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.1 GENERAL

This chapter outlines the procedures used to enforce certain special statutes under the Commission's enforcement jurisdiction. These statutes are: the Truth-in-Lending Act (15 U.S.C. § 1601 et seq.), the Fair Credit Billing Act(15 U.S.C. § 1666 et seq.), the Consumer Leasing Act (15 U.S.C. § 1667 et seq.), the Fair Credit-Reporting Act (15 U.S.C. § 1681 et seq.), the Equal Credit Opportunity Act (15 U.S.C. § 1691 et seq.), the Hobby-Protection Act (15 U.S.C. § 2101 et seq.), the Fair Packaging and Labeling Act (15 U.S.C. § 1331-39), the Wool Products Labeling Act (15 U.S.C. § 68-68j), the Fur Products Labeling Act (15 U.S.C. § 69-69j), the Textile Fiber Products Identification Act (15 U.S.C. § 70-70k), and Title I of the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (15 U.S.C. § 2301-12).

Sample complaints and orders are included as illustrations.

Although the Commission's general rules of notice pleading are applicable to all special statutes matters, the Commission's complaints and orders also serve an important public information and interpretative function and thus, special statutes pleadings are more detailed than in other areas, e.g., a definition section is generally advisable in special statutes cases. In general, when pleading a violation of a special statute the complaint should include a reference to the FTCA and, if applicable, to the regulations promulgated under the specific statute. Also, orders should contain standard boilerplate provisions. But, complaint counsel must evaluate the appropriateness of such language and modify it if necessary to effectuate the agreement. See also Complaints, OM Ch.4, Orders, OM Ch. 5, and Consents, OM Ch. 6 for standard provisions and general discussion.

.1.1 PROMULGATION OF SPECIAL STATUE RULES

The staff should include in draft notices of proposed rulemaking under special statutes a solicitation of public comment on such matters as : (1) the economic and regulatory impact of the proposed rule; (2) the paperwork requirements that the proposed rule may impose; and (3) possible regulatory alternatives, if any, that would reduce the economic impact of the proposed rule yet fully satisfy the requirements imposed on the Commission by the special statute.

.1.2 REVIEW OF SPECIAL STATUTE RULES

The Commission has adopted a policy of reviewing the rules it promulgates under special statutes at least once every ten years, as described in OM Ch 7.5.

.2 TRUTH-IN-LENDING

This Act (Title I of the Consumer Credit Protection Act) delegates to the Commission, effective July 1, 1969, enforcement responsibility as to business entities in general for compliance with the consumer credit disclosure provisions. The Commission does not have enforcement responsibility over regulated depository institutions such as banks and certain other regulated industries such as common carriers. If there is any doubt as to the coverage, the staff should check § 108 of the Act (15 U.S.C. § 1607) and § 226.3 of Regulation Z (12 C.F.R. § 226 et seq.).

The Act requires all consumer creditors to make written disclosures concerning charges, terms and conditions of credit transactions, before consummation of a credit sale or loan and before an account is opened and on every periodic statement in the case of open end or revolving creditors. The Act also contains specified

requirements for any advertisement containing a credit representation, and it includes a 3-day right of rescission in any transaction involving a security interest (except a first mortgage) in the consumer's residence.

The Truth-in-Lending Act was amended on October 26, 1970, to prohibit the issuance of unsolicited credit cards. Since the Act provides for a private right of action, use of that provision should be encouraged where the public interest and the cost benefit indicate that Commission action is not warranted.

The Truth-in-Lending Act provides that a violation of the Act or any implementing regulation shall be deemed a violation of the Federal Trade Commission Act, whether or not the violator is engaged in commerce or meets any other jurisdictional test in the Federal Trade Commission Act. Regulation Z, promulgated by the Federal Reserve Board (hereinafter FRB) is the implementing regulation. It can be found at 12 C.F.R. 226 et seq. Copies can be obtained from the Division of Credit Practices.

As a general rule, all complaints and orders in this area will follow the language and form of the implementing regulation. Thus, for example, a complaint alleging that a respondent has failed to use the term "annual percentage rate" to describe the rate of the finance charge as an annual percentage rate would allege that the respondent:

> Failed to disclose the finance charge expressed as annual percentage rate, using the term "annual percentage rate" as required by § 226.8(b)(2) of Regulation Z.

The corresponding order provision would require the respondent to cease and desist from:

> Failing to accurately disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate" as required by § 226.8(b)(2) of Regulation Z.

Similarly where the respondent is alleged to have inaccurately stated the annual percentage rate, the complaint would allege that the respondent:[1]

> Failed to accurately disclose the finance charge expressed as an annual percentage rate as required by § 226.8(b)(2) of Regulation Z.

The corresponding order provision would be the same as that set out above. Further examples of this format and examples of pleading violations of specific sections of the Act can be found in Illustrations 1 and 2. (When using past cases, care must be taken to ensure that pleadings and order provisions reflect amendments to Regulation Z and the Act. For the most part this can be accomplished by comparing the provisions to a recent copy of Regulation Z or the updated Regulation found in 1 CCH Consumer Credit Glide Par. 3401.)

.2.1 CREDIT ADVERTISING - NO IDENTIFIED CHARGE

Violations of § 226.10(f) of Regulation Z - Credit Payable in More than Four Installments; see generally Gulf

[1] Allegations that the disclosed APR (Annual Percentage Rate) is inaccurate will frequently be coupled with allegations that the finance charge has been incorrectly calculated, for example, by the failure to include finders' fees or other charges. See In re Union Mortgage Company, 80 F.T.C. 427 (C-2177, Mar. 24, 1972); Commercial Credit Company, 82 F.T.C. 1841 (C-2420, June 26, 1972.

Oil Corporation (Dkt. 9044, 1975).

(The complaint in this matter predates § 226.10(f) amendments and should be revised accordingly, but the final order may be utilized.)

.2.2 EXCEPTIONS TO GENERAL RULE

There are several areas of Truth-in-Lending enforcement in which departure from the general rule of closely following the language of Regulation Z is merited. Since new order provisions are being developed in these areas, it is advisable to contact the Division of Credit Practices before putting orders in final form.

.2.2.1 Credit Insurance Orders

Credit insurance orders should normally follow the form set out in Commercial Credit Corporation, 82 F.T.C. 1841 (C-2420, 1973) or USLIFE Credit Corporation, (Dkt. 9057, initial Decision filed January 27, 1977). See also Peacock Buick (Dkt. 8976, final order Dec. 19, 1975, aff'd 4th Cir. April 1977) (Credit insurance sales practices as a § 5 violation).

.2.2.2 Open End Credit Disclosures Used for Other Than Open End Credit

See J. Kurtz & Sons (C-2822, May 24, 1976).

.2.2.3 Rescission Under § 226.9

Charnita, 80 F.T.C. 892 (Dkt. 8829, 1972) aff'd 479 F.2d 684 (3d Cir. 1973); Coventry Builders (Dkt. 9042, Complaint issued July 15, 1975). As a general matter, the basis for a decision to seek or not to seek retroactive rescission must be discussed in the forwarding memorandum for every case involving § 226.9 of Regulation Z.

.2.2.4 Meaningful Sequence Requirements

Meaningful sequence requirements should be a separate paragraph modeled on § 226.6(a). (See Allen v. Beneficial Finance, (No. 75-1635,. 7th Cir., Feb. 9, 1976)).

.2.3 CRIMINAL VIOLATIONS

Participation by the Commission staff in criminal investigations involving violations of the Truth-in-Lending Act should only be undertaken after consultation with the division program advisor. The staff should direct its primary efforts towards obtaining injunctive relief and consumer redress against firms or individuals involved in willful or knowing violations of the special statute.

.2.3.1 Responsibility

In carrying out the procedures outlined in this section and specifically with regard to criminal matters, the regional offices should consult with the Division of Credit Practices, Bureau of Consumer Protection.

.2.3.2 Presentation to Department of Justice

Where the facts indicate some likelihood of a criminal violation of the Truth-in-Lending Act by any creditor,

the staff should first get clearance from the program advisor and then confer with the Consumer Affairs Section, Antitrust Division, Department of Justice, Washington, D.C 20530, telephone, 202-739-4174, to determine (a) whether a prosecution is warranted assuming that the evidence can be developed properly and, if warranted, (b) what evidence is necessary for a successful criminal prosecution. If the Commission attorney or consumer protection specialist has already contacted the proposed defendant(s), further investigation or examination should be delayed until after the Department of Justice has been contacted. The Director, Bureau of Consumer Protection should be immediately notified by memorandum that the matter has been presented to the Department of Justice.

.2.3.3 Declination of Prosecution

If the Department of Justice declines to prosecute the matter based upon an evaluation of the files and the evidence, the investigation should proceed as in other Truth-in-Lending matters.

.2.3.4 Establishment of Investigation File

As soon as it is decided to conduct a criminal investigation, the regional office or Division of Credit Practices should obtain a full or updated history search and a 7-digit number. See also OM Chs. 18, 3 and 2.

.2.3.5 Conducting Criminal Prosecutions

When it is determined that an investigation involves possible criminal violations of the Truth-in-Lending Act, it may become necessary to interview the proposed defendant. If at all possible, such interviews should be conducted in the office or facility of the propose defendant during regular business hours. The Commission attorney or consumer protection specialist should show his/her FTC Identification Card to the proposed defendant and state with some particularity the reason for the interview. if the questioning takes place at the proposed defendant's office and if the proposed defendant demonstrates his/her understanding when being questioned that he/she is free to stop the questioning or free to leave at his/her will, the Miranda warnings probably do not have to be given. However, if the questioning takes place at the interviewer's choice of place, or if the defendant demonstrates a belief that he/she is deprived of his/her freedom of action in any way, the questioning may become 'custodial interrogation' and it is best to give the Miranda warnings as follows:

1. The proposed defendant has a right to remain absolutely silent.

2. Anything he/she does say may be used as evidence against him/her.

3. He/she can stop the interview at any time and say nothing more.

4. He/she may consult with and have an attorney present prior to and during interrogation.

5. If he/she cannot afford an attorney, one will be appointed prior to any questioning if so desired.

The consumer Affairs Section, Antitrust Division, Department of Justice should be consulted as to whether in a particular instance the questioning takes on a custodial character and therefore requires the Miranda warnings. Also, the advice Of the United States Attorney may be sought concerning the particular form of warnings necessary in that district. If the interviewee requests appointment of an attorney, staff should consult with the local U.S. Attorney immediately to arrange or learn the method for appointment of counsel in the particular jurisdiction.

Any physical evidence obtained during the course of a Truth-in-Lending investigation shall be retained in the evidentiary files. Documents and statements proffered by the prospective defendant prior to any warning, if such warning is given, should be so identified.

.2.3.6 Refusal to Produce Evidence

If during the course of an investigation of possible criminal violations, the proposed defendant, or anyone else, refuses to provide evidence or information regarding compliance, the staff should report this fact to the Consumer Affairs Section, Antitrust Division, Department of Justice. The Department of Justice will then determine whether the matter should be presented to a grand jury for the development of additional evidence. If the decision is to utilize a grand jury, the Consumer Affairs Section will coordinate such presentation with the United States Attorney for the appropriate district, and determine what other steps should be taken to obtain the evidence.

Authority to refer a matter to the Consumer Affairs Section for this purpose is delegated to each Regional Director and to the Assistant Director for Credit Practices, without clearance from the Commission. If a criminal investigation is conducted, no proposed defendant should be ordered by a person presiding over the return of a subpoena to testify or produce other information where such action will confer immunity from criminal prosecution pursuant to the immunity provisions of § 201(a) of Title II of the Organized Crime Control Act of 1970. Public Law 91-452, 91st Congress, enacted October 15, 1970. Title II of said Act became effective on December 14, 1970, and specifically repealed the seventh paragraph of § 9 of the Federal Trade Commission Act, which dealt with immunity. See immunity discussion, OM Ch. 3.

.2.3.7 Assistance from the Department of Justice

The Consumer Affairs Section, Antitrust Division of the Department of Justice will assist the staff in determining whether the proposed defendant willfully and knowingly, e.g., not a mistake, committed a violation of the Truth-in-Lending Act as required for a criminal prosecution of the Act.

.2.3.8 Simultaneous Criminal and Administrative Proceedings

Criteria for Proceeding - The staff should prepare and recommend to the Commission the issuance of a complaint without regard to the status of the Department of Justice's consideration or prosecution of the same matter, where the staff has determined that:

(a) It will be necessary to extend immunity to a witness who is or will be a defendant in a criminal case, and

(b) There is good reason for instituting simultaneous administrative and criminal proceedings i.e., the matter requires a remedy in addition to the one that would be forthcoming from the criminal proceeding; there is reason to believe the criminal proceeding will be delayed past the time an effective order could be obtained by the administrative proceeding.

.2.3.9 Deferment to Criminal Proceedings

Where the staff does not recommend to the Commission that it proceed simultaneously with the Department of Justice's consideration for prosecution of the matter, or where a staff recommendation for simultaneous administrative proceedings is not adopted by the Commission, then the regional office or division responsible for the matter shall make a review 6 months after the matter is referred to the Department of Justice for

handling and thereafter as appropriate to determine the status of the prosecution. If at any time it appears to the regional office or the division that the public interest requires institution of simultaneous administrative proceedings by the Commission, the staff shall forward its recommendation to the Commission.

.2.3.10 Re-evaluation After Completion of Criminal Proceedings

Where administrative proceedings are not instituted simultaneously with the criminal proceedings the staff, upon completion of such criminal proceedings, shall re-evaluate the matter to determine whether administrative proceedings would be in the public interest. When all evaluations have been made and all necessary evidence has been obtained to complete the investigation, the staff shall forward the matter to the Commission with its recommendation for disposition.

.3 FAIR CREDIT BILLING ACT

The Fair Credit Billing Act, effective October 28, 1975, amended the Truth-in-Lending Act to provide for prompt resolution of billing disputes between customers and open end creditors, as defined in § 226.2(x), who regularly issue periodic billing statements. The Act establishes a billing dispute settlement procedure under which a creditor must acknowledge in writing a proper written notification of a billing error and promptly correct any errors or explain why it believes the statement is correct.

The Act also requires open end creditors to mail periodic statements at least 14 days before the payment due date, to promptly post payments to the debtor's account, and to refund overpayments or credit them to the debtor's account. Additionally, the Act requires sellers to promptly notify credit card issuers of the return of goods or services purchased on such accounts, and it limits the application of the holder-in-due-course doctrine in credit card transactions. The Act also facilitates the availability of discounts for cash purchases.*

.4 CONSUMER LEASING ACT

The Consumer Leasing Act was passed on March 23, 1976 and became effective on the same date in 1977. The Act regulates leases of personal property having a term exceeding 4 months and a total contractual obligation not exceeding $25,000 provided that the leased property is used primarily for personal, family or household purposes.

