *inter alia* to cease and desist "from making statements or representations so as to import or imply that collection of past due notes and other indebtedness are made through a collecting agency, when in truth and in fact no such agency exists independent of the control of the said corporation or one or more of its said officers and stockholders." This, of course, was not a contested matter resulting in an adjudication against a resisting respondent. It does indicate, however, that such practices were looked upon as

illegal by the Commission as far back as a quarter of a century ago.

But more recently the Commission in a contested proceeding has expressly and clearly held in *DeJay Stores, Inc.* (1952), 48 F.T.C. 1177, 1190: "Although the collection of honest and legitimate debt is a legal and even worthy aim, it does not justify or make legal the use of means which are false, misleading or deceptive." And this case was affirmed in *DeJay Stores, Inc.* v. *F.T.C.* (C.A. 2, 1952), 200 F. 2d 865, 867, where the court in upholding broadly the Commission's order as being in the public interest, specifically held: "The Federal Trade Commission's conclusion that it is in the public interest to require that creditors should not use dishonest methods in collecting their debts is within its discretion." This decision is the latest law on the subject.

It is the undisputed evidence that this collection agency is owned solely by respondent Crawley and is now used, and for some years past has been used, to collect admittedly valid debts of respondent corporations which he controls. The Federal Trade Commission therefore has authority to prevent this "fictitious" agency from carrying on its business. It is unnecessary to comment much on the term "fictitious." Possibly "bona fide" would have been a more accurate legal expression in this complaint, but administrative pleading is not to be construed with technical nicety. The facts bring the methods of respondents' collection practices through "Publishers' Protective Service" under the above-quoted legal principles.

While originally "Publishers' Protective Services" also functioned as a general collection agency for other publishers, it has for some years past served and now serves only as an agency to collect the corporate respondents' various accounts. "It is not independent of and distinct from respondents and is not a bona fide collection agency." *Teitelbaum, et al. d/b/a United States Stationery Co.*, 49 F.T.C. 745, 752. See also *United States Pencil Co., Inc., et al.*, 49 F.T.C. 734, 743, a companion case. In each of these two cases the collection agency was registered as a trade name in the New York County Clerk's Office, just as Crawley has registered "Publishers' Protective Service" here.

But respondents claim that registration under the New York Penal Law, Section 440, makes the use of the name "Publishers' Protective Service" legal and proper. Whether or not Crawley was registered by the name "Publishers' Protective Service" under New York Penal Law, Section 440, as a collection agency is immaterial to the deception actually practiced or the type of undue pressure, harassment and coercion the alleged collection agency's type of letters such as Commission's Exhibit 3 bring to bear on multitudinous

debtors throughout the United States. It definitely appears that these addressed debtors are not advised by the letters that Crawley controls both the particular creditor corporation and the alleged collection agency but the language used by the respondents in the collection agency letters both says and implies quite to the contrary. Respondents have cited no cases under the Federal Trade Commission Act in any way holding that the mere device of a certificate required by a state penal act for the use of a trade name such as is employed here avoids a violation of the Act by the user and holder thereof. All the Federal Trade Commission cases clearly prohibit any kind of collection scheme which is false, misleading or deceptive, even if the sole object is to collect lawful debts. The numerous recent "skip-tracer" cases, such as *DeJay Stores, Inc.* v. *FTC*, *supra*, and cases cited therein, are illustrative of this principle. Whether all, or substantially all, of the debts, are valid is therefore of no great materiality.

