**Alternate Case Problems**

*Chapter 13*

**Consumer Law**

**13-1. Debt Collection.** Swanson owed $262.20 to a hospital in southern Oregon for medical services he had received. When Swanson failed to pay the debt, the hospital turned the account over to a local collection agency, which sent Swanson a letter requesting payment of the bill. Swanson alleged that the letter violated Section 809(a) of the Fair Debt Collection Practices Act (FDCPA), which mandates that any debt collector or agency sub­ject to the act must notify the consumer early in the collection process that the consumer has thirty days within which to request validation of the debt. In the meantime, the con­sumer may withhold payment on the debt until assured that she or he actually owes the money. The letter did contain notice that the consumer had thirty days in which to de­mand verification of the debt, but the notice was, according to Swanson, overshadowed and effectively negated by the following statement—which was printed in boldface, under­lined, and set in a larger-than-standard typeface: IF THIS ACCOUNT IS PAID WITHIN THE NEXT 10 DAYS IT WILL NOT BE RECORDED IN OUR MASTER FILE AS AN UNPAID COLLECTION ITEM. A GOOD CREDIT RATING IS YOUR MOST VALUABLE ASSET. Had the collection agency violated Section 809(a) of the FDCPA? Explain. [*Swanson v. Southern Oregon Credit Service, Inc.,* 869 F.2d 1222 (9th Cir. 1989)]

**13-2.** **Equal Credit Opportunity.** Sebastian and Maria Shaumyan entered into a home improvement contract with Sidetex Co. Sidetex agreed to install siding, replace windows, and perform other related work at the Shaumyan’s home, and the Shaumyans agreed to pay Sidetex a total of $14,800 according to the following schedule: $3,000 as a deposit; $4,000 when Sidetex began the work; $3,900 when the work was half completed; $1,950 on completion of the installation of the siding; and $1,950 on completion of the work on the storm doors and shutters. Although a clause in the agreement referred to the contract as a “consumer credit contract,” the Shaumyans’ payments were not subject to any finance charges. Sidetex commenced work under the contract, and the Shaumyans made the scheduled payments of $3,000, $4,000, and $3,900. Performance was not completed, how­ever, because a dispute arose concerning the quality of the windows that Sidetex was to install. The Shaumyans brought an action against Sidetex to recover damages, claiming that Sidetex had violated the antidiscrimination provision of the Equal Credit Opportunity Act (ECOA) by requiring the signature of Mrs. Shaumyan on the home improvement con­tract. The central issue before the court was whether the home improvement contract, which provided for progressive payments by the Shaumyans, constituted a “credit trans­action” subject to the antidiscrimination provisions of the ECOA. How should the court rule? Discuss fully. [*Shaumyan v. Sidetex Co.,* 900 F.2d 16 (1990)]

**13-3. Deceptive Advertising.** Kraft, Inc.’s individually wrapped cheese slices, or “Singles Slices,” which are made from real cheese, cost more than the imitation cheese slices on the market. In the early 1980s, Kraft began losing its market share to an increasing number of producers of imitation cheese slices. Kraft responded with a series of adver­tisements, collectively known as the “Five Ounces of Milk” campaign. The ads claimed that Kraft Singles cost more than imitation slices because they were made from five ounces of milk rather than less expensive ingredients. The ads also implied that because each slice contained five ounces of milk, Kraft Singles contained a higher calcium con­tent than imitation cheese slices. The Federal Trade Commission (FTC) filed a complaint against Kraft, charging that Kraft had materially misrepresented the calcium content and relative calcium benefit of Kraft Singles. Was Kraft’s advertising campaign decep­tive and likely to mislead consumers? [*Kraft, Inc. v. FTC,* 970 F.2d 311 (7th Cir. 1992)]

**13-4.**  **Debt Collection.**  Equifax A.R.S., a debt-collection agency, sent Donna Russell a notice about one of her debts. The front of the notice stated that “[i]f you do not dispute this claim (see reverse side) and wish to pay it within the next 10 days we will not post this collection to your file.” The reverse side set out Russell’s rights under the Fair Debt Collection Practices Act (FDCPA), including that she had thirty days to decide whether to contest the claim. Russell filed a suit in a federal district court against Equifax. The court ruled against Russell, who appealed. On what basis might Russell argue that Equifax violated the FDCPA? [*Russell v. Equifax A.R.S.,* 74 F.3d 30 (2d Cir. 1996)]

**13-5. Deceptive Advertising.** Thompson Medical Co. marketed a new cream called Aspercreme that was supposed to help arthritis victims and others suffering from minor aches. Aspercreme contained no aspirin. Thompson’s television advertisements stated that the product provided “the strong relief of aspirin right where you hurt” and showed the announcer holding up aspirin tablets as well as a tube of Aspercreme. The Federal Trade Commission held that the advertisements were misleading, because they led con­sumers to believe that Aspercreme contained aspirin. Thompson Medical Co. appealed this decision and argued that the advertisements never actually stated that the product contained aspirin. How should the court rule? Discuss. [*Thompson Medical Co. v. Federal Trade Commission,* 791 F.2d 189 (D.C.Cir. 1986)]

