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United States General Accounting Office
Washington, DC 20548

Human Resources
Division

B-201402

The Honorable Michael Pertschuk
Chairman, Federal Trade Commission

JANUARY 19, 1981

Dear Mr. Pertschuk:

Subject: More Action Is Needed on ~~the~~ Consumer Mail Order Problem (HRD-81-41)

Because many consumers are still subjected to mail order problems, mainly late delivery, we reviewed the Federal Trade Commission's (FTC's) activities concerning the monitoring, enforcement, and evaluation of the mail order merchandise rule. FTC's mail order rule requires the seller to have a reasonable basis to expect shipment to consumers within the time advertised, or if no time was advertised, within 30 days of receipt of a properly completed order. If the advertised shipment time (or the 30-day limit) cannot be met, the seller must so notify the consumer. FTC established this rule, effective February 2, 1976, to address consumer problems with mail order purchases. The results of our review are summarized below and detailed in the enclosure.

We believe that FTC's monitoring and enforcement of the mail order rule could be substantially improved if FTC regularly obtained consumer mail order complaint data available at the U.S. Postal Service. We believe these data would be helpful to FTC because the complaints (1) mostly concern delivery problems covered under the mail order rule, (2) are several times the number received by the Commission, and (3) are filed by company name, thereby aiding identification of potential violations.

While most sellers may be complying with the mail order rule, the large volume of mail order complaints, our analysis of Postal Service complaint files, and the views of certain Federal and State officials familiar with consumer mail order problems indicate a substantial level of noncompliance that needs attention. We believe FTC should evaluate the overall effectiveness of the rule and periodically analyze the adequacy of its enforcement actions in key locations of the mail order industry, such as the Los Angeles and New York areas.

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FTC needs to improve its handling and processing of consumer mail order complaints. The practice of not referring to the Postal Service mail order complaints lacking proof of purchase, in our opinion, should be eliminated. Further, FTC could improve its computerized data base by including all consumer mail order rule violation complaint data.

Our recommendations, shown on pages 9, 10, 12, and 13, have been discussed with FTC officials, who said they are addressing these issues. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Chairmen of the four above-mentioned Committees; the Senate Committee on Commerce, Science and Transportation; the House Committee on Interstate and Foreign Commerce; and the House Committee on Post Office and Civil Service. Copies are also being sent to the Director, Office of Management and Budget, and the Postmaster General.

Sincerely yours,

Gregory J. Ahart
Director

Enclosure

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ABBREVIATIONS

BBB Better Business Bureau

FTC Federal Trade Commission

THE FEDERAL TRADE COMMISSION'S MAIL ORDER RULE NEEDS IMPROVED MONITORING AND ENFORCEMENT

INTRODUCTION

The mail marketing industry is prosperous and growing. The Direct Mail/Marketing Association reported industry sales in excess of $80 billion in 1979. This includes orders received through the mails and over the telephone. Continued industry growth is expected, especially in the telephone segment. Factors favoring further growth include the convenience of shopping by mail, the availability of more types of products, and increased transportation costs to shopping centers. Also, more people are looking at the mail order business, according to a Postal Service official, as a way of earning extra income to help cope with inflation.

While shopping by mail has many advantages and is generally reliable, some characteristics of the mail order marketplace can work to the consumer's disadvantage. First, in typical mail order purchases, the consumer pays in advance. If something goes wrong, the consumer bears the burden of getting the problem resolved. Second, businesses, including individuals working part time, may enter and leave the industry with relative ease because the requirements for getting started are minimal. Third, consumers often have to make their purchase decision without being able to examine the product. Fourth, many mail orders are interstate transactions. The long distances involved preclude personal contact by consumers, make civil suits impractical, and create jurisdiction problems for some law enforcement agencies.