The said trade name registration statute relied upon by respondent, Section 440 of the New York Penal Laws (as amended by Laws 1948, ch. 749, Sec. 1, effective September 1, 1948), insofar as relevant here, makes the transaction of business by an individual under a trade name not registered with the proper local authority a misdemeanor. This statute has been held to be "a highly penal one" which "deserves a strict construction" and in its origin "was a measure intended to be in the interest of the commercial community, and had its foundation in public policy. It simply made it a misdemeanor to do what was therein specified, and that is all." *Sinott* v. *German American Bank* (1900), 164 N.Y. 386, 391, 58 N.E. 286, 287. It was designed to protect merchants selling merchandise for use in the particular business. *Cone* v. *Ballou* (1931), 251 N.Y.S. 791, 795. In the foregoing and many other New York decisions compliance or non-compliance with this statute has been held not to be a defense in a wide variety of court actions. For example, compliance or non-compliance therewith is not a defense in civil suits wherein the trade name whether registered or not under said Section 440, infringes on that of another. See *Niagara Mohawk Power Corp.* v. *Simon* (1953), 125 N.Y.S. 2d 813, 814–815; and *Socony-Vacuum Oil Co.* v. *LaFariere* (1944), 48 N.Y.S. 2d 421, 422. See also *U.S. Light, etc. Co. of Maine* v. *U.S. Light etc. Co. of N.Y.* (Cir. Ct., S.D.N.Y. 1910), 181 F. 182, 184–185 (dictum). In short, said statute is a penal act and nothing else. It gives no right to respondents here to use an artificial name to mislead and deceive others in commerce as to the true identity of the one sending out the "Publishers' Protective Service" collection letters or to intimidate the

debtors to whom the letters are mailed. Certainly respondents have not demonstrated why compliance with this penal State statute of New York by respondent Crawley in order for him to avoid the penalties which would be warranted against him under New York law if he committed a misdemeanor, constitutes a legal defense under the Federal Trade Commission Act in the case at bar.

But respondents claim that what they have done in sending out collection letters under the name "Publishers' Protective Service" is a practice which is essentially universal within the bookselling industry. But in no event is this a defense to a misleading and deceptive practice which violates the Federal Trade Commission Act. See *International Art Co.* v. *F.T.C.* (C.C.A. 7, 1940), 109 F. 2d 393, 397. In passing, it may be appropriate to say that while this Commission certainly does not favor the refusal of debtors to pay their just debts it cannot permit respondents to use unfair and misleading practices in interstate commerce to collect them. Of course it is plain that if respondents were more careful in their extension of credit in the first place, they might have substantially fewer difficult debts to collect. But the Commission has no authority or desire to regulate any of the respondents' business methods unless the same violate the Federal Trade Commission Act and the respondents are entitled to extend credit as they choose.

The hearing examiner has hereinbefore found that the debts sought to be collected by letters such as Exhibit 3 are valid. But the important thing is that the debtor is deceived by said letters in the use of an entirely different name from that under which he knows his creditor. No good reason appears as to why any legitimate creditor should resort to concealing his real identity by using collection letters of the type used in this case. It is true, as respondent argues, that the Federal Trade Commission is not a moral supervisor of business ethics and methods. But it does have the positive duty enjoined on it by law to prevent further deception and other unfair practices in interstate commerce by stopping in their incipiency such unlawful practices which definitely tend to deceive and coerce the public.

Respondent contends in substance that it has abandoned the use of letters such as Commission's Exhibit 3, and is now sending out other letters under the name of "Publishers' Protective Service." While the witness Crawley identified such a letter, it was not offered or received in evidence and the hearing examiner cannot conjecture as to whether it was less unfair and deceiving or more unfair and deceiving than those of the type of Commission's Exhibit 3 definitely were. Respondent also raises a number of other objections

relating to the failure of the Commission to show that anyone has been damaged and the like but these have been refuted by citations in the brief of counsel supporting the complaint which are so basic in Federal Trade Commission law that discussion thereof in this initial decision is deemed unnecessary.

Upon the entire record herein, the hearing examiner therefore finds that this proceeding is to the interest of the public and that the Commission has jurisdiction over the subject matter hereof, as well as of the person of each of the respondents. The hearing examiner under the admissions of the pleadings and the facts established by the evidence, upon the whole record also makes the following specific findings of fact:

1. The respondent named in the complaint as Wm. H. Wise Co., Inc., also sometimes variously referred to in the record and briefs herein as Wm. H. Wise & Co., Incorporated, Wm. Wise Co., Inc., Wm. H. Wise Company, Inc., William H. Wise Co., Inc., and William H. Wise Company, is a corporation duly organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 50 West 47th Street, in the City and State of New York. The respondent The Charming Woman, Inc., is a corporation duly organized, existing and doing business under the laws of the State of New York, and is a wholly owned subsidiary of said respondent Wm. H. Wise Co., Inc., with its principal office and place of business at 37 West 47th Street, in the City and State of New York. The respondent John J. Crawley is an individual and president of said corporations and for many years he formulated, controlled and managed all of the policies of said corporations and continues to do so. His principal office and place of business is the same as that of the respondent Wm. H. Wise Co., Inc.