The Act's enumerated goals are to enable lessees to compare available lease term more readily, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms and assure meaningful and accurate disclosures of lease terms in advertisements.[2]

The statute contains three major substantive provisions: (1) Consumer lease disclosures: § 182 requires the

[2] As of June 1977, there are no complaints or orders under the Fair Credit Billing Act or the Consumer Leasing Act. The general rule expressed above for Truth-in-Lending complaints is also applicable to Fair Credit Billing and Consumer leasing orders (since both are amendments to the Truth-in-Lending Act and Regulation Z which is promulgated by the Federal Reserve Board). Contact the Division of Credit Practices before putting complaints and orders into final form, particularly if consent settlement negotiations are in progress. The Consumer Leasing Act is a chapter of the Truth-in-Lending Act and incorporates its administrative enforcement provisions.

lessor to disclose information concerning the cost of the lease, the warranties available on the leased property, the schedule of payments expected, the type and amount of insurance required, the terms of early termination and the lessee's liability for the anticipated fair market value of the property on expiration of the lease. These disclosures must be made before the lease agreement is consummated. (2) Lessee's liability on expiration of termination of the lease: § 183 establishes a rebuttable presumption that the lessor has set an unreasonable amount for the lessee's end of term liability if a formula involving multiples of the average payment has been exceeded. This section also requires that any penalty charges assessed bear a reasonable relationship to the actual harm caused to the lessor. Finally, the section gives the lessee the right to obtain a professional appraisal of the leased property if the lease has a residual value provision affecting the lessee's liability at the end of the term. (3) Consumer lease advertising: § 184 establishes certain triggering terms which, when used in a lease advertisement, require additional disclosures regarding the basic terms of the lease. The FRB has promulgated amendments to Regulation Z to implement the Consumer Leasing Act and it has issued sample disclosure forms for use by lessors.

The Consumer Leasing Act is a chapter of the Truth-in-Lending Act and incorporates its administrative enforcement provisions.

.5 FAIR CREDIT REPORTING ACT

This Act is concerned with the collection and distribution by consumer reporting agencies of information concerning an individual's creditworthiness, character, general reputation and mode of living. Such agencies commonly collect and report information for use in establishing a consumer's eligibility for employment, insurance, credit, and other benefits--such as housing and check cashing. There are two major types of consumer reporting agencies:

(1) Investigative Reporting Agencies which collect subjective information through personal interviews with an individual's neighbors, friends, or associates; and,

(2) Credit Bureaus which report primarily objective information concerning an individual's credit experience.

There are also a host of miscellaneous information gatherers who are subject to the Act such as loan exchanges, check cashing lists, private detectives, and tenant information exchanges.

The Fair Credit Reporting Act has no implementing Regulation and, as of June 1977, has not been amended since its passage in 1970. The Commission has issued eight formal interpretations which set forth the enforcement position the Commission would take on various questions arising under the Act, 16 C.F.R. 600 et seq. These interpretations deal with: credit guides, protective bulletins, loan exchanges, motor vehicle reports, prescreening, the Civil Service Commission and the relationship of the Fair Credit Reporting Act to the Equal Credit Opportunity Act. The interpretations are provided for by § 1.73 of the Commission's Rules 16 C.F.R. 1.73. In addition, the Division of Credit Practices publishes a staff manual, "Compliance with The Fair Credit Reporting Act," which is designed to provide consumers the most common questions arising under the Act.

In contrast with Truth-in-Lending complaints, in most instances it will be desirable for the complaint to spell out with typical and illustrative examples the elements of the respondent's violation.

For example, a complaint should not simply allege that the respondent failed to follow reasonable procedures to ensure the maximum possible accuracy of the information concerning the individual about whom the report

relates.

See Illustrations 3 and 4 for pertinent parts of the Retail Credit complaint and order (Dkt. 8954, complaint issued Feb. 21, 1974), which describe typical and illustrative examples. of Fair Credit Reporting Act violations.

.5.1 REFERENCE

The following complaints and orders should be referred to in drafting Fair Credit Reporting Act matters:

.5.1.1 Investigative Reporting

a) Retail Credit Company (Equifax), (Dkt. 8954, complaint issued Feb. 21, 1974).

.5.1.2 Credit Bureaus

a) Credit Data Northwest, (C-2712, July 29, 1975).

b) Credit Bureau of Greater Syracuse, (C-2618, Dec. 24, 1974).

c) Credit Bureau of Columbus, 81 F.T.C 938 (C-2333, 1972).

d) Credit Bureau of Lorain, 81 F.T.C. 381 (C-2287, 1972).

.5.1.3 Check Cashing Lists

a) Checkmate Inquiry Service, (C-2728, Sept. 22, 1975).

b) Filmdex Chex Systems, 85 F.T.C. 889 (C-2669, May 16, 1975).

c) National Credit Exchange, 85 F.T.C. 520 (C-2646, March 10, 1975).

.5.1.4 Users of Consumer Reports

a) American Express Company, (C-2821, May 24, 1976).

b) A.V.C. Nos. 2229-2233, August 2, 1972-Berkshire Life Insurance Company, Home Life Insurance Company, New York Life Insurance Company, Southern Farm Bureau Life Insurance Company, Teachers Insurance and Annuity.

.6 HOBBY PROTECTION ACT

The Hobby Protection Act (15 U.S.C. § 2101 et seq.) became effective on November 23, 1973. The Commission promulgated regulations on March 10, 1975 (16 C.F.R. 304.1 et seq.).

This Act makes unlawful the manufacture or importation of imitation numismatic and political items unless marked in accordance with regulations prescribed by the FTC. Imitation numismatic items must be inscribed with the word "COPY" and imitation political items must carry the calendar year of manufacture. Section 3 of the Act provides for private enforcement. Under this provision any interested person may bring a civil action in a United States district court to enjoin a violation and to obtain damages.

.6.1 COMPLAINTS

.6.1.1 Statutory Basis

When pleading a violation of the Hobby Protection Act, as with other special statutes, the first paragraph of the complaint should include a reference to the Federal Trade Commission Act and to the regulations promulgated under the Hobby Protection Act. See OM Ch. 4, Illustration 1 for format.

It is the staff's view that the Rules and Regulations under the Hobby Protection Act are also rules under the FTCA for purposes of FTCA § 5(m)(1)(A). Therefore, the complaint should not refer to the implementing regulations as being promulgated under, the Hobby Protection Act, but rather, under both the Hobby Protection Act and the FTCA.

.6.1.2 Jurisdiction

"Commerce," as defined by FTCA § 4 includes "commerce among the several States or with foreign nations." Hence any importer, whether foreign or domestic, which imports imitation numismatic or imitation political items into the United States, is subject to the Commission's jurisdiction provided the foreign corporation has an agent or is engaged in commerce in the United States. A paragraph pleading trade in or affecting commerce might read as follows:

> In the course and conduct of their business as aforesaid, respondents now cause, and for some time in the past have caused, imitation numismatic items to be imported into the United States and shipped from their place of business in the State of _____ to retailers and other states in the United States. Respondents therefore maintain, and at all times mentioned herein have maintained, a substantial course of trade in said items in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

.6.1.3 Laying the Foundation

A foundation should be laid for an allegation charging a violation of the Hobby Protection Act and regulations by stating the nature of the imitation items and their relationship to the original numismatic or original political item they purport to resemble. The paragraph should also state the practice for which a violation is alleged (i.e., manufacture or importation) and that the act occurred after the effective date of the regulations. For example:

> Respondents, subsequent to March 10, 1975, have imported into the United States for distribution in commerce privately minted copies of [ ] coins. The aforesaid coins are imitation numismatic item as "imitation numismatic item" is defined in § 2(b) of the Hobby Protection Act and as further defined in Rule l(d) of the Rules and Regulations under the Hobby Protection Act (16 C.F.R. 304), duly promulgated by the Federal Trade Commission. Said coins were not marked "COPY," as required by Rule 6 of the Regulations.

.6.2 ORDERS

.6.2.1 Notification to Purchasers

A Hobby Protection Act consent order should, if feasible, contain a provision requiring the respondents to notify each purchaser of an imitation numismatic item that gave rise to the complaint, that the item was

manufactured or imported in violation of the Hobby Protection Act, and that a private right of action for damages exists under the Act. For example:

> IT IS FURTHER ORDERED that the respondent corporations shall forthwith distribute a of copy this order to each of their operating divisions, and to each purchaser of an item which gave rise to this complaint of the fact that such item was imported in violation of the Hobby Protection Act. Each purchaser shall also be advised in writing on company stationery that the coins they have purchased are not original numismatic items and that a private right of action for damages exists under § 3 of the Hobby Protection Act.

Notification to all purchasers in all cases may not be possible; therefore, complaint counsel must still tailor each consent order to conform to the practical options available in their case.

.7 WARRANTY ACT

The Magnuson-Moss Warranty Act, Title I of P.L. 93-637 calls for a comprehensive scheme of warranty disclosures and warranty availability, designed to achieve a greater level of consumer comprehension of warranties and to achieve greater competition in warranty offerings. The Commission has promulgated the three rules required by Congress to implement the statute: Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 C.F.R. 701; Pre-Sale Availability of Written Warranties, 16 C.F.R. 702; and Informal Dispute Settlement Procedures, 16 C.F.R. 703. Several of the nine discretionary rules authorized in the Act have been proposed or are the subject of staff recommendations to the Commission. The Commission has also published two policy statements giving guidance for compliance with the Act: "Implementation and Enforcement Policy," 40 Fed. Reg. 25721 ff. (June 18, 1975), and the "Interpretations," 16 C.F.R. 700. These are not substantive rules but, like previous "guides" issued under Section 5 of the FTC Act, offer policies and interpretations that the Commission will follow in enforcing the law.

The statute also calls for continuous Commission activity to review requests for waivers of the prohibition of tie-ins in warranties (under § 102(c)), and for petitions by states for exemptions from preemption of certain kinds of state warranty laws (§ 111(c)). FTCA § 5 is the basis of other warranty activities. The proposed Mobile Home TRR concerns the performance by manufacturers of mobile homes of warranty service. The Used Motor Vehicle Sales TRR (based on both the Warranty Act and § 5) concerns disclosure of warranty and other pertinent information in the offering for sale of used automobiles. Deceptive warranty advertising and other unfair and deceptive warranty practices may also be the subject of Commission action under § 5.

A form complaint and consent agreement have been developed by staff in connection with the earliest investigations for compliance with the Warranty Act (Title I). See Illustrations 5 and 6. Until the Commission has determined the appropriate format it is inevitable that further refinements will be made to these forms. Staff bringing enforcement actions are encouraged to contact the program advisor to discuss any recent changes in these forms, as well as problems and needs that arise in applying these forms to particular facts and cases.

The forms have been derived generally from those currently used in Commission § 5 cases; some paragraphs are standard boilerplate or boilerplate modified only slightly to recognize the new statutory basis of the Commission's authority and jurisdiction. The paragraphs detailing violations of the Act are provided as illustrations; they do not exhaust the possible violations of the Act and]Rules that, could arise in a case.

.7.1 COMPLAINTS

1. The initial paragraph should contain essential definitions which have particular applicability to the

Act and the complaint. Section 101 of the Act includes the definitions of terms that are essential to establish jurisdiction. Among the key terms are written warranty, consumer product, consumer, supplier, warrantor and commerce. Some of these terms have slightly different definitions in Rules 701 and 702. See especially definitions of consumer in 16 C.F.R. 701.1(h). Compare statute's definition of "supplier," § 101(5), with definition of "seller" in § 702.1(e). Where the definition in a rule is to be applied, that should be noted and cited in the complaint.

2. The following introductory paragraphs should allege the jurisdictional elements under the Warranty Act. The key elements of jurisdiction are:

- respondent is a supplier of consumer products
- the products are distributed in commerce
- the respondent offers a written warranty on the consumer products
- the consumer products were manufactured after the effective date of the Act (or Rule).

(Note: The provisions of the statute that do not require rules in order to take effect, became operative on July 4, 1975; Rule 703, July 4, 1976; Rules 701 and 702, December 31, 1976.)

3. Thereafter, the paragraphs of the complaint should identify in specific detail specific violations of the Act. Short sentences and simple declarative statements should be used here to make the charges of law violations in the complaint comprehensible.

4. The concluding paragraph before the wherefore clause should be used verbatim in all Warranty Act complaints. The tie-in to § 5 of the FTC Act via § 110(b) of the Warranty Act establishes the Commission's authority to issue and enforce the order; i.e., the paragraph should allege violations of both Acts.

.7.2 CONSENT ORDERS

The preamble to warranty consent orders ("IT IS HEREBY AGREED . . .") is adopted from the current standard for § 5 orders. (See OM Chs. 5 and 6.) Order provisions should correspond to the violations detailed in the complaint. One paragraph of the order should incorporate the applicable Rule requirement; and to preserve the future effectiveness of this order, the provision should contain the additional phrase "or as that Rule may be amended." (See, e.g., Illustration 6.) The order should also include a catch-all provision which is designed to simplify enforcement proceedings for any future Rule violation.

The order should also contain specific paragraphs to cancel any advantage respondents may stand to realize in performing pursuant to a warranty issued in violation of the law. These are essential in any order so that respondents may not escape warranty liability or avoid warranty performance costs assumed by competitors offering similar, but complying, warranties.

As previously noted, the concluding paragraphs should contain standard boilerplate provisions. See OM Ch. 5. If a consumer product is marketed under a licensing agreement, the notification paragraph should include appropriate language. This illustrates the need for complaint counsel to carefully evaluate the appropriateness of all boilerplate language, and to modify it where needed to make an agreement accurate and enforceable. However, deviation from standard or boilerplate provisions must be explained and justified by the staff.

.7.3 RULEMAKING UNDER THE MAGNUSON-MOSS WARRANTY ACT

Section 109(a) of the Warranty Act, 15 U.S.C. § 2309(a), requires that implementing rules for Title I (the warranty provisions) be prescribed in accordance with 5 U.S.C. § 553, and that, in addition, public oral hearings for the presentation of data, views, and arguments by interested persons must be made.