Scope and methodology

We reviewed Federal activities involving consumer mail order problems to determine their adequacy. The fieldwork was primarily performed at the headquarters of the U.S. Postal Service and the Federal Trade Commission (FTC) in Washington, D.C., and at their offices in Boston, Massachusetts, and New York, New York. We also contacted Postal Service offices in Los Angeles and San Francisco and FTC offices in Denver, Seattle, Los Angeles, and San Francisco. In addition to talking with agency personnel, we examined agency regulations, consumer complaint files, consumer complaint handling procedures, and investigative case files.

We also discussed consumer mail order problems with officials of Better Business Bureaus (BBBs), the Direct Mail/Marketing Association, and the Office of the Attorney General of New York State. Our fieldwork was done between March and July 1980.

We did not analyze which agency is the most appropriate to deal with typical mail order delivery problems, such as late delivery--FTC, with its broad responsibilities in consumer protection, or the Postal Service, with its special interest in protecting consumers using the mails. (Before the Postal Service could take action on these problems, legislative action by the Congress would be required.) The Congress, as well as both agencies, may wish to consider this issue. We are not pursuing it at this time since FTC has agreed to address the issues raised in this report which we believe will lead to more effective consumer protection on mail order delivery problems. We will, however, monitor FTC's progress in resolving the problems.

LATE DELIVERY--A COMMON CONSUMER PROBLEM

Consumers send over 100,000 mail order complaints a year to the Postal Service, BBBs, and the Direct Mail/Marketing Association. Other third parties that handle consumer complaints, such as State consumer protection agencies, also receive many mail order complaints. These complaints, however, are only part of a very extensive problem because many consumers who complain send their complaints directly to the business. A 1979 national study on how consumer complaints are handled, sponsored by the U.S. Office of Consumer Affairs, found that only a small percentage of the consumers contacted third-party complaint handlers about their problems.

By far the most common mail order problem is late delivery. Time between order placement and product delivery is sometimes very long, often as long as several months. Because of bankruptcy or mail fraud, the consumer sometimes never receives anything. Delivery problems cause consumers inconvenience, frustration, and aggravation in attempting to get their problems resolved. Further, companies with numerous consumer complaints are often unresponsive. As one postal inspector explained, sellers already have the consumer's money and know that resolving complaints takes money and time more profitably spent generating increased sales. Examples of consumers experiencing mail order delivery problems follow:

--A consumer ordered merchandise on October 1, 1979, expecting delivery before Christmas. The order was finally received in January 1980, too late for its intended purpose. During this period, the consumer did not receive any notice about the delay. Although the consumer returned the merchandise immediately, she had to wait over 3 months to get her money refunded.

--Another consumer waiting for delivery became concerned when his canceled check was returned indicating the seller had received the order and payment. None of the consumer's letters of inquiry about the delay or those sent on his behalf by the BBB prompted any reply. Finally, after over 6 months of waiting, the consumer received the merchandise.

Mail order complaints continue to top the list at BBBs

The Council of Better Business Bureaus not only helps consumers resolve problems with businesses including mail order sellers, but also compiles consumer complaint statistics. These data are particularly significant because of their national scope. The Council recorded about 79,000 mail order complaints in 1979, up 29 percent from 1978. Mail order problems accounted for 19.1 percent of all complaints received in 1979, and as usual were at the top of the Bureau's complaint list. The great majority of these mail order complaints, according to the BBB, continue to be delayed deliveries or nondelivery. But complaints about consumers not receiving refunds have also increased.

Direct Mail/Marketing Association also helps resolve mail order complaints

The Direct Mail/Marketing Association, an industry-supported group that helps resolve consumer mail order problems, is an international trade association with about 3,400 members, and represents users, creators, and suppliers of direct mail advertising, mail order, and other direct marketing techniques. An Association official estimated that it receives about 20,000 to 30,000 mail order complaints annually, most involving nondelivery (at the time of complaint) of merchandise or requests for refund on returned merchandise.