**13-6. Fair Debt Collection.** A condominium association, Rancho Santa Margarita Recreation and Landscape Corp., attempted unsuccessfully to collect an assessment fee from Andrew Ladick. The association referred the matter to the Law Offices of Gerald J. Van Gemert. Van Gemert sent Ladick a letter demanding payment of the fee. The letter did not include a “validation notice, as required by the Fair Debt Collection Practices Act (FDCPA),” nor did it disclose that Van Gemert was attempting to collect a debt and that any information obtained would be used for that purpose. Ladick filed a suit in a federal district court against Van Gemert and his office, alleging violations of the FDCPA. Van Gemert filed a motion for summary judgment on the ground that the assessment was not a “debt,” as defined by the FDCPA, in part because there was no “transaction,” as required by the FDCPA definition, out of which Ladick’s obligation arose. Will the court agree with Van Gemert? Why or why not? [*Ladick v. Van Gemert,* 146 F.3d 1205 (10th Cir. 1998)]

**13-7. Fair Debt Collection.** Gloria Mahon incurred a bill of $279.70 for medical services rendered by Dr. Larry Bowen. For more than two years, Bowen sent monthly billing statements to the Mahons at their home address (where they had lived for forty-five years). Getting no response, Bowen assigned the collection of their account to Credit Bureau of Placer County, Inc. Credit Bureau uses computerized collection tracking and filing software, known as Columbia Ultimate Business Systems (CUBS). CUBS automatically generates standardized collection notices and acts as an electronic filing system for each account, recording all collection activities, including which notices are sent to whom and on what date. Credit Bureau employees monitor the activity, routinely noting whether an envelope is returned undelivered. Credit Bureau mailed three CUBS—generated notices to the Mahons. According to Credit Bureau’s records, the notices were not returned and the Mahons did not respond. Credit Bureau reported the Mahons’ account as delinquent. The Mahons filed a suit in a federal district court against Credit Bureau, alleging in part that the agency had failed to send a validation notice, as required by the Fair Debt Collection Practices Act. Credit Bureau filed a motion for summary judgment. Should a notice be considered sent only if a debtor acknowledges its receipt? Why or why not? [*Mahon v. Credit Bureau of Placer County, Inc.,* 171 F.3d 1197 (9th Cir. 1999)]

**13–8. Fair Debt Collection.** CrossCheck, Inc., provides check-authorization services to retail merchants. When a customer presents a check, the merchant contacts CrossCheck, which estimates the probability that the check will clear the bank. If the check is within an acceptable statistical range, CrossCheck notifies the merchant. If the check is dishonored, the merchant sends it to CrossCheck, which pays it. CrossCheck then attempts to redeposit the check. If this fails, CrossCheck takes further steps to collect the amount. CrossCheck attempts to collect on more than two thousand checks per year and spends $2 million on these efforts, which involve about 7 percent of its employees and 6 percent of its total expenses. William Winterstein took his truck to C&P Auto Service Center, Inc., for a tune-up and paid for the service with a check. C&P contacted CrossCheck and, on its recommendation, accepted the check. When the check was dishonored, C&P mailed it to CrossCheck, which reimbursed C&P and sent a letter to Winterstein requesting payment. Winterstein filed a suit in a federal district court against CrossCheck, asserting that the letter violated the Fair Debt Collection Practices Act. CrossCheck filed a motion for summary judgment. On what ground might the court grant the motion? Explain. [*Winterstein v. CrossCheck, Inc.,* 149 F.Supp.2d 466 (N.D.Ill. 2001)]

**13–9. Deceptive Advertising.** “Set up & Ready to Make Money in Minutes Guaranteed!” the ads claimed. “The Internet Treasure Chest (ITC) will give you everything you need to start your own exciting Internet business including your own worldwide website all for the unbelievable price of only $59.95.” The ITC “contains virtually everything you need to quickly and easily get your very own worldwide Internet business up, running, stocked with products, able to accept credit cards and ready to take orders almost immediately.” What ITC’s marketers—Damien Zamora and end70 Corp.—did not disclose were the significant additional costs required to operate the business: domain name registration fees, monthly Internet access and hosting charges, monthly fees to access the ITC product warehouse, and other “upgrades.” The Federal Trade Commission filed a suit in a federal district court against end70 and Zamora, seeking an injunction and other relief. Are the defendants’ claims “deceptive advertising”? If so, what might the court order the defendants to do to correct any misrepresentations? [*Federal Trade Commission v. end70 Corp.,*  \_\_. F.Supp.2d \_\_, 2003 WL 21770837 (N.D.Tex. 2003)]

**13–10**. **Deceptive Advertising.** Brian Cleary and Rita Burke filed a suit against cigarette maker Philip Morris USA, Inc., seeking class-action status for a claim of deceptive advertising. They claimed that “light” cigarettes, such as Marlboro Lights, were advertised as safer than regular cigarettes, even though the health effects are the same. They contended that the tobacco companies concealed the true nature of light cigarettes. Philip Morris correctly claimed that it was authorized by the government to advertise cigarettes, including light cigarettes. Assuming that is true, should Cleary and Burke still be able to bring a deceptive advertising claim against the tobacco company? Why or why not? [*Cleary v. Philip Morris USA, Inc.,* 683 F.Supp.2d 730 (N.D.Ill. 2010)]