The Warranty Act provides that certain warranty rules must be prescribed by the Commission, while other rules may be prescribed in the Commission's discretion. (All the mandated rules, and some of the discretionary rules, have already been prescribed.) Procedures followed after the investigation stage have included preparation, of an initial staff report to the Commission proposing promulgation of a rule or specifying the form a mandated rule should take, placing of the report on the public record at the time of initial notice, a subsequent public comment period, oral hearings at which only staff and the Presiding Officer conduct examination of witnesses, written rebuttal in the discretion of the Presiding Officer, preparation of a Presiding officer's report and a final staff report, and a Commission Statement of Basis and Purpose accompanying promulgation of the rule in final form.

Section 109(a) further provides for the standard for judicial review for any rules promulgated pursuant to the Warranty Act, as follows:

> Any such rule shall be subject to judicial review under § 18(3) of the Federal Trade Commission Act (as amended by § 202 of this Act) in the same manner as rules prescribed under § 18(a)(1)(B) of such Act, except that § 18(e)(3)(B) of such Act shall not apply.

Note that procedural requirements described above do not apply to the Commission's issuance of interpretations of the warranty provisions. One such interpretive statement, restating the warranty provisions in simplified language, has been issued by the Commission, 40 Fed. Beg. 25721 (June 18, 1975), and another, containing various interpretations in the nature of industry guides, has been published for comment (16 C.F.R. 700). The Commission may adopt its own procedures for the issuance of such interpretive statements. Those statements are not subject to judicial review.

A rule can be promulgated under the authority of both the Warranty Act (Title I) and under FTCA § 5. An example is the proposed TRR on the Sale of Used

Motor Vehicles which addresses issues that arise under the Warranty Act as well as other unfair or deceptive acts and practices. The procedures under the amended § 18 of the FTCA are appropriate for such hybrid rules. (See OM Ch. 7)

.8 EQUAL CREDIT OPPORTUNITY ACT

.8.1 GENERAL

The Equal Credit Opportunity Act of 1974 (ECOA) (effective October 28, 1975) and the ECOA, amendments of 1976 (effective March 23, 1977) were enacted to eliminate the practices of many creditors of denying credit to applicants because of factors relating to their sex, marital status, race, religion, national origin, age, receipt of public assistance benefits or exercise of rights under the Consumer Credit Protection Act. The regulations governing this Act are promulgated by the Federal Reserve Board. The original law which prohibited discrimination on the basis of sex or marital status deals specifically with the many credit policies which have operated to deny women access to credit, including: the refusal to grant credit to divorced women or to grant separate accounts to married women, termination of a woman's account upon divorce or marriage, discounting

of a married woman's income, or refusal to consider part-time income.

The sample ECOA complaint and order (see Illustrations 7 and 8) have been developed in connection with several investigations of sex and marital status discrimination by retail creditors in violation of the 1974 ECOA. The sample complaint and order focus therefore on sex and marital status discrimination by open end retail creditors and would have to be appropriately modified for other than open end creditors. Complaints and orders concerning other kinds of discrimination (e.g., race discrimination) by other kinds of creditors (e.g., mortgage bankers) may be based on a similar approach and format. Staff should contact the program advisor to determine whether any further refinements have been made to this sample language before preparing final ECOA complaints or orders. It is anticipated that additional paragraphs tailored to specific fact patterns will be developed as new cases are brought against creditors in different segments of the market and that modifications to the existing language will be made.

.8.2 SPECIFICITY OF THE COMPLAINT AND ORDER

Allegations of violation of the ECOA and Regulation B should, as a general rule, follow the language of Regulation B closely. For example, a complaint alleging a violation of a woman's right to use her maiden name would provide:

> PARAGRAPH : Subsequent to November 30, 1975, in the ordinary course of business respondent has refused to extend joint accounts to married couples where the wife uses her birth given surname or a combined surname rather than her husband's surname.
>
> PARAGRAPH : By and through the practices described in PARAGRAPH , above, respondent has prohibited female applicants from opening or maintaining an account in a birth given first name and surname or a birth given first name and a combined surname. Therefore, respondent has violated § 202.4(e) of Regulation B.

The corresponding order provision provides that the creditor cease and desist from:

> Prohibiting an applicant from opening or maintaining an account in a birth given first name and a surname that is the applicant's birth given surname, the spouse's surname or a combined surname, in violation of § 202.5(b) of amended Regulation B.

A notable exception to the general rule of following the language of Regulation B occurs where a respondent is alleged to have engaged in practices which have the effect of discriminating against a protected class. In such instances, the complaint also serves an educational function and the facts surrounding the alleged violation should be spelled out in some detail. An example of a complaint paragraph alleging sex discrimination in violation of the general rule is as follows:

> PARAGRAPH : As part of its procedures for evaluating applicants, respondent has adopted policies and formulated written instructions to its employees which set forth the criteria to be applied in selecting applicants to be granted credit. Subsequent to October 29, 1975, and pursuant to respondent's written instructions concerning the evaluation of occupational categories, respondent has automatically rejected applications from "waitresses" without any further evaluation of the applicants' qualifications. During the same period, respondent has not rejected applications from "waiters" but has evaluated such applications on the basis of the applicants' qualifications.
>
> PARAGRAPH : By and through the use of the practices described in PARAGRAPH , above,

respondent has discriminated against female applicants for credit on the basis of sex. Therefore, respondent has violated § 202.2 of Regulation B.

The corresponding order provision would simply provide, however, that the respondent cease and desist from:

Discriminating against applicants for credit on the basis of sex or marital status with respect to any aspect of a credit transaction in violation of § 202.4 of amended Regulation B.

An example of a complaint paragraph alleging marital status discrimination in violation of the general rule is as follows:

PARAGRAPH : In a substantial number of instances subsequent to October 28, 1975, respondent has ordered and evaluated consumer reports on the spouses of married female applicants for separate accounts but has not ordered and evaluated consume reports on the applicants. In a substantial number of these instances, respondent has denied the applications on the basis of information from a consumer report on the applicant's spouse. Respondent does not, in the normal course of business, order consumer reports on the spouses of married male applicants for separate accounts.

PARAGRAPH : By and through the practices described in PARAGRAPH above, respondent has used information requirements and investigatory procedures which have the effect of discriminating against married females who apply for separate accounts. Therefore, respondent has violated § 202.2, of amended Regulation B.

The corresponding order provision would require the creditor to cease and desist from:

Imposing information requirements and investigatory procedures which have the effect of discriminating against female or married applicants for credit in violation of § 202.4 of amended Regulation B.

.8.3 REFERENCES TO THE ORIGINAL AND AMENDED REGULATION B

If a violation occurred prior to March 23, 1977, reference should be made to the original Regulation B in the complaint. The order should refer to the corresponding provision of amended Regulation B. If a violation occurred both before and after March 23, 1977, the complaint and order should refer to both versions of Regulation B, while the order should refer only to amended Regulation B.

.8.4 COMPLAINT

1. Prefatory language in ECOA cases follows the standard language drawn from § 5 complaints.

2. A "definitions" section should be included in complaints to ensure that the key terms in the complaint are defined. It is important to define "Regulation B" and "&mended Regulation B" if the complaint refers to violations before and after March 23, 1977. Mien a term is defined in Regulation B, reference may be made to § 202.2 of amended Regulation B.

3. A separate paragraph identifies the respondent(s).

4. The next paragraph establishes the jurisdictional prerequisite that the respondent is a creditor regularly engaged in the extension of credit. It is not necessary to allege that the respondent is in interstate commerce.

5. The following paragraphs allege violations of various provisions of Regulation B and are illustrative of the types of violations which may occur.

6. The concluding paragraph should be used verbatim as it establishes the FTC's enforcement authority.

.8.5 ORDER

1. The initial paragraph, is a catch-all provision which prohibits violation of the general rule. Even though the complaint alleges that the respondent violated only the original Regulation B, the order should refer to amended Regulation B as well since the order applies prospectively.

2. The following paragraphs prohibit violations of various sections of the regulation..

3. The next paragraph prohibits prospective violation of § 202.9 of amended Regulation B. Optional Subparagraph 8(a) of Illustration 8 is designed for use in connection with orders against creditors who require a "reference number" before they will provide the reasons for denial. Optional Subparagraph 8(b) of Illustration 8 is designed for use in connection with orders against creditors who utilize credit scoring systems.

Although Regulation B already has extensive recordkeeping requirements, it may be necessary to require retention of further evidence of compliance with specific terms of the order.

The concluding paragraphs in the order are based on standard Commission language found in § 5 complaints while also alleging violations of the Equal Credit Opportunity Act. (See OM Ch. 5)

.9 FAIR PACKAGING AND LABELING ACT

The Fair Packaging and Labeling Act (15 U.S.C. 1451) became effective on November 3, 1966, to prevent the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in commerce. The declared policy of Congress is that packages and labels should enable consumers to obtain accurate information as to the quantity of contents and should facilitate value comparisons.

The Secretary of Commerce (acting through the National Bureau of Standards) has the responsibility of developing voluntary product standards to eliminate undue proliferation of package sizes.

There are two general areas of regulation prescribed by the Act. The first is described in § 4 which is commonly termed the "mandatory" section. In this section it is required that each packaged or labeled "consumer commodity" specify the identity of the commodity, the name and place of business of the manufacturer, packer, or distributor, a separate and accurate statement of net quantity and, where the package bears a representation of servings or uses, the net quantity of each serving or use. The second area of regulation is contained in § 5 of the Act and is commonly called the "discretionary" section. This section authorizes the Commission to issue regulations whenever it is determined necessary to prevent deception or to facilitate value comparisons by the consumer. Four general areas are defined for possible regulation:

(a) Establish and define standards for characterization of the size of a package. (e.g., regular, king, jumbo, family, etc.)

(b) Regulate the use of statements on packages which represent that the commodity is offered for retail sale at a price lower than the ordinary price (e.g., "cents-off") or that a retail sale price advantage is given because of the size of the package or the quantity of contents (e.g.,

'economy size").

(c) Require that a common or usual name be used for a commodity and/or that the ingredients be listed in the order of their decreasing predominance.

(d) Prevent the nonfunctional-slack-fill of packages.

The first mandatory regulations issued under § 4 became effective in September 1969 and the first discretionary regulations under § 5 became effective in January 1972. (16 C.F.R. 500.1 et seq.)

.9.1 JURISDICTION

Section 10 of the Fair Packaging and Labeling Act assigns jurisdiction of foods, drugs, cosmetics, and devices, as defined in the Food, Drug, and Cosmetic Act (21 U.S.C. § 321) to the Secretary of Health, Education, and Welfare (Food and Drug Administration). All other "consumer commodities", as that term is defined under § 10, come under the jurisdiction of the Federal Trade Commission, with the exception of the several specifically named commodity groups covered by other federal statutes (see 15 U.S.C. § 1459).

In its broadest form, all commodities that are offered at retail sale in packaged or labeled form would have been included. However, legislative history reveals that it was the expressed intent of Congress not to include "all other consumer commodities."

For further specific discussion and definition see 16 C.F.R. 503.5 and 503.2 of the regulations.

In summary, there are four specific categories of packaged and labeled products excluded from FTC jurisdiction under this Act.

(1) Institutional and industrial products.

(2) Foods, drugs, cosmetics, and devices assigned to FDA.

(3) Commodities specifically excluded under § 10 of the Act.

(4) Commodities excluded by legislative history and Commission interpretation as enumerated under §§ 503.5 and 503.2 of the regulations.

.9.1.1 State Regulation

The Secretary of Commerce must furnish copies of each federal regulation issued under this Act to state officers and agencies in order to promote the greatest uniformity possible between state and federal regulation of the labeling of consumer commodities. The Model State Packaging and Labeling Regulation issued by the National Conference on Weights and Measures and adopted by many states is perhaps the most instrumental effort which influences uniformity in state and federal regulation on this subject to date.

The model is not restricted by jurisdictional exclusions and where adopted, applies to any packaged or labeled commodity, including industrial and institutional commodities. Therefore, when a question arises as to whether a package is covered by the regulations under the Fair Packaging and Labeling Act and it is determined that the commodity is excluded from federal jurisdiction, the packager should be advised that the Model Regulation

exists as state law in many states, with identical labeling requirements for all packaged products. For specific questions concerning such packaging, the packager should be referred to appropriate state authorities who are normally State Weights and Measures officials.

.9.2 PROCEDURE

The majority of instances of noncompliance have not involved serious omissions of required labeling elements. Instead, they have been and continue to be attributable, in many instances, to a lack of knowledge or misunderstanding of the specifics of location, conspicuousness, and clarity for the mandatory elements of disclosure. When the deficiencies are revealed and the requirements explained, responsible industry members have taken steps toward immediate voluntary compliance. Consequently, the principal method of enforcement has been and continues to be on a basis of frequent surveillance of packaging in the retail marketplace and correction on a minor violation basis. This method has the advantage of permitting greater product/industry coverage and deficiency correction, than if done by the case method which, nonetheless, remains available.

Although specific FPLA inspection efforts should be carried out periodically, it is believed that considerable enforcement coverage can also be accomplished in conjunction with other Commission investigative and enforcement activities. For example, if an individual is traveling to interview witnesses or inspect other products, some time could also be expended for FPLA surveillance in that geographic area.

The FTC Survey Sheet for Consumer Commodities Under the Fair Packaging and Labeling Act (FTC Form 6-41) (Illustration 9) is the basic reporting tool and is especially designed to enable inspectors to quickly record violations discovered in the retail marketplace. Due to the fact that this form is aligned with a data processing system, it is essential that this, and no other method of recording and reporting possible noncomplying products be utilized, wherever possible.

To facilitate knowledge of actions being taken by all offices for correction of a noncomplying product and to eliminate duplicate actions involving any given commodity, a reporting system has been developed employing data processing. A copy of each Survey Sheet (FTC Form 6-41), which is the basis of a noncompliance action should be sent to the FPLA program advisor for entry into the reporting system. To ensure that no duplicate actions involving commodities and/or companies are instituted, each product found to be out of compliance should be checked against the reporting system by calling the program advisor. File numbers will be assigned if the system reveals no duplication. Violators should be notified by a letter similar in form to Illustration 10, and the letter should include, as an enclosure, a form reply as in Illustration 11.

.10 WOOL PRODUCTS LABELING ACT

The discussion below is to be used as an aid in drafting a complaint and order under the Wool Products Labeling Act (WPLA) of 1939 (15 U.S.C. § 68, and the rules promulgated thereunder, 16 C.F.R. 300.1 et seq.). The discussion and sample complaint and order (Illustrations 12 and 13) cover the majority of the most commonly occurring practices and violations.

Each paragraph in the sample complaint is followed by a reference, in brackets, to the corresponding provision in the sample order under the WPLA of 1939, and vice versa.