Complaints to the Postal Service are increasing

More and more consumers are complaining to the Postal Service about delivery problems involving merchandise ordered by mail. The Service's Consumer Protection Program handled about 42,300 mail order complaints in fiscal year 1979, up 17.4 percent from the 36,000 complaints received in 1978. Through the first 10 months of fiscal year 1980, the Service's Boston and New York divisions combined received 17,345 complaints, an increase of about 65 percent from the 10,528 received during the same period in 1979. The increase in complaints in 1980 may in part have resulted from a new Service consumer education effort begun in October 1979 and designed to reduce the public's susceptibility to mail fraud schemes.

In addition to complaints processed through the Consumer Protection Program, the Postal Service handled about 200,000 mail fraud complaints in fiscal year 1979. Some of these noted delivery problems (mostly failure to receive merchandise) involving mail order sellers. In some cases, Service investigation showed evidence of mail fraud, a criminal offense. In others it showed that seller financial or operational difficulties caused the delivery problems.

FEDERAL AGENCY EFFORTS TO REDUCE MAIL ORDER PROBLEMS

Because our mail system is run by the Federal Government, it has a special interest in assuring that business conducted through the mail is reliable. Two Federal agencies, the Postal Service and FTC, are active in protecting the interests of consumers who order products and services by mail.

FTC's mail order rule

FTC's primary legislative authority stems from section 5 of the Federal Trade Commission Act (15 U.S.C. 45), which states that unfair methods of competition and unfair or deceptive acts or practices in commerce are unlawful. Under this authority FTC may order individual businesses (including mail order sellers) to cease and desist from unfair acts or practices. In October 1975, FTC took a broader and more direct approach to the mail order problem by issuing a trade regulation--the mail order merchandise rule--which became effective on February 2, 1976.

FTC based its mail order rule on proceedings initiated in September 1971. During its rulemaking proceedings, FTC recorded over 3,000 mail order sales complaints. Most complaints involved failure to (1) deliver, (2) deliver within a reasonable time, (3) refund promptly, or (4) responsively answer consumer inquiries. FTC found existing remedies available to consumers inadequate, partly because of the economic impracticability of taking legal action. The mail order buyer was described as being in a far less advantageous position in seeking to resolve complaints than one who purchases from a local merchant.

FTC's mail order rule requires the seller to have a reasonable basis to expect shipment to consumers within the time advertised, or if no time was advertised, within 30 days of receipt of a properly completed order. If the advertised shipment time (or the 30-day limit) cannot be met, the seller must notify the consumer. The seller must also tell the consumer what the new shipping date will be and give the option of either canceling the order and receiving a refund or agreeing to the new shipping date. The rule allows the seller to obtain consumer consent to further delay more than once, as long as the seller has a reasonable basis for expecting shipment within the times stated in the offers of options.

The rule does not apply to all mail order merchandising. For example, the rule does not apply to mail order photo finishing, magazine subscriptions, and other serial deliveries (except for the initial shipment); to mail order seeds and growing plants; to COD orders; or to credit orders where the buyer's account is not charged before merchandise shipment.

Violators of the mail order rule are subject to a penalty of up to $10,000 for each violation. From the effective date of the rule, February 2, 1976, through July 1980, FTC obtained penalties in four cases against six companies. The penalties ranged from $15,000 to $40,000 and were obtained in the form of judgments processed through U.S. district courts. FTC officials point out that seeking monetary penalties is only part of its enforcement approach. A major objective is to get mail order sellers to improve their operations to the extent needed to comply with the rule. FTC officials noted one example where a seller who violated the mail order rule installed a new computer system which provides for handling consumer service correspondence on a daily basis. Consumer complaints against this firm have since dropped sharply. FTC also investigated 38 other mail order sellers.

These investigations were closed for various reasons, such as lack of substantial violations and seller bankruptcy.

To help monitor compliance with the mail order rule, FTC uses a computerized data base containing consumer complaints indicating possible rule violations. An FTC official estimated that FTC recives about 400 to 500 mail order rule violation complaints per month (about 5,000 to 6,000 per year). The accuracy of these figures is uncertain because of inaccuracies in the data input. (See p. 11.)