2. For more than two years last past respondent, The Charming Woman, Inc., has been engaged in the sale and distribution of a course of instruction in beauty care which said course was sold and pursued by correspondence through the United States mails. Said respondent, in the conduct of said business, caused said course to be transported from its said place of business in the State of New York to purchasers thereof located in states other than the State of New York. There is now and has been at all times material hereto a substantial course of trade in said course of instruction so sold and distributed by said respondent in commerce.

3. In the course and conduct of said business as aforesaid, respondents have adopted and used the name "Publishers' Protective Service" to collect and enforce past due accounts. "Publishers'

Protective Service" is and at all times material hereto has been owned and operated solely by respondent Crawley, and all of the employees are employees of corporate respondent Wm. H. Wise Company, Inc. In 1935 respondent Crawley was Vice President of corporate respondent Wm. H. Wise Co., Inc., when he first adopted the trade name "Publishers' Protective Service."

4. On December 28, 1935, respondent John J. Crawley signed a certificate declaring his intention to conduct a collection business in New York City under the said name of "Publishers' Protective Service"; that Certificate No. 50799 was issued by the County Clerk, New York County, State of New York, certifying that the original certificate of conducting business was filed in his office December 31, 1935, under file No. 13962–1935.

5. For some years after December 28, 1935, "Publishers' Protective Service" made collections for other publishers as well as for respondent corporations, although such accounts were substantially handled as the respondents' own accounts. In recent years "Publishers' Protective Service" has been used exclusively for the collection of accounts of respondent corporations.

6. "Publishers' Protective Service" has been used and is currently being used by respondents only after a series of nine to twelve letters have been sent to such debtors by respondent corporations; that subject only to the possibility of occasional clerical error, "Publishers' Protective Service" has never been used to attempt to collect delinquent accounts where debtors have paid or have previously denied owing such accounts, and has been intentionally used by respondents only to collect bona fide delinquent accounts.

7. That no accounts of customers of respondent corporations were ever sold or transferred to "Publishers' Protective Service" and no debtor of respondent corporations has been deprived of any legal defense by reason of the handling of respondents' accounts against them by reason respondents' use of the said "Publishers' Protective Service" collection letters.

8. The representations of respondents in interstate commerce that "Publishers' Protective Service" is a separate and independent collection agency and an entirely different organization than the respondent corporations have tended to mislead and deceive the public. "Publishers' Protective Service" is not a "bona fide" collection agency but is a "fictitious" one as that term has been defined and construed by the Federal Trade Commission and is not a "bona fide" separate and independent organization or business from respondents or any of them.

9. Respondents have used and are using the fictitious name of "Publishers' Protective Service" to coerce and intimidate the cus-

tomers of respondents by means of collection letters sent out under the name and post office address of "Publishers' Protective Service," which letters also have tended to deceive and mislead the recipients of said letters into believing that the "Publishers' Protective Service" is an organization and business entirely separate from and independent of respondents' corporation; that said letters were and are being sent by respondents to legitimate debtors of respondents who have purchased but have not paid for correspondence courses of instruction in beauty care published by respondent The Charming Woman, Inc.

Upon the facts herein found, it is concluded that:

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and jurisdiction of the person of each of the respondents; and this proceeding is to the public interest; and

2. The said acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Upon the foregoing findings and conclusion the following order is made against each and all of the respondents herein:

ORDER

It is ordered, That respondents, Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and their officers; and John J. Crawley, individually and as an officer of said corporation; and the respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution, in commerce as "commerce" is defined in the Federal Trade Commission Act, of a course of instruction in beauty culture, or any courses of study or instruction, or any other product, do forthwith cease and desist from:

1. Using fictitiously any trade or corporate name in collecting past-due accounts;

2. Implying that such fictitious collection agency is an independent organization engaged in the business of collecting past-due accounts.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

The questions raised by this appeal of respondents have to do with Paragraph 7 of the complaint which states as follows:

In the course and conduct of said business as aforesaid, respondents have adopted and use a fictitious trade name, to wit, Publishers Protective Service,

for the purpose of collecting accounts to be delinquent, thereby representing and implying that said Publishers Protective Service is an independent and separate organization employed to collect accounts which are in arrears.