.10.1 JURISDICTION

The jurisdictional paragraph in complaints and orders drafted under the WPLA of 1939 is derived from § 3 of the Act, which declares misbranding in commerce unlawful.

Section 3 of the WPLA covers the manufacturing for introduction, introducing, selling, transporting, distributing, delivering for shipping, shipping and offering for sale in commerce of any wool product or of any product purporting to be wool that is misbranded within the meaning of the Act or Rules. The WPLA does not cover advertising.

Section 3 of the WPLA, in declaring such practices unlawful, provides that it shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the FTCA.

Importing, where appropriate, should also be pleaded in the jurisdictional paragraph. Jurisdiction over importing is derived from § 8 of the Act, which declares that all wool products imported into the United States must be stamped, tagged, labeled, or otherwise identified in accordance with the provisions of the Act.

An all-inclusive jurisdictional paragraph is found in PARAGRAPH TWO of the sample complaint (Illustration 12) and Paragraph 1 of the sample order (Illustration 13).

.10.2 MISBRANDING

Misbranding (or, less correctly, mislabeling) is defined in detail in § 4 of the WPLA.

Basically, there are two general types of violations that occur in this area -- deceptive statements as to fiber content on a label (an act of commission) and insufficient or nonexistent information with respect to fiber content on a label (an act of omission). Obviously, the latter situation includes products with no label at all.

The first situation--deceptive statements--is prohibited by § 4(a)(1) of the Act and is pleaded as in PARAGRAPH THREE in the sample complaint and in Paragraph 2-1 of the sample order. Section 4(a)(1) is pleaded whenever there has been a percentage overstatement or understatement or an allegation of the presence of a fiber not present in the product. This Section can also be pleaded to cover deceptive statements relating to other than the name or amount of the constituent fibers, since the language of the statute is not limited to deceptive statements as to name or amount of constituent fibers, as is the analogous language of the Textile Act. See .12.1 below.

The second situation--insufficient or nonexistent information--is covered by § 4(a)(2) of the Act and is pleaded in PARAGRAPH FOUR of the sample complaint and in Paragraph 2-2 of the sample order.

Section 4(a)(2) covers the "no label" situation, and any situation where there is a label with incorrect or incomplete information on it or with information on it that is not set out in precisely the manner required by this Section of the Act and by the Rules.

10.3 RULE VIOLATIONS (16 C.F.R.Part 300)

Minor rule violations, in and of themselves, would not ordinarily be the sole subject of a complaint under the Wool Act except in those cases where the violation is willful and/or flagrant.

However, in the course of an investigation, evidence of minor rule violations is often discovered. In such a case, allegations of violations of these rules should be included in the complaint and order along with violations of major sections of the Act. An example of the pleading of rules violations is found in PARAGRAPH FIVE of the sample complaint and in Paragraph 2-3 of the sample order.

.10.4 RECORDKEEPING

The WPLA requires that proper records must be kept for 3 years by manufacturers of wool products (§ 6(b) and Rule 31).

A violation by a manufacturer of § 6(b) is pleaded as in PARAGRAPH SIX of the sample complaint and in Paragraph 3 of the sample order.

.10.5 CONTINUING GUARANTY

Section 9(a) of the Act establishes the availability of the continuing guaranty as a defense; § 9(b) declares it unlawful to furnish a false guaranty--which amounts to selling misbranded goods when one has a continuing guaranty on file with the Commission. This Section is pleaded as in PARAGRAPH SEVEN of the sample complaint and in Paragraph 4 of the sample order.

Falsely declaring that one has a continuing guaranty on file with the Commission when one in fact does not is specifically declared by Rule 33(d) to be a violation of § 9(b). Rule 33(d) declares such a falsehood to be the equivalent of furnishing a false guaranty in violation of § 9(b). This situation is pleaded as in PARAGRAPH EIGHT in the sample complaint and in Paragraph 4 of the sample order.

.10.6 BONDING

Section 8 of the WPLA deals exclusively with imports. It briefly states that all imported products must be marked in accordance with § 4 of the Act, and that all import documents required by the Tariff Act of 1930 (C. 497, Title IV, 46 Stat. 719) in connection with the products must set forth the information required by the WPLA. Section 8 declares it unlawful to falsify the information on the import documents or to fail to set forth the required information on the documents. Section 8 permits the Commission to prohibit importers who violate that section from importing their merchandise except upon the filing of a bond with the Secretary of the Treasury in a sum double the value of the products and any duty thereon, conditioned upon compliance with the provisions of the WPLA.

Violations of § 8 of the WPLA are pleaded as in PARAGRAPH NINE of the sample complaint. This prohibition is set forth in Paragraph 5 of the sample order.

.10.7 INVOICES

With the exception of the, requirements of § 8 (see above) as to import documents, the Wool Act does not cover invoicing.

If it becomes evident that a respondent is making deceptive statements on invoices as a regular practice, the practice may be pleaded in the complaint under § 5 of the FTCA.

Such a pleading is found in PARAGRAPHS ELEVEN, TWELVE, FOURTEEN, and FIFTEEN of the sample complaint and in Paragraph 6 of the sample order.

.10.8 UNDERSTATEMENT OF WOOL; INACCURATE DISCLOSURE OF NONWOVEN FIBERS IN A WOOL PRODUCT LABELED CORRECTLY AS TO WOOL CONTENT

(Marcus v. F.T.C., 354 F.2d 85 (2d Cir. 1965), held that:

(1) Understatement of wool content does not violate the WPLA. See Verrazzano Trading

Corporation, 78 F.T.C. 637 (1971).

(2) Where wool content is correctly stated, inaccurate disclosure of nonwoolen fibers is not a subject of concern under the WPLA.

This interpretation is controlling in cases arising in the 2d Circuit, and could be persuasive in cases arising in the other circuits.

It is therefore advisable (other circuits), if not mandatory (2d Circuit), to plead these types of violations under FTCA § 5 in addition to the usual WPLA pleadings.

Such a § 5 pleading is found in PARAGRAPHS ELEVEN, THIRTEEN, FOURTEEN and FIFTEEN of the sample complaint and in Paragraph 6 of the sample order.

.10.9 NOTICE TO CUSTOMERS

This is a provision that has sometimes been included in orders to act as an added deterrent to large-scale misbranding by other companies similarly situated in the industry. [Paragraph 7 of Illustration 13]

.11 FUR PRODUCTS LABELING ACT

The discussion below is by no means all inclusive--it is only meant to be used as an aid in drafting a complaint and order under the Fur Products Labeling Act (FPLA)(15 U.S.C. § 69 and the Rules promulgated thereunder 16 C.F.R.301.0 et seq. The discussion and sample complaint (Illustration 14) and sample order (Illustration 15) cover the majority of the most commonly occurring practices and violations. Each PARAGRAPH in the sample complaint is followed by a reference, in brackets, to the corresponding provision in the sample order under the FPLA.

Introductory Notes

(1) A "fur" is a skin or pelt; a "fur product is an article of wearing apparel made therefrom (see subsections (b) and (d) of § 2 of the Act and Rule l(b) for the precise definitions of "fur," "fur product," and "wearing apparel").

(2) "Fur products" must be labeled and invoiced; "furs" need only be invoiced--labels are not required.

(3) In general, the fur industry consists of "fur" producers (primarily ranchers, but also trappers, for some furs), "fur" dealers, fur" dressers and dryers, "fur products" manufacturers, "fur products" wholesalers, and "fur products" retailers.

Most fur cases involve fur dealers (who may be importers) or some combination of fur products manufacturer/wholesaler/retailer. Occasionally, a case is brought against a dresser, of which there are only a few, most of whom are in the New York City area.

(4) A case against a "fur" importer/dealer or a "fur" dresser usually involves only invoicing charges, perhaps with rule violations.

A case against a manufacturer/wholesaler/retailer of "fur products" can involve both

invoicing and labeling, as well as advertising violations and rule violations.

(5) See Rule 39 for exempted fur products.

.11.1 JURISDICTION

The jurisdictional paragraph in complaints and orders drafted under the Fur Products Labeling Act is derived from § 3 of the Act, which declares misbranding, false and deceptive invoicing, and false and deceptive advertising in commerce unlawful.

Section 3(a) covers the introducing, or manufacture for introduction into commerce, and the selling, advertising, offering for sale, transporting or distributing, in commerce, of any fur product that is misbranded or falsely or deceptively advertised or invoiced.

Section 3(b) covers the manufacture for sale, selling, advertising, or offering for sale, transporting or distributing of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced. This differs from § 3(a) in that it is unnecessary to prove that the selling, etc. took place in commerce--only that the fur product is misbranded or falsely or deceptively advertised or invoiced, and that it is made in whole or part of "fur" which has been shipped and received in commerce.

Section 3(c) deals with furs only. This Section covers the introducing into commerce, and the selling, advertising, offering for sale, transporting and distributing in commerce of any fur that is falsely or deceptively advertised or falsely or deceptively invoiced.

Importing, where appropriate, should also be pleaded in the jurisdictional paragraph. Jurisdiction over importing is derived from § 6 of the Act, which declares that all fur products imported into the United States shall be properly labeled and that all fur products and furs must be properly invoiced, in accordance with the provisions of the Act.

All three subsections of § 3, in declaring such practices to be unlawful, designate that it shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act. This last language is set forth in PARAGRAPH TWELVE of the sample complaint.

In the all-inclusive jurisdictional paragraphs of the sample complaint (PARAGRAPH TWO) and sample order (Paragraph 1), the language of the three subsections is designated separately in brackets to correspond to the subsection designation. (This would not be done in an actual complaint.)

.11.2 MISBRANDING

Misbranding (or, less correctly, mislabeling) of fur products is defined in detail in § 4 of the Act.

Basically, there are two general types of violations that occur in this area--misrepresentations on the label with respect to the fur product (an act of commission) and insufficient or nonexistent information with respect to the fur product on the labeL (an act of omission).

The first situation--misrepresentations--is prohibited by § 4(1) of the Act and is pleaded as in PARAGRAPH THREE in the sample complaint and Paragraph 2-1 the sample order. A typical misrepresentation would be representing a dyed fur product as "natural."

The second situation--insufficient or nonexistent information--is covered by § 4(2) of the Act and is pleaded in PARAGRAPH FOUR of the sample complaint and Paragraph 2-2 of the sample order. Section 4(2) covers the "no label" situation, and any situation where there is a label with incorrect or incomplete information on it or with information on it that is not set out in precisely the manner required by this Section of the Act and by the Rules.

.11.3 FALSE AND DECEPTIVE PRICING AND ADVERTISING

Section 5(a) covers false or deceptive advertising of fur products or furs; Section 5(b) covers false or deceptive invoicing of fur products or furs. Due to the similarity of the Fur Act's requirements respecting advertising and invoicing, this discussion, as well as the sample order, will not detail advertising. However, in the event advertising violations are discovered, they should be pleaded similarly to invoicing violations.

Basically, as in misbranding, there are two types of violations that occur in this area--misrepresentations on the invoice (or in the advertisement) with respect to the fur product (an act of commission) and insufficient or nonexistent information on the invoice (or in the advertisement) with respect to the fur product (an act of omission).

The first situation--misrepresentations--is prohibited by § 5(b)(2) of the Act and is pleaded as in PARAGRAPH SIX of the sample complaint and Paragraph 3-2 of the sample order. A typical misrepresentation on an invoice would be to represent a dyed fur product as "natural."

The second situation--insufficient or nonexistent information--is covered by § 5(b)(1) of the Act and is pleaded as in PARAGRAPH FIVE of the sample complaint and Paragraph 3-1 of the sample order. Section 5(b)(1) covers the "no invoice" situation, and any situation where there is an invoice with incorrect or incomplete information on it or with information on it that is not set out in precisely the manner required by this Section of the Act and by the Rules.

.11.4 RULE VIOLATIONS (16 C.F.R. Part 301)

Minor rule violations, in and of themselves, would not ordinarily be the sole subject of a complaint under the Fur Act except in those cases where the violation is willful and/or flagrant.

However, in the course of an investigation, evidence of minor rule violations is often discovered. In such a case, allegations of violations of these rules should be included in the complaint along with violations of major sections of the Act. An example of the pleading of rule violations is found in PARAGRAPH SEVEN of the sample complaint and Paragraph 4 of the sample order.

.11.5 RECORDKEEPING

The FPLA requires that proper records must be kept for 3 years by manufacturers and dealers in fur products of furs (§ 8(d) and Rule 41) and by persons substituting labels pursuant to § 3(e) (§ 3(e) and Rules 35 and 41). A violation by a manufacturer of § 8(d) is pleaded as in PARAGRAPH EIGHT of the sample complaint and Paragraph 5 of the sample order.

.11.6 CONTINUING GUARANTY

Section 10(a) of the Act establishes the availability of the continuing guaranty as a defense; § 10(b) declares it unlawful to furnish a false guaranty which amounts to selling misbranded goods when one has a continuing

guaranty on file with the Commission. This section is pleaded as in PARAGRAPH NINE of the sample complaint and Paragraph 6 of the sample order. Falsely declaring that one has a continuing guaranty on file with the Commission, when one in fact does not, is specifically declared by Rule 48(c) to be a violation of § 10(b). Rule 48(c) declares such a falsehood to be the equivalent of furnishing a false guaranty in violation of § 10(b). This situation is pleaded as in PARAGRAPH TEN in the sample complaint and Paragraph 6 of the sample order.

.11.7 BONDING

Section 6 of the FPLA has to do exclusively with imports and, briefly, states that all imported fur products must be marked in accordance with § 4 of the Act and that all invoices of fur products and furs required by the Tariff Act of 1930 (C. 497, Title IV, 46 Stat. 719) must set forth the information required by § 5(b) of the FPLA. Section 6 declares it unlawful to falsify the information on the import documents or to fail to set forth the required information on the documents. Section 6 permits the Commission to prohibit importers who violate § 6 from importing their merchandise except upon the filing of a bond with the Secretary of the Treasury in a sum double the value of the products and any duty thereon, conditioned upon compliance with the provisions of the FPLA.

Violations of § 6 of the FPLA are pleaded as in PARAGRAPH ELEVEN of the sample complaint and Paragraph 7 of the sample order.

.12 TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

The discussion below is not meant to be all-inclusive. It is merely a brief explanation that is meant to be used as an aid in drafting a complaint under the Textile Fiber Products Identification Act (TFPIA) (15 U.S.C. § 70, and the rules promulgated thereunder 16 C.F.R. 303.1 et seq.). The discussion and sample complaint (Illustration 16) and sample order (Illustration 17) cover the majority of the most commonly occurring practices and violations. Each paragraph in the sample complaint is followed by a reference, in brackets, to the corresponding provision in the sample order under the TFPIA.

