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## Consumer News

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# Consumer News

## Credit Bureaus Under Fire

Spurred by thousands of consumer complaints and stories of improperly denied credit, federal regulators, members of Congress, and consumer advocates recently called for tighter control of credit reporting agencies. The industry, which is dominated by three major firms, Trans Union Corp., TRW Inc. and Equifax Inc., collects personal credit and other information and sells that information to banks, retailers, and employers. The three companies hold over 450 million individual credit files. Critics charge that many of the files include incorrect information.

"The credit reporting industry is out of control," said Rep. Charles E. Schumer (D-N.Y.) during a hearing before the consumer affairs subcommittee of the House Banking Committee. Added subcommittee chairman Esteban Torres (D-Cal.), "A system that produces errors in almost half of its reports while requiring more than six months to remove those errors, must not be allowed to continue."

Jean Noonan, associate director for credit practices at the Federal Trade Commission ("FTC"), told the panel that the FTC received 9,000 written complaints in 1990, up from 6,000 in 1989, and "several dozen phone calls every day." Other witnesses testified of being denied credit due to false credit information, being fired when a credit bureau's report improperly showed a criminal record, and being hounded by collection agencies when one person's credit information was commingled with another individual with the same name. Schumer and Torres were joined by three other House members, two Republicans and a Democrat, in introducing individual bills which would amend the Fair Credit Reporting Act of 1971 ("FCRA").

The credit reporting industry countered that the legislation is unnecessary and would be very

costly. While errors do occur, industry representatives argued most are minor and that the one million consumers who receive credit each day in the United States benefit from quick and easy credit checks. Recently, Associated Credit Bureaus Inc., an industry trade group, announced it had hired the accounting firm Arthur Andersen and Co. to audit credit files to determine if they contain incorrect information.

"It's not just because of legislation, but that's a motivating factor," said Equifax senior vice president John Baker. "We have an opportunity for additional business if we're better in handling consumers." Equifax spent over \$5 million this year revamping its customer service system.

Consumers Union, which publishes Consumer Reports, recently released a study which found that nearly half the credit reports it examined contained inaccuracies. According to the study, nineteen percent contained mistakes which would likely lead to a denial of credit. "Inaccuracies occur when the credit grantor is supplying information to the credit bureau that is wrong, or when the bureau mixes up files of related individuals or those with similar names," said Michelle Meier, counsel for government affairs at Consumers Union. Meier recommends consumers check all three credit bureaus' reports because each may contain incorrect information. However, that would cost consumers nearly \$50 (\$15 to \$20 for each report) unless they have been denied credit in the last 30 days in which case credit reports must be issued free.

While each bill currently before Congress is different, the proposed legislation would generally require bureaus to provide free credit reports annually at a consumer's request, resolve consumer complaints of errors within thirty days, institute civil penalties for banks and retailers which provide false

credit information, and prohibit the sale of credit information to direct-marketing companies without consumers' consent.

## Consumer Group Seeks Rules On "Advertising" In Movies

The Center for the Study of Commercialism ("CSC") recently petitioned the Federal Trade Commission ("FTC") to require movie makers to inform viewers when a company paid to place a product in a film. The Washington-based non-profit group wants the notice to be clearly displayed and clearly audible at the beginning of each movie. "Naming every product or corporation will let moviegoers know that they're going to be hit with paid advertising," said Mark Crispin Miller, a co-signer of the petition and a professor of media studies at Johns Hopkins University. The warning proposed by the CSC would state: "The motion picture you are about to see contains advertisements for the following products, paid for by the following companies."

The practice of "product placement" began in the early 1980s and has since proliferated. Some marketing experts say that placements began after the seventy percent increase in the sales of Reese's Pieces following their appearance in the 1982 movie "E.T." Sales figures for product placement are unavailable because movie studios refuse to release them. However, according to the CSC, Philip Morris paid \$350,000 to have Lark cigarettes featured in the James Bond movie, "Licence to Kill."

*"Consumer News" is prepared by the News Editor. A limited list of materials used in preparing the stories appearing here is available for a \$5 compilation charge. Please be specific (include volume number, issue number, and story title) when ordering. Send requests to: News Editor, Loyola Consumer Law Reporter, One East Pearson Street, Chicago, Illinois, 60611.*

## CONSUMER UPDATE

### New FTC Rule For Advertisements

A new Federal Trade Commission ("FTC") rule requires retailers to issue rain checks when a store runs out of an advertised sale item. The rule applies unless the ad stated there were limited quantities of the item. For more information on the "Unavailability Rule," please write: Rain Checks, Federal Trade Commission, Attn: Ed Bush, 6th and Pennsylvania Ave. N.W., Washington, DC 20580.