The Postal Service's consumer protection activities

To protect consumer interests, the Postal Service acts within its special frauds programs and its Consumer Protection Program. If the Service finds evidence of a scheme to obtain money or property through the mail by means of false representation, it may stop delivery of such mail under authority of the Postal Service Reorganization Act, 1970 (39 U.S.C. 3005). If the scheme involves mail fraud, a criminal act, the Service, under Federal Crimes and Criminal Procedure statutes (18 U.S.C. 1341), can also seek prosecution by a U.S. attorney in Federal district courts where fines and prison sentences may be imposed.

The Consumer Protection Program is intended to reduce the consumer's susceptibility to mail fraud schemes through education and to prevent mail fraud schemes from developing. The educational process uses the media to provide information to consumers, consumer advocate groups, business groups, and others. Another component of this program involves resolving consumer complaints. For example, if a consumer files a complaint citing a failure to receive a product ordered several months earlier, the Postal Service first sends a letter to the consumer acknowledging receipt of the complaint. It then writes to the seller describing the consumer's problem and requesting the company's assistance in obtaining resolution. For fiscal year 1979, the Postal Service reported a consumer complaint resolution rate of over 90 percent.

USE OF POSTAL SERVICE COMPLAINT DATA SHOULD IMPROVE FTC'S MAIL ORDER RULE COMPLIANCE MONITORING AND ENFORCEMENT

The Postal Service's consumer complaint files contain key data on mail order delivery problems that could be used to monitor compliance with the mail order rule. In three of four field locations contacted, FTC regional officials had not made arrangements to routinely obtain and analyze Service complaint date. Coordination attempts at the headquarters level had not been effective.

Postal Service complaint files would help flag potential violations

Postal Service consumer complaints would be helpful to the Commission. First, the Service's data base is several times larger than FTC's (about 42,300 complaints versus 5,000 to 6,000 in fiscal year 1979). Second, most of the complaints involve delivery problems. Third, they are filed by company name, which helps to identify sellers generating the most complaints. Of course, the fact that many delivery complaints have been made does not necessarily mean a seller is violating the mail order rule. Delivery delays of several months may not be in violation of the rule if proper delay notices were sent and consumer consent was obtained. Consumer complaints, however, do serve as an indicator since consumers probably would not be sending as many complaints if the required notices were received.

We reviewed the complaint files in two Postal Service divisions, Boston and New York. During fiscal year 1979, consumers filed 2,943 and 9,728 complaints with the Boston and New York divisions, respectively. Combined, this represents about 30 percent of the 42,300 mail order complaints received by the Postal Service that year.

Based on their experience in resolving thousands of complaints annually, officials from the consumer complaint section of the Boston division estimate that 85 percent of consumer mail order complaints involve delivery problems, 10 percent involve failure to refund, and 5 percent allege product or service misrepresentation. In the New York division, the estimates were similar, with 90 percent of the complaints citing delivery problems, 7 percent noting failure to refund, and 3 percent claiming misrepresentation. These officials stated that, in most complaints, consumers waited 3 or more months (from the order date) before contacting the Postal Service. Companies with many complaints, according to these officials, apparently did not send delay notices to these consumers as required by the mail order rule.

The Boston and New York divisions' files combined showed 63 mail order sellers having 30 or more complaints filed against them in the first 9 months of fiscal year 1980. Of these, 37 sellers had 50 or more complaints for the period. The significance of these complaint figures is indicated by FTC investigation data. FTC staff provided information showing that they had investigated most mail order sellers having over 20 complaints (in FTC files) during the 25-month period from January 1978 to January 1980. This is even longer than the 9-month period we chose for identifying potential violations occurring in fiscal year 1980. At the time of our review, FTC reported some investigation in 10 of the 63 firms noted above.

Our review of Postal Service complaint files indicated that most consumer complaints involved delivery problems and that there was little or no evidence that sellers sent delay notices as required by the mail order rule. The complaints reflected many instances of consumer dissatisfaction and frustration with the sellers' failure not only to deliver the merchandise, but also to respond to complaints.