.12.1 JURISDICTION

The jurisdictional paragraph in complaints and orders drafted under the TFPIA is derived from § 3 of the Act, which declares misbranding and false advertising in commerce unlawful. Section 3(a) covers manufacturing and importing (and is the only subsection that does), as well as introducing, delivering for introduction, selling, advertising, offering for sale, transporting or causing to be transported in commerce any textile fiber product which is misbranded or falsely or deceptively advertised within the meaning of the Act or Rules.

Section 3(b) covers the selling, offering for sale, advertising, delivering, transporting or causing to be transported of any textile fiber product (which is misbranded) that has been advertised or offered for sale in commerce. This differs from § 3(a) in that it is unnecessary to prove that the selling, etc., took place in commerce--only that the product is misbranded and has been advertised or offered for sale in commerce at some prior time. It is useful to plead this paragraph (in addition to § 3(a)) in cases where establishing that the allegedly misbranded products were actually sold "in commerce" might be difficult, out where there is evidence that they were advertised or offered for sale "in commerce."

Section 3(c) covers the selling, offering for sale, advertising, delivering, transporting or causing to be transported of any misbranded or deceptively advertised textile fiber product after it has been shipped in

commerce--whether it is in its original state or whether it is contained in other textile fiber products. It is necessary, to prove only that the product has been shipped "in commerce" at some prior time. The language in this subsection is useful in cases where, for example, a merchant is selling misbranded clothes intrastate which it manufactured from fabric it receivedinterstate. This subsection, too, is usually pleaded in conjunction with subsection (a).

All three of these subsections are often pleaded in the same jurisdictional paragraph, with inapplicable phrases deleted. All three, in declaring such practices to be unlawful, provide that it shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the FTCA. This last language is pleaded in PARAGRAPH TWELVE of the sample complaint.

In the jurisdictional paragraph of the sample complaint and sample order, the language of the three subsections is numbered separately in brackets. (Complaint, PARAGRAPH TWO and Order, Paragraph 1)

.12.2 MISBRANDING AND FALSE ADVERTISING

Misbranding (or, less correctly, mislabeling) and false advertising are defined in detail in § 4 of the Act.

Basically, there are two general types of violations that occur in this area--deceptive statements as to fiber content on a label or invoice or in an advertisement (an act of commission) and insufficient or nonexistent information with respect to fiber content on a label (or an invoice given under Rule 31) or an advertisement (an act of omission). Obviously, the latter situation includes products with no label at all.

The first situation--deceptive statements--is prohibited by § 4(a) of the Act and is pleaded as in PARAGRAPH THREE in the sample complaint and Paragraph 2-1 of the sample order (dealing with labeling rather than advertising). Section 4(a) is pleaded whenever there has been a percentage overstatement or understatement or an allegation of the presence of a fiber not present in the product.

The second situation--insufficient or nonexistent information--is covered by § 4(c) of the Act and is pleaded in PARAGRAPH FOUR of the sample complaint and Paragraph 2-2 of the sample order.

Section 4(b) covers the "no label" situation, and any situation where there is a label with incorrect or incomplete information on it or with information on it that is not set out in precisely the manner required by this Section of the Act and by the Rules.

.12.3 RULE VIOLATIONS (16 C.F.R. Part 303)

Minor rule violations, in and of themselves, would not ordinarily be the sole subject of a complaint under the Textile Act except in those cases where the violation is willful and/or flagrant.

However, in the course of an investigation, evidence of minor rule violations is often discovered. In such a case, allegations of violations of these rules should be included in the complaint along with violations of major sections of the Act. An example of the pleading of rule violations is found in PARAGRAPH FIVE of the sample complaint and Paragraphs 2-3 and 2-4 of the sample order.

.12.4 SUBSTITUTION OF LABELS

Section 5(a) declares it unlawful to remove or mutilate the label, etc., on a textile fiber product before it is sold to the consumer, unless the procedures outlined in § 5(b) are followed. A violation of this section is pleaded

as in PARAGRAPH SIX of the sample complaint and Paragraph 3 of the sample order. Note: That § 6(b) of the Act requires persons who substitute labels in this fashion to keep records. A violation of § 5(b) is usually pleaded with a § 6(b) charge as well.

.12.5 RECORDKEEPING

The Textile Act requires that proper records must be kept for 3 years by manufacturers of textile fiber products (§ 6(a) and Rule 39(a)) and by persons substituting labels pursuant to § 5(b) (§ 6(b) and Rule 39(b)). A violation by a manufacturer of § 6(a) is pleaded as in PARAGRAPH EIGHT of the sample complaint and Paragraph 5 of the sample order.

A violation of the recordkeeping requirements set out in § 6(b) by a person substituting labels pursuant to § 5(b) of the Act is pleaded in PARAGRAPH SEVEN of the sample complaint and Paragraph 4 of the sample order. Note: This charge is pleaded in conjunction with the § 5(b) charge explained above; see PARAGRAPH SIX of the sample complaint and Paragraph 3 of the sample order.

.12.6 CONTINUING GUARANTY

Section 10(a) of the Act establishes the availability of the continuing guaranty as a defense; § 10(b) declares it unlawful to furnish a false guaranty--which amounts to selling misbranded goods when one has a continuing guaranty on file with the Commission. This Section is pleaded as in PARAGRAPH NINE of the sample complaint and Paragraph 6 of the sample order.

Falsely declaring that one has a continuing guaranty on file with the Commission when one in fact does not is specifically declared by Rule 38(d) to be a violation of § 10(b). See PARAGRAPH TEN in the sample complaint and Paragraph 6 of the sample order.

.12.7 BONDING

Section 9 of the Textile Act has to do exclusively with imports and, briefly, states that all imported products must be marked in accordance with § 4 of the Act, and that all import documents required by the Tariff Act of 1930 (C. 497, Title IV, 46 Stat. 719) in connection with the products must set forth the information required by § 4(b) of the Textile Act. Section 9 declares it unlawful to falsify the information on the import documents or to fail to set forth the required information on the documents. Section 9 permits the Commission to, prohibit importers who violate § 9 from importing their merchandise except upon the filing of a bond with the Secretary of the Treasury in a sum double the value of the products and any duty thereon, conditioned upon compliance with the provisions of the Textile Act.

Violations of § 9 of the Textile Act are pleaded as in PARAGRAPH ELEVEN of the sample complaint and Paragraph 7 of the sample order.

Truth-in-Lending Complaint Format

PARAGRAPH ONE: Respondent is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of , with its office and principal place of business located at in the City of , State of (Zip Code) .

PARAGRAPH TWO: Respondent is now and for sometime has been engaged in [describe business] the offering for sale and the sale of [ ] [ ] to the public at retail.

PARAGRAPH THREE: In the ordinary course and conduct of its business as aforesaid, respondent regularly extends or arranges for the extension of consumer credit and is a creditor, as "consumer credit" and "creditor" are defined in Regulation Z, the implementing regulation of the Truth-in-Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PARAGRAPH FOUR: Subsequent to July 1, 1969 respondent, in the ordinary course of its business, as aforesaid, in connection with credit sales, as "credit sale" is defined in Regulation Z, has caused and is causing its customers to enter into contracts hereinafter referred to as "the contract," for the purchase of respondent's goods and services which contracts contain certain consumer credit cost disclosures. Respondent usually makes no consumer cost disclosures other than on the contract.

By and through the use of the contract, respondent:

1. Failed to furnish customers prior to the consummation of a consumer credit transaction with a duplicate of the contract or instrument, or a statement by which the required disclosures are made and on which the creditor is identified,, as required by § 226.8(a) of Regulation Z.

2. Failed to make all disclosures together on either the contract or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature, or on one side of the separate statement which identifies the transaction, as required by § 226.8(a) of Regulation Z.

3 . Failed to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness, as required by § 226.8(b)(3) of Regulation Z.

4. Failed to disclose the sum of the payments scheduled to repay the indebtedness using the term "total of payments," as required by § 226.8(b)(3) of Regulation Z.

5. Failed to describe or identify the type of any security interest held or to be retained or acquired in connection with the extension of credit, and to clearly identify the property to which the security interest relates as required by § 226.8(b)(5) of Regulation Z.

6. Failed to use the term "cash price" to describe the price at which the creditor offered, in the ordinary course of business, to sell for cash the property or services which are the subject of the consumer credit transaction, as required by § 226.8(c)(1) of Regulation Z.

7. Failed to disclose the amount of the downpayment in money, using the term "cash

downpayment," as required by § 226.8(c)(2) of Regulation Z.

8. Failed to use the term "unpaid balance of cash price" to describe the difference between the cash price and total downpayment, as required by § 226.8(c)(3) of Regulation Z.

9. Failed to use the term "amount financed" to describe the amount of credit of which the customer will have actual use determined in accordance with § 226.8(c)(7) of Regulation Z.

10. Failed to disclose the sum of the cash price, all other charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price" as described by § 226.8(c)(8)(ii) of Regulation Z.

PARAGRAPH FIVE: Subsequent to July 1, 1969, in the ordinary course and conduct of its business, as aforesaid, respondent has caused to be published, advertisements for goods and services, as "advertisement" is defined in Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of consumer credit. By and through the use of these advertisements, respondent states that there is no charge for credit [or other triggering term listed in § 226.10(d)(2)] without also disclosing in the terminology prescribed under § 226.8 of Regulation Z all the following terms as required by § 226.10(d)(2) of Regulation Z:

(1) The cash price;

(2) The amount of the downpayment required or that no downpayment is required, as applicable;

(3) The number, amount, and due dates or periods of payment scheduled to repay the indebtedness if the credit is extended;

(4) The amount of the finance charge expressed as an annual percentage rate;

(5) The deferred payment price.

PARAGRAPH SIX: Pursuant to § 103(s) of the Truth-in-Lending Act, respondent's aforesaid failures to comply with Regulation Z, constitute violations of that Act and pursuant to § 108 thereof respondents have thereby violated the Federal Trade Commission Act.

Truth-in-Lending Order Format

IT IS ORDERED that respondent its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device in connection with any extension, or arrangement for the extension of consumer credit, or in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth-In-Lending Act (15 U.S.C. § 1601 et seq., as amended) do forthwith cease and desist from:

1. Failing to furnish customers prior to the consummation of consumer credit transactions a duplicate of the contract or instrument or statement by which the required disclosures are made and on which the creditor is identified, as required by § 226.8(a) of Regulation Z.

2. Failing to make all the disclosures together on either the note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature, or on one side of the separate statement which identifies the transaction, as required by § 226.8(a) of Regulation Z.

3. Failing to accurately disclose the number, amount, and due dates or periods of payment as required by § 226.8 (b)(3) of Regulation Z.

4. Failing to accurately disclose the sum of the payments scheduled to repay the indebtedness, using the term "total of payments" to describe that amount as required by § 226.8(b)(3) of Regulation Z.

5. Failing to describe or identify the type of any security interest held or to be retained or acquired in connection with the extension of credit and to clearly identify the property to which the security interest relates, as required by § 226.8(b)(5) of Regulation Z.

6. Failing to accurately disclose the price at which the creditor offers to sell for cash the property or services which are the subject of the consumer credit transaction, and to use the term "cash price" to describe that amount, as required by § 226.8 (c)(1) of Regulation Z.

7. Failing to accurately disclose the amount of the downpayment in money, using the term "cash downpayment," downpayment in property, using the term "trade-in," and the sum, using the term "total downpayment," as required by § 226.8 (c)(2) of Regulation Z.

8. Failing to accurately disclose the difference between the cash price and the total downpayment and to use the term "unpaid balance of cash price" to describe that amount, as required by § 226.8(c)(3) of Regulation Z.

9. Failing to accurately disclose the amount of credit of which the customer will have actual use determined in accordance with § 226.8(c)(7), and to use the term "amount financed" to describe that by § 226.8 (c)(7) of Regulation Z.

10. Failing to accurately disclose the sum of the cash price, all other charges which are included

in the amount financed but which are not part of and the finance charge, and the finance charge, and to use the term "deferred payment price" to describe that amount, as required by § 226.8(c)(8)(ii) of Regulation Z.

11. Representing in any advertisement to aid or promote or assist, directly or indirectly, any extension of consumer credit, that no downpayment is required, the amount of the downpayment or the amount of any installment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of installments or the periods of repayments, or from representing that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology required by § 226.8 of Regulation Z as required by § 226.10(d)(2) of Regulation Z:

    (a) the cash price;

    (b) the amount of the downpayment required or that no downpayment is required, as applicable.

    (c) the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

    (d) the amount of the finance charge expressed as an annual percentage rate; and

    (e) the deferred payment price.

12. Failing, in any consumer credit transaction or advertisement, to make all disclosures that are required by § 226.4, § 226.5, § 226.6, § 226.7, § 226.8, § 226.9, and § 226.10 of Regulation Z in the manner, form, and amount specified therein.

Fair Credit Reporting Act Complaint Format

PARAGRAPH : In the ordinary course and conduct of its business, as aforesaid, respondent employs certain procedures in the preparation of consumer reports and investigative consumer reports, as defined herein, which do not assure the maximum possible accuracy of the information concerning the individuals about whom the reports relate. Typical and illustrative of such procedures, but not all inclusive thereof, are the following:

(1) a salary/production system which causes or requires its investigative personnel, as defined herein, to complete or prepare an unreasonable number of consumer reports or investigative consumer reports, or to average an unreasonable number of said completed reports per day or other period;

(2) quotas for adverse information, as defined herein which causes or requires its investigative personnel to complete or prepare a certain proportion of consumer reports or investigative, consumer reports, containing negative or derogatory information about the consumers who are the subject of the reports; and/or

(3) paying or "crediting" an investigator for a reinvestigation conducted pursuant to § 611 of the Fair Credit Reporting Act only if the reinvestigation proves that the investigator was accurate in his initial investigation.

PARAGRAPH : By and through the use of these aforesaid procedures, and others similar thereto, but not expressly set out herein, respondent imposes requirements and pressures upon its investigative personnel which are inconsistent with accurate reporting and which have the tendency and capacity to promote incomplete or inaccurate reports. Therefore, respondent has failed and is failing to adopt reasonable procedures to assure the maximum possible accuracy of the information concerning the individuals about whom the reports relate, as required by § 607(b) of the Fair Credit Reporting Act.