In truth and in fact said fictitious collection agency is operated solely by respondent John J. Crawley and is used by respondents to coerce and intimidate purchasers of said course of instruction, as well as persons who have cancelled orders therefor, and compel them to pay for said course, though purchased as a result of the erroneous and mistaken belief engendered by respondents' deceptive practices as herein alleged.

Respondent, The Cahrming Woman, Inc., 50 W. 47th Street, New York City, is a corporation engaged in the sale and distribution of a correspondence course of instruction in beauty care. Respondent William H. Wise Co., Inc., 50 W. 47th Street, New York City, is also a corporation engaged in the sale and distribution of a number of products through the mail. John J. Crawley is president of both corporations.

About December 28, 1935, John J. Crawley filed with the County Clerk and Clerk of the Supreme Court of New York County a sworn statement of intention to conduct a collection agency at 50 W. 47th Street, New York City, under the name of Publishers Protective Service, and stating that the person conducting said business was John J. Crawley.

The questions presented in this appeal are:

(1) Is Publishers Protective Service (PPS) a bona fide independent collection agency as that term is generally understood, or only a fictitious or make-believe organization operating under the control of and for the benefit of other organizations with which Mr. Crawley is associated?

(2) Is the element of deception as required by the Federal Trade Commission Act present?

(3) Has the element of public interest been established?

The evidence, which consists of the testimony of John J. Crawley and certain Commission exhibits, establishes the following:

The mail address of PPS is Box 633, Grand Central Station, New York City, which box is registered in the name of John J. Crawley; Mr. Crawley did not know if it had a listed telephone number or how it could be reached by telephone; It was listed on the office bulletin board where other respondent corporations are listed and had a headquarters where customers could contact it; Mostly William H. Wise Company employees handled the details of PPS operations—that is, the necessary record keeping, multigraphing, checking and answering correspondence; Mr. Crawley did not think anyone worked for PPS who was not an employee of William H. Wise Company; PPS kept separate bookkeeping records;

It does not handle accounts for others than William H. Wise and affiliated companies; Originally it did handle accounts of some other publishers, when their accounts involved customers of William H. Wise Company; That practice was given up six or eight years ago; Respondent corporations at times utilized the services of other collection agencies; About 8% to 10% of the total business of each of said corporations is eventually thus sent for collection; Of this total, about 25% is handled by PPS; If the efforts of PPS brought from the alleged debtors claims that debts were not owed, this question was referred to the creditors for personal attention; When customers of respondent corporations were in default, attempts to collect were made by sending out a succession of nine to twelve letters "of varying degrees of friendliness"; Included were notices on the letterhead of William H. Wise Company (Commission's Exhibits 4 and 5) advising that if payment were not made, the account would be placed with a "collection agency" or "an outside department for collection"; This was referred to as "about as unpleasant a thing as we can think of"; After this, the letter Commission's Exhibit 3 was sent, the material parts of which are as follows:

PUBLISHERS PROTECTIVE SERVICE

Credit Investigations and Collections of Delinquent Accounts

Department of Investigations

NOTICE:

A duplicate statement of your account is enclosed herewith. We have been instructed to take any necessary steps to effect collection.

Our clients state that some time ago you entered into a definite agreement to make regular monthly payments for merchandise which they furnished you in good faith but that you still owe them the long overdue amount shown.

Our clients further state that you have been given every opportunity to pay this honest debt. They are convinced that you do not intend to pay unless you are sued in court. They are planning on retaining counsel to handle this case for them.

Before we proceed further, we are going to get up-to-date information on you, including your *exact present address*, your *place of employment, amount of salary*, and *amount of your real and personal property*. Do you know that court costs, interest charges, and attorney fees must be paid by the person against whom judgment is rendered? Legal action against you may result in considerable additional expense to you. If you doubt this statement, we suggest that you consult your attorney.