Contacts with FTC and/or Postal Service officials in four field locations (Boston, New York, San Francisco, and Los Angeles) disclosed minimal coordination on using Service complaint data to identify problems and potential violators. Only in Boston did we find an effort (during our review) by FTC to obtain and use these data regularly. An FTC official stated that some coordination efforts were made by FTC at the headquarters level but they did not lead to any agreement on the use of Postal Service data. According to FTC and Service officials, most coordination between the agencies' investigators on mail order investigations occurs only after one or the other selects a specific case for possible investigation.

Officials at Postal Service headquarters and at its division offices in Boston and New York said that they would cooperate fully with an FTC effort to obtain Service consumer complaint data. They noted that, if this led to improved enforcement, the Service and consumers would benefit by having fewer complaints to resolve.

Conclusions and recommendation

The many consumer complaints received by the Postal Service and their availability to FTC provides a good opportunity to improve identification of violations of the mail order rule. We believe these data could also help FTC monitor compliance with the rule.

We recommend that the FTC Chairman direct the Bureau of Consumer Protection to routinely obtain from the Postal Service consumer complaint data in a form useful for monitoring compliance with, and improving enforcement of, the mail order rule.

EVALUATION OF THE MAIL ORDER RULE'S EFFECTIVENESS IS NEEDED

9, 10, 12, 13

FTC has not evaluated the effectiveness of its mail order rule (in effect since February 1976), but plans to do so during fiscal year 1982. FTC officials believe that most mail order sellers, particularly large ones, comply with the rule. While this may be true, the volume of consumer mail order complaints, the analysis of Postal Service complaints (discussed previously), and the views of various officials familiar with mail order problems indicate a substantial noncompliance problem that needs attention.

Views on the rule's effectiveness vary

FTC officials believe that the mail order rule is effective and that most sellers, especially the larger ones, comply with it. They note that most companies cited in mail order complaints in FTC files have only one to five complaints against them. However, officials from other organizations familiar with consumer mail order problems, and some FTC staff, held a different view on the rule's effectiveness.

Officials from the BBB in New York City and the New York State Office of the Attorney General believe that FTC is not effectively enforcing the mail order rule. They stated that the rule has had some positive impact but that consumer mail order problems in New York, a major center of the mail order industry, continue to be serious. FTC should be doing more, they said, to monitor and enforce the rule.

Postal Service officials in Boston, New York, and Washington, D.C., also believe there is substantial noncompliance with the mail order rule and question the rule's effectiveness. In the New York and Boston division offices, Service officials told us they have not seen any improvement in the mail order problem since the rule became effective.

While noting that large and reputable mail order sellers do comply with the rule, some FTC staff in New York believe that, overall, the rule is only marginally effective. They point out that FTC's sometimes cumbersome investigative process can slow down progress for months and even years. Consequently, many firms in the mail order industry could avoid enforcement action by going out of business and starting over under a new name. Staff also cited a lack of resources. One attorney stated that FTC's New York regional office could easily keep half of the entire staff occupied on mail order rule violation cases. An FTC attorney in Los Angeles, another major center of the mail order industry, stated that all of that region's staff could be occupied pursuing mail order rule violations against companies with $10 million or more in annual mail order sales.

FTC allocates only a small amount of resources to mail order rule enforcement. At headquarters, the amount was less than 1 staff-year for fiscal year 1980. The total staff time spent by regional offices was not readily available, but is probably not much more than at headquarters. Some FTC staff even questioned whether FTC was the best agency for the job. Emphasizing the need for quick enforcement action required in dealing with mail order firms, they suggested that the Postal Service might be more effective if it had the authority to enforce the mail order rule when the seller fails to ship merchandise on time.

FTC headquarters officials believe that FTC is the proper enforcement agency for the mail order rule. While acknowledging the need for improvements, such as better coordination with the Postal Service, they stated that FTC is committed to effective enforcement of the mail order rule.