Fair Credit Reporting Act Order Format

The proposed order requires respondents to cease and desist from:

4. Employing or using any system, plan, or procedure which results in its investigative personnel completing or preparing:

(a) an unreasonable number of consumer reports or to average an unreasonable number of said reports or units of said reports per day or other period; or

(b) a certain proportion of consumer reports or investigative consumer reports containing adverse information about or relating to the consumers who are the subjects of the reports.

For purposes of subparagraph 4(a) above, an unreasonable number of consumer reports shall be

that number of reports which an investigator cannot, with due diligence, complete or prepare while attempting to conform to the following procedures:

(1) interviewing all the sources or other third parties listed on said reports;

(2) conducting all interviews directly and in person;

(3) making all observations of the homes, neighborhood, or other physical surroundings of the consumers who are the subjects of the reports, directly and in person;

(4) confirming all adverse information through interviews with an independent source.

For purposes of subparagraph 4(b) above, each of the following typical and illustrative practices, as well as other similar practices not specifically set out herein, shall constitute a system, plan, or procedure which requires or compels the production of a certain proportion of consumer reports containing adverse information:

(1) exhorting or urging an investigator to prepare a certain proportion of consumer reports containing adverse information;

(2) posting any chart or listing which indicates or ranks the proportion of consumer reports prepared by an investigator which contains adverse information;

(3) indicating that an investigator is not earning his/her salary or doing his/her job because he/she is failing to prepare a certain proportion of consumer reports containing adverse information.

5. Taking or threatening to take, directly or indirectly, any of the following actions based on an investigator's failure to complete or prepare an unreasonable number of consumer reports or to complete, or prepare a certain proportion of consumer reports containing adverse information, as set out in paragraph 4, above:

(a) reducing or withholding the investigator's bonus or expense allowance, including his/her stenographic or automobile allowance;

(b) reducing the investigator's job status from salaried to fee or from full time to part time;

(c) failing or refusing to promote or to increase the job status or job responsibility of an investigator; or

(d) firing or transferring an investigator or imposing other similar disciplinary action.

Warranty Act Complaint Format

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Magnuson-Moss Warranty Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that , a corporation, and , a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules promulgated by the Commission thereunder, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH ONE: The definitions of terms contained in § 101 of the Magnuson-Moss Warranty Act shall apply to the terms used in this complaint.

PARAGRAPH TWO: Respondent is a corporation doing business under and by virtue of the laws of the State of its principal office and place of business is located at (Zip code).

PARAGRAPH THREE: Respondent is a corporation doing business under and by virtue of the laws of the State of . Its principal office and place of business is located at (Zip code).

PARAGRAPH FOUR: Respondents are now and have been distributing, advertising and selling tires, batteries, automotive parts and accessories, which are consumer products. Therefore, respondents are suppliers of consumer products.

PARAGRAPH FIVE: Respondents, in the course and conduct of their business, have caused consumer products to be distributed in commerce.

PARAGRAPH SIX: Respondents have offered written warranties on consumer products manufactured after July 4, 1975. A copy of such a written warranty is incorporated into this complaint as Exhibit A.

PARAGRAPH SEVEN: Respondents' written warranty includes the following term: "There are no other warranties, express or implied, specifically, we do not warrant the durability, serviceability, or merchantability of the merchandise described . . . ." This statement constitutes a disclaimer of implied warranties in violation of § 108 of the Magnuson-Moss Warranty Act [15 U.S.C. 2308 (Supp. 1975)].

PARAGRAPH EIGHT: Respondents' written warranty includes the following term: "The merchandise described in the accompanying invoice is warranted only against defect [sic] in manufacture . . . . [O]ur replacement policy is not intended to be and should not be interpreted as a warranty." This statement is a representation which is false and which has the capacity to mislead a reasonable individual exercising due care. Therefore, respondents' warranty is a "deceptive warranty" as that term is defined in § 110(c)(2)(A) of the Magnuson-Moss Warranty Act [15 U.S.C. 2310(c)(2)(A) (Supp. 1975)].

PARAGRAPH NINE: Respondents' written warranty contains the designation "Limited Warranty" placed at the extreme bottom center of the document. This designation appears to be part of the decorative border enclosing the warranty text. This placement of the designation is not clear or

conspicuous, as required by § 103(a) of the Magnuson-Moss Warranty Act [15 U.S.C. 2303(a) (Supp. 1975)].

PARAGRAPH TEN: Respondents' written warranty includes the following terms: "Unserviceable shock absorbers or batteries with a lifetime replacement agreement, will be replaced at no charge for life of vehicle"; and "This agreement is not transferable . . . to another owner [of this vehicle] . . . ." These representations are contradictory statements of the duration of the warranty coverage of consumer products installed in a vehicle which is sold or transferred to another owner during the life of the vehicle. These statements have the capacity to mislead a reasonable individual exercising due care. Therefore, the written warranty is a "deceptive warranty" as that term is defined in § 110(c)(2)(A) of the Magnuson-Moss Warranty Act [15 U.S.C. 2310(c)(2)(A) (Supp. 1975)].

PARAGRAPH ELEVEN: Respondents' written warranty set forth in PARAGRAPH SIX above, does not contain a statement of the duration of the warranty (except for those products covered by a "lifetime replacement agreement"). Without a statement of duration, the written warranty fails to contain information which is necessary in light of all the circumstances, to make the warranty not misleading to a reasonable individual exercising due care. Therefore, the written warranty is a "deceptive warranty" as that term is defined in § 110(c)(2)(A) of the Magnuson Warranty Act [15 U.S.C. 2310(c)(2)(A) (Supp. 1975)].

PARAGRAPH TWELVE: The acts and practices of respondents alleged in this complaint constituted and now constitute violations of § 108(a), 110(c), and 103(a) of the Magnuson-Moss Warranty Act [15 U.S.C. 2308(a), 2310(c) and 2303 (a), (Supp. 1975)], and by virtue of 15 U.S.C. 2310(b) (Supp. 1975) are violations of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), as amended.

Warranty Act Order Format

The definitions contained in § 101 of the Magnuson-Moss Warranty Act (15 U.S.C. 2301) shall apply to the terms used in this order.

IT IS ORDERED that respondents, , a corporation, and , a corporation, their successors and assigns, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device in connection with the importing, distributing, advertising, offering for sale, or sale of consumer products in or affecting commerce do forthwith cease and desist from:

1. disclaiming any implied warranty in any written warranty, or modifying any implied warranty in a manner prohibited by § 108 of the Magnuson-Moss Warranty Act (15 U.S.C. 2308);

2. representing or implying in any written warranty that the document is not a warranty on the product sold;

3. failing to make a clear and conspicuous designation of a written warranty; specifically, as a minimum requirement, the designation shall appear at the top of the written warranty as a title or caption, clearly separated from the text, in the largest print on the page;

4. representing the duration of a written warranty as a "life" or "lifetime" warranty a) unless the warranty provides that it will expire only upon the termination of the measuring life and on no other event; and b) unless the life to which reference is made (i.e., the life of a person or the service life of a product) is clearly disclosed;

5. omitting from any written warranty a statement of duration in the manner provided in the Commission's rule on Disclosure of Written Consumer Product Warranty Terms and (Conditions, 16 C.F.R. 701.3(a), or as that rule may be amended; and

6. failing in any written warranty to make all disclosures required by 16 C.F.R. 701, the rule on Disclosure of written Consumer Product Warranty Terms and Conditions, in the manner and form specified therein, and as that rule may be amended.

IT IS FURTHER ORDERED that respondents and their agents authorized by it to perform warranty repairs and service, shall not, in connection with any claim by a consumer arising under a written warranty on a consumer product covered by the Act, assert any defense or denial of coverage based on a disclaimer or purported disclaimer of the implied warranties.

IT IS FURTHER ORDERED that respondents and their agents authorized by it to perform warranty repairs and service shall repair or replace, pursuant to § 104 of the Act, 15 U.S.C. 2304, any consumer product for which a disclaimer or purported disclaimer of implied warranties in violation of the Act was made, and which does not conform to any implied warranty applicable to the transaction.

IT IS FURTHER ORDERED that respondents shall replace or modify the written warranty as

required by this order on all products unsold at the date this order becomes final, and shall direct their employers and agents to make such replacement or modification.

IT IS FURTHER ORDERED that respondents identify those consumers who purchased consumer products subject to this order and covered by written warranties that violate the. Magnuson-Moss Warranty Act, and mail to each such consumer a copy of the letter attached as "Appendix A" and a copy of a written warranty complying with the provisions of the Act in effect at the date of sale.

Equal Credit Opportunity Act Complaint Format

Pursuant to the provisions of the Equal Credit Opportunity Act, as amended, its implementing regulation, Regulation B, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that a corporation, has violated the provisions of said Acts and Regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH ONE: For the purposes of this complaint the following definitions are applicable:

1. The terms "account," "applicant," "application," "contractually liable," "credit," "creditor," "credit transaction," "discriminate against an applicant because of sex or marital status," "marital status" and open-end credit" shall be defined as provided in § 202.3 of amended Regulation B (12 C.F.R. 202.2 (1976)).

2. "Joint account" shall mean an account where the nonapplicant spouse will be contractually liable or will be an authorized user on the account, or where the applicant has relied on the spouse's income or on community property to support the extension of credit. "Separate account" shall mean an account where the nonapplicant spouse will neither be contractually liable nor an authorized user on the account and where the applicant does not rely on the spouse's income. or on community property to support the extension of credit.

3. "Regulation B" shall refer to that version of Regulation B (12 C.F.R. 202) in effect from October 28, 1975, through March 22, 1977. "Amended Regulation B" shall refer to that version of Regulation B in effect on or after March 23, 1977.

4. The terms "consumer report" and "consumer reporting agency" shall be defined as provided in §§ 603(d) and 603(f), respectively, of the Fair Credit Reporting Act (15 U.S.C. § 1681a(d) and (f) (1970).

PARAGRAPH TWO: Respondent (hereinafter referred to as " " or "respondent") is a corporation organized, existing and doing business under and by virtue of the laws of the State of with its principal office and place of business located at (Zip code).

PARAGRAPH THREE : Respondent [is engaged in the direct mail sale of consumer products. In the regular course of its business, respondent regularly finances the sale of its products by extending credit to it customers through the use of its open end credit plan ( )] [regularly extends credit to persons through the issuance Of credit cards and through the use of retail installment contracts which enables those persons to purchase property or services from respondent and to defer payment therefor.]

PARAGRAPH FOUR: As part of its procedures for evaluating applicants for respondent has formulated written instructions to its employees which set forth the criteria to be applied in selecting applicants to be granted credit. Subsequent to October 28, 1975, and pursuant to respondent is written instructions concerning the evaluation of occupational categories, respondent or its employees have rejected applications from "waitresses" without any further evaluation of the applicants' qualifications. During the same period, respondent has not rejected applications from "waiters" but has proceeded to

evaluate such applications on the basis of the applicants' qualification.

PARAGRAPH FIVE: By and through the use of the practices described in PARAGRAPH FOUR above, respondent has discriminated against female applicants for credit on the basis; of sex. Therefore, respondent has violated § 205.5(f) and § 202.2 of Regulation B.

PARAGRAPH SIX: In a substantial number of instances subsequent to November 20, 1975, pursuant to respondent's initial screening process, respondent has rejected applicants for credit whose source of income is child support, without evaluating the applicants' other qualifications for credit.

PARAGRAPH SEVEN: By and through the practice described in PARAGRAPH SIX above, respondent has failed to consider child support payments as income to the extent that such payments are likely to be consistently made. Therefore, respondent has violated § 202.5(d)(2) and § 202.2 of Regulation B.

PARAGRAPH EIGHT: Subsequent to June 30, 1976, in the ordinary course of business, respondent has required persons who wish to obtain a charge account to fill out an charge application form. (A typical example of respondent's " Charge Application" is attached hereto as Exhibit A). The charge application may be used, inter alia by a married person to apply for a separate account or to apply for a joint account.

With respect to applications for both separate and joint accounts, the charge application instructs the applicant to disclose the "spouse's first name." In a substantial number of instances subsequent to June 30, 1976, married applicants who applied for separate accounts have disclosed the first name of their spouse pursuant to respondent's instructions.

PARAGRAPH NINE: In a substantial number of instances subsequent to October 28, 1975, respondent has ordered and evaluated consumer reports on the spouses of married female applicants for separate accounts but has not ordered and evaluated consumer reports on the applicants. In a substantial number of these instances, respondent has denied the applications on the basis of information from a consumer report on the applicant spouse. Respondent does not, in the normal course of business, order consumer reports on the spouses of married male applicants or separate accounts.

PARAGRAPH TEN: By and through the practices described in PARAGRAPH EIGHT AND NINE above, respondent has requested subsequent to June 30, 1976, information about the spouse of an applicant where the applicant was not relying on income, alimony, child support or separate maintenance payments from a spouse or former spouse or on community property to support the extension of credit and where the spouse would neither be contractually liable on the account nor an authorized user on the account. Therefore, respondent has violated § 202.5(b)(3) of Regulation B.

PARAGRAPH ELEVEN: By and through the practices described in PARAGRAPH EIGHT above, respondent has inquired about the applicant's marital status where the applicant has applied for an unsecured separate account in a non-community property state except as required to comply with state law governing permissible finance charges or loan ceilings. Therefore, respondent has violated § 202.4(c)(1) of Regulation B.

PARAGRAPH TWELVE: By and through the practices described in PARAGRAPH NINE above, respondent has used information requirements and investigatory procedures which have the effect of discriminating against married females who apply for separate accounts. Therefore, respondent has

violated § 202.2 of Regulation B.

PARAGRAPH THIRTEEN: In the ordinary course of its business subsequent to October 28, 1975, respondent has ordered and considered in connection with the evaluation of charge applications consumer reports from which contain adverse credit information concerning persons residing at the applicant's address who have the same last name as the applicant. Pursuant to respondent's written instructions, respondent has rejected credit where a Credit Index report contains adverse information on any person who has the same last name as the applicant at the applicant's address.

PARAGRAPH FOURTEEN: By and through the practices described in PARAGRAPH THIRTEEN above, respondent has imposed information requirements and investigatory procedures which have the effect of discriminating against married applicants. Therefore, respondent has discriminated against married applicants in violation of § 202.2 of Regulation B.

PARAGRAPH FIFTEEN: Subsequent to November 30, 1975, in the ordinary course of business, respondent has refused to extend joint accounts to married couples where the wife uses her birth-given surname or a combined surname rather than her husband's surname.

PARAGRAPH SIXTEEN: By and through the practices described in PARAGRAPH FIFTEEN above, respondent has prohibited female applicants from opening or maintaining an account in a birth-given first name and surname or a birth-given first name and a combined surname. Therefore, respondent has violated § 202.4(e) of Regulation B.