Most placements cost in the tens of thousands according to Richard E. Gore, the president of a placement brokerage firm in New York.

Tobacco companies agreed to stop buying placements earlier this year after the FTC threatened to investigate whether health warnings would be required and whether television showings of such movies would violate the 1971 broadcast ban on tobacco advertising. The petitioning marks the first time the FTC will examine the practice under its mandate to prohibit unfair or deceptive advertising. At issue is whether product placement is advertising at all, and if so whether it creates a risk of significant economic injury.

The CSC contends that product placements are deceptive "because they exploit the relaxed sensibilities and less vigilant and critical attitude of the movie audience." And according to Michael Jacobson, co-founder of the CSC, "...there is economic harm. Moviegoers are being persuaded to develop a highly favorable opinion of a product by having the product associated with the glamour of Hollywood and fame of actors. That obviously accrues to the advantage of the marketer, because moviegoers are likelier [sic] to buy that product."

The CSC's charges have support in a 1989 report by the advertising agency, J. Walter Thompson. It labeled product placement "as powerful as a celebrity endorse-

ment but more subtle." The report stated, "In society's zeal to imitate stars, it's conceivable that viewers will acknowledge and buy products used by idols on the big screen."

The FTC will consider the petition over the next several months according to Bonnie Jansen, director of public affairs.

### Government Cracks Down On Malt Liquor Advertising

Responding to community outcry, the Bureau of Alcohol, Tobacco and Firearms ("BATF") is cracking down on malt liquor advertising. BATF recently ordered G. Heileman Brewing Co. to change the name of its new malt liquor, PowerMaster, which was to be introduced this summer. PowerMaster, at 5.9% alcohol, is one of a new group of "up-strength" malt liquors which are generally about thirty to forty percent stronger than standard malt liquors, such as Heileman's Colt 45. Following BATF's decision to prohibit the brandname PowerMaster, Heileman elected to withdraw the new product.

Surgeon General Antonia Novello joined health and minority activists in opposing the introduction of PowerMaster. Novello called Heileman's marketing plans "socially irresponsible" and added: "It's true this is a legal product, but the problem is that they are targeting some populations that are already very prone (to health risks). . . . In a subconscious way, I think they think these people are expendable."

BATF relied on the federal Alcohol Administration Act of 1935 ("the Act"), passed shortly after the repeal of Prohibition, in requiring Heileman to change its brandname. Under the Act, beer manufacturers (unlike wine or liquor manufacturers) are prohibited from printing alcoholic content on their labels and from using such words as "extra strength" or "high test" in any of their promotional materials. BATF objected to Heileman's use of the word "power." According to BATF's Tom Hill, "'Power' is a word that connotes [sic] strength."

While objecting to the name

PowerMaster, Novello has called for the repeal of the 1935 Act. Novello would like to see new federal regulations requiring that all alcoholic beverage labels carry information about alcohol content. Earlier this year, Novello criticized the marketing of Cisco, a fortified wine of approximately twenty percent alcohol, which was packaged to look like a low-alcohol wine cooler. The Federal Trade Commission took action against Canandaigua Wine Co., Inc. the maker of Cisco. The company has since agreed to change the packaging and contact its distributors and retailers to make sure the product is not promoted or confused as being a low-alcohol beverage.

In deciding to drop its new malt liquor, Heileman was also responding to pressure from community activists. Community groups planned a boycott of all Heileman products. George Hacker, director of the National Coalition to Prevent Impaired Driving, called Heileman's campaign "an insidious attack on the black community," and noted that the blacks likely to be reached by the campaign have "less health care, live in poverty, have economic and social problems exacerbated by alcohol. To justify targeting because that's the market and with a message that promotes high alcohol content and [its] drug effect is indefensible." Heileman's decision to remove PowerMaster from the market was a victory for community activists trying to promote better health in minority communities.