Conclusions and recommendations

Though almost 5 years have past since FTC established the mail order rule, there has been no clear analysis of its impact. State and Federal officials who routinely work on consumer mail order problems have widely varying views on its effectiveness. Our analysis of consumer complaint files indicates a significant level of noncompliance. Consequently, we believe that the effectiveness of the mail order rule needs to be evaluated.

We recommend that the FTC Chairman have the Bureau of Consumer Protection (1) evaluate the mail order rule's effectiveness and (2) use Postal Service complaint data, in addition to its own data and that of other organizations, to periodically analyze mail order problems nationwide and the adequacy of enforcement in the mail order industry.

MAIL ORDER COMPLAINT PROCESSING NEEDS IMPROVEMENT

The failure of some regional offices to send all complaint data to headquarters and some inaccuracies in processing the data lessen the value of FTC's computerized data base for mail order complaints. In addition, FTC does not refer some mail order complaints that should be sent to the Postal Service for resolution.

Complaint data are incomplete

FTC staff report that FTC receives 400 to 500 mail order rule violation complaints per month. The accuracy of these figures, however, is uncertain. FTC regional offices are supposed to send copies of mail order complaints to headquarters for processing into the computerized data base. The information on each complaint is entered on a computer coding form. Computer printouts display such information as the date of complaint receipt and type of violation, and list complaints by company name.

We noted that 4 of FTC's 10 regional offices (Denver, New York, Seattle, and San Francisco) were not routinely sending all the complaint data to headquarters. The New York regional office, according to a regional official, stopped sending mail order complaints to headquarters in mid-1979. This region's data are particularly important because it receives an estimated 200 mail order complaints per month, according to a regional staff member.

The other three regional offices, according to their staffs, together receive about 200 or more mail order complaints per month. The San Francisco regional office forwarded only mail order complaints against sellers located outside the region. The Denver regional office did not forward any mail order complaints to headquarters, while the Seattle regional office generally did not forward them. Regional staff attributed the processing problems to various reasons, including the avoidance of the "paperwork" involved, forgetfulness, uncertainty about complaint handling policy, and the lack of any inquiry from headquarters when complaints were not forwarded.

Accuracy of data entry needs improvement

During our analysis of FTC's computerized mail order complaint data base, we noted some processing errors, such as complaints shown twice on the computer lists and inaccuracies in the recording of consumer complaint information. We brought these problems to the attention of FTC officials and indicated the difficulty we experienced in trying to obtain accurate mail order complaint statistics. FTC officials stated that the errors were relatively minor and that they were being corrected. The officials explained that, during our review, they were converting the data base systems. They expect that the changes being made will increase the accuracy of the data base.

Complaint referral practice needs revision

FTC does not refer some mail order complaints, particularly those processed through headquarters, that we believe should be forwarded to the Postal Service for resolution. As a matter of policy, FTC generally does not attempt to resolve individual consumer complaints but will assist consumers by referring them to other agencies. Based on an apparent agreement (no documentation available) with the Postal Service, FTC refers mail order complaints to the Service if they contain proof of purchase, such as a copy of a canceled check. For complaints lacking this proof, FTC will write the consumer suggesting that another letter of complaint containing proof of purchase be written and sent to the Service.

This procedure imposes a burden on the consumer to write a second letter when the first is sufficient to obtain Postal Service assistance. According to Service officials, consumer mail order complaints are received without proof of purchase are still handled under its Consumer Protection Program. A Service headquarters official stated that FTC could refer to the Postal Service complaints lacking proof of purchase.

Conclusions and recommendations

We believe that improved mail order complaint handling could (1) help identify firms violating the mail order rule, (2) provide information on problem trends, and (3) help consumers resolve their problems.

The FTC Chairman should direct the Bureau of Consumer Protection to

--require the regional offices to provide all mail order complaint data to headquarters for processing,

--improve the accuracy of FTC's mail order complaint data base to assure its reliability, and

--eliminate the practice of not referring to the Postal Service mail order complaints lacking proof of purchase.