PARAGRAPH SEVENTEEN: Subsequent to November 30, 1975, in the ordinary course of business, respondent has refused to extend joint accounts to credit-worthy unmarried persons on the basis of marital status.

PARAGRAPH EIGHTEEN: By and through the practices described in PARAGRAPH SEVENTEEN above, respondent has discriminated against applicants on the basis of marital status. Therefore, respondent has violated § 202.2 of Regulation B.

PARAGRAPH NINETEEN: In the ordinary course of its business, subsequent to November 20, 1976, respondent has failed to retain for 15 months after the date respondent notified the applicant of action taken on an application, the following written or recorded information used by respondent in evaluating applications for credit: (1) written consumer reports received from consumer reporting agencies, (2) worksheets on which information given orally by a consumer reporting agency concerning an applicant's credit history was recorded by respondent's employees, (3) worksheets on which information concerning the applicant derived from telephone calls to various natural persons, corporations, and partnerships was recorded by respondent's employees and (4) written documents on which the points assigned to applicant's answers to various items on the charge application by respondent's point scoring system were recorded by respondent's employees.

PARAGRAPH TWENTY: By and through the practices described in PARAGRAPH NINETEEN above, respondent has failed to retain as to each applicant all written and recorded information used in evaluating the applicant for the period ending 15 months after the date respondent gave the applicant notice of action on the application. Therefore, respondent has violated § 202.9 of Regulation B.

PARAGRAPH TWENTY-ONE: Subsequent to January 31, 1976, a substantial number of applicants of charge accounts failed to satisfy respondent's standards of creditworthiness and were

informed that credit was denied by means of one of respondent's form rejection letter " ," " " or " " (see Exhibits B, C, and D) stamped with the following statement:

YOUR FILE NO. _____

IF YOU HAVE ANY QUESTIONS CONCERNING OUR DECISION, PLEASE RETURN THIS LETTER AND YOUR ORDER, OR REFER TO YOUR FILE NUMBER.

PARAGRAPH TWENTY-TWO: In a substantial number of instances subsequent to January 30, 1976, responded to applicant's request for the reasons for denial which were accompanied by the reference number, by advising such applicants that it could not provide the reason for the denial by means of the " " letter (see Exhibit E), set forth in relevant part below:

> Your letter was referred to me for personal attention. We are unable to determine the exact reason your application was not approved. Records are kept by us to facilitate answering letters by our customers, but unfortunately we cannot locate any information regarding your recent application.

In fact, in many of such instances respondent was capable of locating the application and furnishing the reasons for denial.

PARAGRAPH TWENTY-THREE: In a substantial number of instances subsequent to January 30, 1976, when an applicant asked respondent for the reasons for denial, respondent obtained a consumer report on the applicant.

In other instances, where positive information in the consumer report did not justify re-evaluation of the decision to deny the application,respondent advised the applicant by means of a " ," " " or " " letter (see Exhibits F, G, and H), set forth in relevant part below, that:

> We regret very much we were unable to open a credit account for you . . . . This decision was based upon information contained in a Consumer Credit Report we requested from . . . .

In fact, respondent's initial decision to deny such applications was not based upon information derived from a consumer credit report from the. consumer reporting agency named by respondent, but was based on the applicant's failure to meet respondent's initial screening requirements or on the applicant's failure to achieve a minimum qualifying score under respondent's point scoring system.

PARAGRAPH TWENTY-FOUR: On and after January 31, 1976, respondent refused to provide the reasons for a denial of an application upon the oral request of its applicants.

PARAGRAPH TWENTY-FIVE: By and through the practices described in PARAGRAPHS TWENTY-TWO, TWENTY-THREE and TWENTY-FOUR respondent has failed to establish and maintain suitable procedures to provide each applicant, who is denied credit or whose account is terminated, the reasons for denial upon the request of the applicant. Therefore, respondent has violated § 202.5 (m)(2) of Regulation B.

PARAGRAPH TWENTY-SIX: Pursuant to § 702(g) of the Equal Credit Opportunity Act, respondent's aforesaid failures to comply with Regulation B as alleged in PARAGRAPHS FIVE, SEVEN,

TEN, ELEVEN, TWELVE, FOURTEEN, SIXTEEN, EIGHTEEN, TWENTY, and TWENTY-FIVE above, constitute violations of that Act and its implementing Regulation and pursuant to § 704(c) thereof, respondent has thereby violated § 5(a)(1) of the Federal Trade Commission Act.

Equal Credit Opportunity Act Order Format

Definitions: For the purposes of this Order the following definitions are applicable:

(a) The terms "account," "applicant," "application," "contractually liable," "credit," "creditor," "credit transaction," "discriminate against an applicant because of sex or marital status," "marital status," and "open end credit" shall be defined as provided by § 202.3 of Regulation B (12 C.F.R. 202.3 (1976)) of the Equal Credit Opportunity Act, Public Law 93-495 (1974) as amended by Public Law 94-239.

(b) The terms "consumer report" and "consumer reporting agency" shall be defined as provided in, §§ 603(d) and 603(f), respectively, of the Fair Credit Reporting Act (15 U.S.C. § 168la(d) and (f) (1970)).

(c) "Regulation B" shall refer to that version of Regulation B (12 C.F.R. 202) in effect from October 28, 1975, through March 22, 1977. "Amended Regulation B" shall refer to that version of Regulation B in effect on and after March 23, 1977.

IT IS ORDERED that respondent , a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device in connection with every application for credit do forthwith cease and desist from:

1. Discriminating against applicants for credit on the basis of sex or marital status with respect to any aspect of a credit transaction in violation of [§ 202.4 of amended Regulation B].

2. Taking sex or marital status into account in a credit scoring system or other method of evaluating applications in violation of § 202.6 (b)(1) of amended Regulation B.

3. Failing to consider child support payments, where disclosed by the applicant as income in evaluating applications, to the extent that such payments are likely to be consistently made, as required by § 202.6(b)(5) of amended Regulation B.

4. Requesting, where the applicant applies for an unsecured separate account in a state other than a community property state, the name of the applicant's spouse in violation of § 202.5(d)(1) of amended Regulation B.

5. Requesting or considering information concerning an applicant's spouse (or former spouse under (d) below) unless:

(a) the spouse will be permitted to use the account; or

(b) the spouse will be contractually liable upon the account; or

(c) the applicant is relying on community property or the spouse's income as a basis of repayment of the credit requested; or

(d) The applicant is relying on alimony, child support, or maintenance payments from a

spouse or former spouse as a basis of repayment of the credit requested,

in violation of § 202.5(b)(3) of Regulation B [§ 202.5(c) of amended Regulation B as of March 23, 1977].

6. Imposing information requirements and investigatory procedures which have the effect of discriminating against married applicants in violation of § 202.4 of amended Regulation B.

7. Failing to preserve and allow Federal Trade Commission access to records including (1) written consumer reports received from consumer reporting agencies, (2) worksheets on which information given orally by a consumer reporting agency concerning an applicant's credit history was recorded by respondent's employees, (3) worksheets on which information concerning the. applicant derived from phone calls to various natural persons, corporations, and partnerships was recorded by respondent's employees, and (4) written documents on which the points assigned to applicant's answers to various items on the charge application by respondent's point scoring system was recorded by respondent's employees, as required by § 202.12 of amended Regulation B.

8. Failing to provide the specific reason(s) for adverse action either at the time of notifying the applicant of such action or within 30 days of receiving an oral or written request " within 60 days of such notification in a manner and form meaningful to the applicant, as required by § 202.9 of amended Regulation B.

(a) PROVIDED THAT if respondent cannot locate the consumer's file after good faith efforts because the consumer did not supply the file number assigned to that application, the respondent shall be deemed to be in compliance with the provisions of this paragraph if it clearly and conspicuously advises the applicant that the applicant not supply the file number with the request for the reason(s) and that if the applicant does not do so, the respondent will be unable to furnish the reason(s) for denial.

(b) PROVIDED FURTHER that where the denial of an application for credit was due to the applicant's failure to obtain a sufficient number of points in respondent's point scoring evaluation system, a statement of the reasons for denial complies with this order only if it advises the applicant of that fact and includes the criteria, not fewer than two, which most significantly affected respondent's adverse decision. If, however, a single criterion would cause an adverse decision without regard to the other criteria, disclosure of that criterion complies with this provision.

9. Failing to provide a statement of the reason(s) for denial as set forth in paragraph 8 above, to all applicants who were denied credit and requested the reasons for denial during the period January 31, 1976, through the effective date of this order. Such applicants shall be identified by:

(a) a review of the files retained by respondents for all rejected applicants during the relevant period, and

(b) the selection of all applicants which respondents' records show requested reasons for denial,
whether orally or in writing.

10. Failing to review the applications of all (i.e., waitresses) who applied for credit during the period October 28, 1975, through the date of this order according to the same standards used by respondent to evaluate the applications of (i.e., waiters) during the same period and to open accounts for such applicants who would have qualified for credit if their application had been evaluated in the same

manner as an application from a (i.e., waiter).

FTC Survey Sheet

FTC Survey Sheet for
Consumer Commodities Under the Fair Packaging and Labeling Act

PLEASE TYPE OR PRINT IN CAPITAL LETTERS DATE: ,19

NAME OF STORE:

ADDRESS:

IDENTITY STATEMENT

LIST BRAND NAME & OTHER WORDS USED TO IDENTIFY THE COMMODITY

THE IDENTITY STATEMENT:

/ /A/ IS NOT ON THE PRINCIPAL DISPLAY PANEL

/ /B/ IS NOT CONSPICUOUS BY REASON OF TYPE SIZE, COLOR, ETC.

/ /C/ IS NOT GENERALLY PARALLEL TO THE BASE (i.e. IT EXCEEDS 22')

/ /D/ IS INSUFFICIENT. EXPLAIN

/ /E/ INCLUDES ELEMENTS OF NET QUANTITY

NET QUANTITY STATEMENT

/ /P/ REPEAT NET QUANTITY STATEMENT EXACTLY AS IT APPEARS ON THE PRINCIPAL DISPLAY PANEL

THE NET QUANTITY STATEMENT:

/ /H/ IS NOT ON THE PRINCIPAL DISPLAY PANEL

/ /I/ HAS TYPE SIZE WHICH IS INCORRECT (EXPLAIN IN REMARKS SECTION)

/ /J/ DOES NOT MEET SEPARATION REQUIREMENTS

/ /K/ IS NOT IN THE LOWER 30% OF THE PRINCIPAL DISPLAY PANEL IF K IS CHECKED OFF:

/ / PDP IS 5 SQ. IN. OR LESS

/ / IS VARIETY OR COMBINATION PACKAGE

/ / NEITHER OF THE ABOVE

/ /L/ IS NOT GENERALLY PARALLEL TO THE BASE (i.e., IT EXCEEDS 22o)

/ /M/ CONTAINS QUALIFYING TERMS - e.g. "JUMBO QUART", "APPROXIMATELY", etc. (EXPLAIN)_____

/ /N/ CONTAINS IMPROPER ABBREVIATIONS(SECTION 500.19) _

/ /O/ IS SUPPLEMENTED BY OTHER NET QUANTITY INFORMATION ON THE PDP

/ /Q/ IS IMPROPER ON ALTERNATE PDP (EXPLAIN)

/ /R/ INCLUDES AN IMPROPER STATEMENT OF USE, SERVICE, OR APPLICATION

/ /S/ INCLUDES IDENTITY INFORMATION OR OTHER EXTRANEOUS WORDAGE (EXPLAIN)

/ /T/ IS INCONSPICUOUS

NAME AND PLACE OF BUSINESS

REPEAT NAME AND PLACE OF BUSINESS OF MANUFACTURER, PACKER, OR DISTRIBUTOR EXACTLY AS IT APPEARS ON THE PACKAGE:

_____

THE NAME AND PLACE OF BUSINESS: _____

/ /V/ WAS INCONSPICUOUS - TYPE SIZE, COLOR, SEPARATION, ETC.

/ /W/ NAME WAS INCORRECTLY STATED OR WAS MISSING

/ /X/ CITY WAS INCORRECT OR WAS MISSING

/ /Y/ STATE WAS INCORRECT OR WAS MISSING

/ /Z/ ZIP CODE WAS INCORRECT OR WAS MISSING

MANUFACTURER'S CODE OR LOT NUMBER: _____

IF PACKAGED, IDENTIFY PACKAGING MATERIALS AND DISTINGUISHING FEATURES e.g, "PLASTIC BLISTER PACK" - "AEROSOL METAL CAN" - "GLASS BOTTLE - ETC.

REMARKS: Used to clarify answers above or to make other notations

Submit to: Observer Field Office

Division of Energy and
Product Information
Bureau of Consumer Protection
Federal Trade Commission
Washington, D.C. 20580

FTC Form 6-41

Fair Packaging and Labor Act Notice Letter

XYZ Company
1320 Jones Street
Anytown, New York 01234

Dear [ ]: (If the identity of the Company Official is unknown, "Dear Sir or Madam" should be used)

The Federal Trade Commission conducts continuous surveys of packaged or labeled commodities distributed in commerce for sale in the retail market to determine whether they are in compliance with the Fair Packaging and Labeling Act (Public Law 89-755) and the Commission's implementing regulations which became effective on September 10, 1969.

Briefly, these regulations specify that packages or labels of consumer commodities must bear separate statements which (1) clearly specify the identity of the products (2) accurately and without qualification declare the net quantity of contents and (3) conspicuously indicate the name and place of business of the manufacturer, packer or distributor, including address and proper zip code. Both the identity and net quantity statements must appear on the principal display panel and the net quantity statement must appear in the lower 30 percent of that panel in a specified type size.

The Act permits the orderly disposal of goods in inventory or with the trade if packaged or labeled prior to the effective date of the specific regulation. However, all commodities packaged or labeled subsequent to the effective date must be in compliance before being distributed in commerce.

A recent survey revealed that the labeling on the following product(s) is not in compliance with regulations now in effect:

(Here describe the product(s), the apparent violation(s) and the appropriate regulations which should be followed.)

Attached is a form for each of the commodities enumerated. The form is provided to facilitate disposition of this matter but this proposed disposition is not binding on the Commission as to any further action it may take.

A form for each product should be completed and returned to this office within 30 days of receipt of this letter. Failure to respond promptly may result in formal administrative action being instituted by this Agency.

Should you desire to submit any additional information or explanation concerning this matter, you are invited to do so on a supplemental sheet.