In order that you may avoid unnecessary publicity and expense, we urge you to send your payment today in the enclosed envelope.

Very truly yours,

PUBLISHERS PROTECTIVE SERVICE

(S) J. M. LAHY

Manager

The hearing examiner found that "Publishers Protective Service is not a 'bona fide' collection agency but is a 'fictitious' one as that

term has been defined and construed by the Federal Trade Commission and is not a 'bona fide' separate and independent organization or business from respondents or any of them."

We agree with this finding. PPS did not handle accounts for creditors outside the William H. Wise corporations. This would, of course, not be controlling, if it in fact did have an independent existence, which obviously it did not. Its employees were employees of William H. Wise and Company. In regard to the accounts of respondent corporations, it does not appear that it performed the ordinary function of a collection agency except to send out Commission's Exhibit 3 and to funnel reports to the creditors for their disposition. It does not exist for its own independent purposes but only for the purposes of respondent corporations.

International Art Company, *American Discount Company*, and *John C. Kuck* v. *F.T.C.* (1940) 109 F. 2d 363 presented a somewhat similar situation. There, the first two respondents were separate corporations having the same office and place of business and were organized by Kuck who was president, general manager, and owner of substantially all the stock of each. The product in question was sold by the art company and sometimes payment was made by notes payable to the discount company, which then assumed the role of an innocent purchaser for value. The court said:

"The finding is to the effect that both corporations have their office in the same room with merely an aisle separating the desks. International Art Company used 325 W. Huron Street as its address, and the discount company The Orleans-Huron Building as its address. Kuck was president of both and owned practically all the stock in each. The flimsy argument is made that the discount company was organized for the benefit of the customers whose notes were discounted. It is plainly obvious, however, that it was for the benefit of Kuck and the art company. Petitioners came close to correctly appraising the situation in their answer in stating that the discount company served 'in an effort to discourage customers from setting up trumped-up charges against a legitimate balance small in amount and far from the home office.' * * * There can be no doubt but that it was a corporation without substance and that its purpose was to aid and assist in the art company's plan of operations."

The fact of registration under the New York statute is not conclusive on the factual question at this point. Statutes requiring the registration of trade names have been adopted in many states and have been construed by the courts. Their general purpose is to afford an opportunity for the public to know the identity of the individuals operating under the particular trade name. The New

York statute provides a penalty for not stating the true facts in this regard. Nowhere does it indicate any intention to create a presumption that the facts recited therein are conclusive on the question involved here. In any event, the sworn statement in 1935 that Mr. Crawley intended to operate a collection agency does not offset the evidence showing what the actual situation was at a later date. See in the Matter of *U.S. Pencil Company*, 49 F.T.C. 754.

As to the second question raised in the appeal, the hearing examiner found:

"The representations of respondents in interstate commerce that Publishers Protective Service is a separate and independent collection agency and an entirely different organization than the respondent corporations have tended to mislead and deceive the public."

We are also in accord with this finding. It is, of course, not necessary to prove actual deception or injury to any particular individual. It is enough if the practice is of such a character as under the circumstances would have a natural tendency to deceive. In considering the effect on the alleged debtor, it is necessary to consider the entire sequence of events including, first, the nine to twelve letters from the creditor corporations, second, the notices that the matter was being referred to a collection agency or outside department for collection (which was referred to as an unpleasant experience) and, finally, the letter from PPS purporting on its face to be from an organization engaged in credit investigations and collections for the protection of those engaged in the distribution of books. This letter was well designed to impress the addressee with the unpleasantness of the steps which were proposed to be taken in the matter of investigation and possible suit. The vigorous methods generally adopted by collection agencies are well known and the attitudes of debtors toward payment of even a just account have often been considerably changed thereby. The corporate respondents sought to attain these results, not by the hard way of actually employing a bona fide collection agency, but by pretending that they had done so.