### Banks Fight To Keep Share In Credit Card Market

Like many industries, the credit card business boomed in the 1980s. Over 215 million cards are in circulation, with the average credit card holder carrying 9.1 cards. By 1990, billings totaled \$366 billion, double the 1986 figure. And outstanding balances on general purpose cards such as Visa and MasterCard grew sixfold to \$180.1 billion. For banks, this is good news in otherwise bad times. For example at Citibank, credit cards brought in sixty percent of the consumer credit division's one

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# Recent Cases

## The Second Circuit Holds That An Anti-Discrimination Provision Of The Fair Housing Act Applies to Human Models in Advertisements

In *Ragin v. New York Times*, 923 F.2d 995 (2d Cir. 1991), the United States Court of Appeals for the Second Circuit held that section 3604(c) of the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.* (1988), which prohibited publication of advertisements suggesting racial preference, applied to human models in real estate advertisements published in newspapers. The court also held that application of section 3604(c) of the Fair Housing Act to newspapers did not violate the first amendment.

### Background

Luther M. Ragin, Jr. ("Ragin") and other individuals were black persons who sought housing in the New York metropolitan area. The Open Housing Center, Inc. ("Open Housing"), an equal housing organization, joined Ragin and the other individuals in a suit against the New York Times Co. ("the Times"), publisher of *The New York Times*. Ragin and Open Housing asserted that real estate advertisements in the Sunday editions of *The New York Times* violated the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (c) (1988), the Civil Rights Act of 1866, 42 U.S.C. § 1982 (1988), the Civil Rights Act of 1870, 42 U.S.C. § 1981 (1988), and the thirteenth amendment.

The complaint stated that during the twenty year period since the Act was passed, the Times published advertisements containing thousands of human models, virtually none of whom were black. Furthermore, while the white human models depicted potential

homeowners and tenants, the few black models in the advertisements usually represented maintenance workers, small children, or cartoon characters.

In addition, Ragin and Open Housing claimed that the Times published advertisements targeted to certain racial groups which indicated a preference on the basis of race. Ragin and Open Housing stated that the Times incorporated all-white models in advertisements directed to white communities. Similarly, the few advertisements that depicted black human models as potential homeowners or tenants were for real estate located in predominantly black communities. Ragin and Open Housing sought declaratory judgment, injunctive relief, and compensatory and punitive damages.

The Times moved to dismiss the complaint for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). The district court partially granted the motion and dismissed the claims based on the thirteenth amendment, sections 1981 and 1982 of the Civil Rights Act, and section 3604(a) of the Fair Housing Act.

The district court, however, denied the motion for the claim based upon section 3604(c) of the Fair Housing Act. The lower court concluded: (1) proof at trial of the alleged advertising patterns would adequately support a finding that the Times violated the Fair Housing Act, (2) the first amendment did not protect illegal commercial speech, (3) requiring the press to monitor advertisements would not impose an unconstitutional burden, and (4) the statute provided constitutionally adequate notice of the prohibited conduct. The Times appealed the decision to the United States Court of Appeals for the Second Circuit.

### The Appellate Court's Opinion Statutory Issues

The Second Circuit first ad-

ressed the arguments of the Times under section 3604(c) of the Fair Housing Act. Section 3604(c) provides that it is unlawful to publish real estate advertisements which indicate any racial preference. The court found that the statute banned advertisements which suggested racial preference to an ordinary reader. The ordinary reader, the court concluded, was one who was neither overly suspicious nor insensitive. Furthermore, the appellate court maintained that section 3604(c) prohibited racially biased advertisements, regardless of the advertiser's intent. The court recognized that although intent may be necessary for factual determinations, it was irrelevant in determining the advertisement's general message.

The court next defined the situations in which section 3604(c) applied. The court agreed with the Times that liability may not be based on an aggregation of different advertisers. Instead, the court found the Fair Housing Act applied only to individual advertisers. Additionally, section 3604 of the Fair Housing Act encompassed human models in advertisements since the statute did not limit the prohibition to racial messages conveyed by particular means. The court noted that nothing in the statute's text or legislative history showed congressional intent to exclude subtle methods of indicating racial preference.

The appellate court rejected the Times's argument that application of section 3604(c) to newspapers would promote racial quotas. The court noted that the choice of models for advertisements involved very different considerations from those relating to selection of persons for employment opportunities, the usual forum for the quota controversy. The court found that since advertisers arbitrarily determined everything in their "make-up-your-own-world" of advertisements, the inclusion of a black model where necessary was