In the Matter of *National Remedy Company, et al.*, 8 F.T.C. 437, respondent was ordered to cease and desist from falsely representing that it had placed its claims in the hands of a collection agency. In the Matter of *May Goldberg, et al.*, 40 F.T.C. 296, respondents sent letters from a purported collection agency, which letters were simply purchased in blank. Thus, the addressees were induced to believe that the letters were sent by a bona fide collection agency when, in fact, the senders were the respondents. The Commission prohibited this practice.

It is true in some of these cases there were other elements of deception, such as falsely claiming to be an innocent purchaser for value. Nevertheless, the Commission has entered orders against misrepresenting a fictitious collection agency as a bona fide one without anything more. For example, in the Matter of *New Standard Publishing Company*, 47 F.T.C. 1350, order vacated on other grounds, 194 F. 2d 181 (4th Cir. 1952), respondent was ordered to cease and desist from representing:

"(14) That Commercial Finance or any other trade or fictitious name under which business is done by respondents is a bona fide collection agency not connected with the respondent New Standard Publishing Company.

"(15) That any purchaser's contract has been assigned to or discounted with a bona fide collection agency where such is not the fact."

The hearing examiner found that:

"No debtor of respondent corporations has been deprived of any legal defense by reason of the handling of respondents' accounts against them by reason of respondents' use of the said Publishers Protective Service collection letters."

He also found that PPS has been intentionally used by respondents only to collect bona fide delinquent accounts.

These facts, however, do not justify the adoption of that part of respondents' Fifth Proposed Finding which states that collection of accounts by PPS has not resulted in detriment to the purchasing public within the purview of Section 5 of the Federal Trade Commission Act; nor did it necessitate adoption of respondents' Seventh Proposed Finding that PPS has not been used to coerce purchasers to make payment.

The basis of the complaint against respondents is that they falsely represented PPS as being a bona fide independent collection agency, when, in fact, it was not, and that such misrepresentation has the tendency and capacity to deceive. Nothing more need be proved. *Ohio Leather Company* v. *F.T.C.* (1930) 45 F. 2d 39, cited by respondents is not inconsistent with the holding here. In that case, the claimed deception was based on the use of the trade name "Kaffor-Kid," in that it induced the belief among consumers that the leather was from a young goat or kid. The court held that the evidence did not show that to be the fact.

This leads to the final argument of respondents that public interest is lacking.

It appears that respondents had many accounts in various parts of the country. Some of them involved only a few dollars. This

brings to mind the situation suggested in *F.T.C.* v. *Klesner* (1929) 280 U.S. 19, where the Supreme Court said public interest may exist "* * * because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected was too small to warrant it." In *De Jay Stores, Inc.* v. *F.T.C.* (1952), 200 F. 2d 865, the court said: "But it is not necessary to establish that the person deceived has suffered any pecuniary loss."

It is true that all persons should pay their just debts. Within legal limits, creditors are entitled to pursue their collection methods energetically. That does not, however, justify methods that are deceptive under the law. This has been consistently held both by the Commission and the courts.

Respondents also complain of the reception in evidence over their objection of Commission's Exhibits 4 and 5. These were the notices already referred to on the letterheads of William H. Wise Company, Inc., stating that if the debt were not paid, the matter would be referred to an outside department or a collection agency. Because it appears that William H. Wise Company did employ other collection agencies whose independent status is not disputed, respondents claim that the above reference is to them rather than to PPS. Mr. Crawley described the procedure of sending out nine to twelve notices before turning over the matter for collection. He did not testify that any different practice was followed with PPS than with other organizations. Nor does it appear that any distinction was made between the two corporate respondents in this regard. The argument of respondents' counsel goes to the value of the evidence rather than to its admissibility.

The appeal of respondents is denied. The findings, conclusions and order of the hearing examiner are adopted as the findings, conclusions and order of the Commission.

It is directed that order issue accordingly.

Commissioner Mason did not participate in the decision of this matter.

FINAL ORDER

Respondents having timely filed on August 15, 1956, their appeal from the initial decision of the hearing examiner in this proceeding; and the matter having been heard by the Commission on briefs and oral argument; and

The Commission having rendered its decision denying respondents' appeal and adopting the initial decision as the decision of the Commission.

It is ordered, That respondents, Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and John J. Crawley, individually and as an officer of said corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in said initial decision.

Commissioner Mason not participating.