Sincerely,

Enclosure.

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Fair Packaging and Labeling Act Respondent's Reply Form

TO: FEDERAL TRADE COMMISSION File No._____
6th & Pennsylvania Avenue, N.W.,
Washington, D.C. 20580

ATTENTION: _____

FROM: Company Name: _____

Address: _____

_____

Complete either paragraph 1 or 2 and the applicable subparagraph (a) or (b) below:

( ) 1. The commodity you observed was packaged prior to [date] ___ and was in inventory or with the trade as of the effective date of the regulation governing the packaging deficiency noted in your letter.

( ) a. Enclosed for your files is a copy of our new packaging used for this commodity since the effective date of the regulations.

( ) b. This commodity has been discontinued as a product packaged and distributed for retail sale. Should we resume distribution in the future we agree to furnish a copy of our new packaging for your files.

( ) 2 We have decided to revise our packaging as follows:

( ) a. A copy of the revised packaging is enclosed.

( ) b. A copy of the revised packaging will be furnished on or about [date] _____.

Subscribed and sworn to before me _____
this ___ day of ___, 19_. [Signature of Company Officials]

Seal _____ [Type or Print Full Name and Position]
My commission expires _____

NOTE: THIS DOCUMENT SHOULD BE SIGNED BY COMPANY OWNER OR OFFICIAL, NOTARIZED AND PROMPTLY RETURNED TO THE COMMISSION WHERE IT WILL BE A MATTER OF PUBLIC RECORD.

Wool Products Labeling Act Complaint Format

Respondents are engaged in the importation, manufacture, distribution, and sale of wool products including, but not limited to, boys' clothing.

PARAGRAPH TWO: Respondents, now and for some time last past have imported into commerce, manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped or offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein. [Paragraph 1]

PARAGRAPH THREE: Certain of said wool products were misbranded by the respondents within the intent and meaning of § 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified by respondents as containing "75% reprocessed wool, 20% unknown reprocessed fibers and 5% other fibers, whereas, in truth and in fact, said wool products contained substantially different fibers and amounts of fibers than as represented. [Paragraph 2-1]

PARAGRAPH FOUR: Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of § 4 (a) (2) of the Wool Products Labeling Act: of 1939 and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products, namely, boys' clothing, which failed to have labels on or affixed thereto showing the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers. [Paragraph 2-2]

PARAGRAPH FIVE: Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 In that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respect:

> Samples, swatches or specimens of wool products used to promote or effect sales of such wool products in commerce were not labeled or marked to show the information required under § 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in violation of Rule 22 of the aforesaid Rules and Regulations. [Paragraph 2-3]

PARAGRAPH SIX: Respondents have failed to maintain proper records showing the fiber content of the wool products manufactured by them, in violation of § 6(b) of the Wool Products Labeling Act of 1939 and Rule 31 of the Rules and Regulations promulgated thereunder. [Paragraph 3]

PARAGRAPH SEVEN: Respondents furnished false guarantees that certain of their said wool products were not misbranded under the provisions of the Wool Products Labeling Act of 1939, when respondents in furnishing such guaranties had reason to believe that the wool products so falsely guaranteed might be introduced, sold, transported, or distributed in commerce, in violation of § 9(b) of said Act.

[Paragraph 4]

PARAGRAPH EIGHT: Respondents furnished false guaranties with respect to certain of said wool products by falsely representing in writing that respondent had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the wool products so falsely guaranteed would be introduced, sold, transported, or distributed in commerce, in violation of § 9(b) of the Wool Products Labeling Act of 1939 and Rule 33(d) of the Rules and Regulations promulgated thereunder. [Paragraph 4]

PARAGRAPH NINE: Respondent's wool products described in PARAGRAPH FOUR above were imported by the respondent into the United States and, as particularized in said paragraph, were not stamped, tagged, labeled, or otherwise identified in accordance with the provisions of the Wool Products Labeling Act of 1939. The invoices of said imported wool products required by the Tariff' Act of 1930 failed to set forth the information with respect to said wool products required under the provisions of the Wool Products Labeling Act of 1939, to wit, the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) roused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers. The respondent did falsify the consignee's declaration provided for in said Tariff Act of 1930 insofar as it related to the above items of information enumerated in this paragraph in violation of § 8 of the Wool Products Labeling Act of 1939 and § 5 oil the Federal Trade Commission Act. (Paragraph 5)

PARAGRAPH TEN: The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

PARAGRAPH ELEVEN: Respondents are now and for some time last past have been engaged in the importation, manufacturing, offering for sale, sale, and distribution of wool products. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their place of business in the State of _____ to purchasers located in various other states of the United States, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. [Paragraph 6]

PARAGRAPH TWELVE: Respondents in the course and conduct of their business have made statements on invoices to their customers misrepresenting the fiber content of certain of their products.

Among such misrepresentations, but not limited thereto, were statements setting forth the fiber content thereof as "50% acrylic, 25% reprocessed wool, 25% cotton," whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented. [Paragraph 6]

PARAGRAPH THIRTEEN: In the course and conduct of their business, respondents have misrepresented to their customers the character and amount of the constituent fibers contained in their products through falsely and deceptively stamping, tagging, labeling, and otherwise identifying said products.

Among such products, but not limited thereto, were fabrics labeled as "55% acrylic, 20% nylon, 20% cotton, 5% linen," whereas, in truth and in fact, such products contained substantially different fibers

and amounts of fibers than represented, including wool. [Paragraph 6]

PARAGRAPH FOURTEEN: The acts and practices set forth in PARAGRAPHS TWELVE AND THIRTEEN have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof. [Paragraph 6]

PARAGRAPH FIFTEEN: The aforesaid acts and practices of the respondents as herein alleged in PARAGRAPHS TWELVE AND THIRTEEN were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce, within the intent and meaning of the Federal Trade Commission Act, as amended. (Paragraph 6]

Wool Products Labeling Act Order Format

[Par. 1] IT IS ORDERED that respondents XXX, Inc., a corporation, its successors and assigns, and its officers, and John Doe, individually and as an officer of said corporation, and respondent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the introduction or manufacture for introduction, into commerce, or the importation into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment, or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from: [TWO]

[Par. 2] A. Misbranding such products by:

[Par. 2-1] 1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products. [THREE]

[Par. 2-2] 2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear, legible and conspicuous manner each element of information required to be disclosed by § 4(a)(2) of the Wool Products Labeling Act of 1939. [FOUR]

[Par. 2-3] 3. Failing to securely affix labels to samples, swatches, or specimens of wool products used to promote or effect the sale of such wool products, showing in words and figures plainly legible all the information required to be disclosed by § 4(a)(2) of the Wool Products Labeling Act of 1939, as required by Rule 22 of the Rules and Regulations promulgated thereunder. [FIVE]

[Par. 3] B. Failing to maintain and preserve proper records of fiber content of wool products manufactured by respondents as required by § 6(b) of the Wool Products Labeling Act of 1939 and Rule 31 of the Rules and Regulations promulgated thereunder. The Federal Trade Commission shall have access to said records. [SIX]

[Par. 4] C. Furnishing a false guaranty that respondents' wool products are not misbranded under the provisions of the Wool Products Labeling Act of 1939, when there is reason to believe that any wool products so falsely guaranteed may be introduced, sold, transported, or distributed in commerce, as "commerce" is defined in said Act. [This provision covers both § 9(b)/Rule 33(d) situations and situations involving § 9(b) only.] (SEVEN and EIGHT]

[Par. 5] IT IS FURTHER ORDERED that respondents XXX, Inc., a corporation, its successors and assigns, and its officers, and John Doe, individually and as an officer of XXX, Inc., and respondent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from importing or participating in the importation of wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of the Wool Products Labeling Act of 1939. [NINE]

[Par. 6] IT IS FURTHER ORDERED that respondents XXX, Inc., a corporation, and its officers, and John Doe, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of fabrics or other products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as

amended, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products [on invoices or shipping memoranda applicable thereto,] or [through stamping, tagging, labeling, advertising,] or in any other manner. [ELEVEN through FIFTEEN]

(Par. 7] IT IS FURTHER ORDERED that respondents notify, by delivery of a copy of this order by certified mail, return receipt requested, each of their customers that purchased the wool products which gave rise to this complaint of the fact that such products were misbranded.

Fur Products Labeling Act Complaint Format

Respondents are importers and sellers of furs, and are manufacturers, wholesalers and retailers of fur products with their office and principal place of business located at ___.

PARAGRAPH TWO: Respondents are now and for some time last past have been engaged in the [§ 3(a)] introduction into commerce, or in the manufacture for introduction into commerce, or in the sale and offering for sale in commerce, or the [§ 6] importation into the United States, of fur products; or the [§ 3(b) manufacture for sale, sale, offering for sale, transportation or distribution of fur products which have been made in whole or in part of furs which have been shipped and received in commerce; or the [§ 3(c) sale or offering for sale in commerce, or the [§ 6] importation into the United States, [§ 6] or the transportation or distribution in commerce, of furs, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act. [Paragraph 1]

PARAGRAPH THREE: Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of § 4(1) of the Fur Products Labeling Act. [Paragraph 2-1]

PARAGRAPH FOUR: Certain of said fur products were misbranded in that they were not labeled as required under the provisions of § 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact. [Paragraph 2-2]

PARAGRAPH FIVE: Certain of said [furs and/or] fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by § 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced (furs and/or] fur products, but not limited thereto, were [furs and/or] fur products covered by invoices which failed to disclose that the [furs and/or] fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact. [Paragraph 3-1]

PARAGRAPH SIX: Certain of said (furs and/or] fur products were falsely and deceptively invoiced in that they were invoiced to show that the fur [contained therein] was natural when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of § 5(b)(2) of the Fur Products Labeling Act. [Paragraph 3-2]

PARAGRAPH SEVEN: Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with Rules and Regulations promulgated thereunder in the following respects:

(a) The term "natural" was not used on labels to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations. [Paragraph 4-1]

(b) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations. [Paragraph 4-2]

(c) The true animal name of the fur used in such fur products was not shown on labels, in violation of Rule 5 of said Rules and Regulations. [Paragraph 4-3]

(d) Required information on labels was described in abbreviated form and not spelled out fully, in violation of Rule 4 of said Rules and Regulations. [Paragraph 4-4]

(e) Required information on labels was entered in handwriting, in violation of Rule 29 of said Regulations. [Paragraph 4-5]

PARAGRAPH EIGHT: Respondents have failed to maintain proper records showing the information required by the Fur Products Labeling Act with respect to all [furs and/or fur] fur products handled by them, in violation of § 8(d) of the Fur Products Labeling Act and Rule 41 of the Rules and Regulations promulgated thereunder. [Paragraph 5]

PARAGRAPH NINE: Respondents furnished false guaranties that certain of their said [furs and/or] fur products were not misbranded and/or falsely or deceptively invoiced or advertised under the provisions of the Fur Products Labeling Act, when respondents in furnishing such guaranties had reason to believe that the [furs and/or] fur products so falsely guaranteed might be introduced, sold, transported, or distributor in commerce,, in violation of § 10(b) of said Act. [Paragraph 6]

PARAGRAPH TEN: Respondents furnished false guaranties under § 10(b) of the Fur Products Labeling Act with respect to certain of their (furs and/or] fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the [furs and/or] fur products so falsely guaranteed would be introduced, sold, transported, or distributed in commerce, in violation of Rule 48(c) of the Rules and Regulations under the Fur Products Labeling Act and § 10(b) of said Act. [Paragraph 6]

PARAGRAPH ELEVEN: Respondents' [furs and/or] fur products described in PARAGRAPHS FOUR through SIX above were imported by the respondents into the United States and, as particularized in said paragraphs, were not identified in accordance with § 5(b) of the Fur Products Labeling Act. The invoices of said imported [furs and/or] fur products required by the Tariff Act of 1930 failed to set forth the information required by § 5(b) of the Fur Products Labeling Act in that [said invoices contained the names of animals other than the animals that produced the furs as such names are set forth in the Fur Products Name Guide]. The respondents did falsify the consignee's declaration provided for in said Tariff Act of 1930 insofar as it related to the item of information set forth above, in violation of § 6 of the Fur Products Labeling Act an § 5 of the Federal Trade Commission Act. [Paragraph 7]

PARAGRAPH TWELVE: The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constituted, and not constitute, unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce under the Federal Trade Commission Act.

Fur Products Labeling Act Order Format

[Par. 1] IT IS ORDERED that the respondents XXX, Inc., a corporation, its successors and assigns, and its officers, and John Doe, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the [§ 3(a)] introduction, or manufacture for introduction, into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, or the [§ 6] importation into the United States, of any fur product; or in connection with the [§ 3(b)] manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; or in connection with the (§ 3(c)] introduction into commerce, or the transportation or distribution in commerce, or the [§ 6] importation into the United States of any fur, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from: [TWO]

[Par. 2] A. Misbranding any fur product by.,

[Par. 2-1] 1. Representing, directly or by implication, on labels that the fur contained in any fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored. (THREE]

[Par. 2-2] 2. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of § 4(2) of the Fur Products Labeling Act. [FOUR]

B. Falsely or deceptively invoicing any fur or fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of § 5(b)(1) of the Fur Products Labeling Act. [FIVE]

[Par. 3-2] 2. Representing, directly or by implication, on an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, that the [fur or the] fur contained in such fur product is natural, when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored. [SIX]

[Par. 4] C. Misbranding any fur product by: [SEVEN]

[Par. 4-1] 1. Failing to set forth the term "natural" as part of the information required to be disclosed on a label under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe such fur products as are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, as required by Rule 19(g) of said Rules and Regulations.

[Par. 4-2] 2. Failing to set forth on a label the item number or mark assigned to such fur product, as required by Rule 40 of the Rules and Regulations promulgated under authority of the Fur Products Labeling Act.

[Par. 4-3] 3. Failing to set forth on a label the true animal name of the fur used in such fur product, as required by Rule 5 of the Rules and Regulations promulgated under authority of the Fur Products Labeling Act.

[Par. 4-4] 4. Setting forth information required under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on a label pertaining to such fur product, in violation of Rule 4 of said Rules and Regulations.

[Par. 4-5] 5. Setting forth required information on a label in handwriting, in violation of Rule 29 of the Rules and Regulations promulgated under authority of the Fur Products Labeling Act.

[Par. 5] D. Failing to maintain proper records showing the information required by the Fur Products Labeling Act with respect to all [furs and/or] fur products handled by respondents, as required by § 8(d) of the Fur Products Labeling Act and Rule 41 of the Rules and Regulations promulgated thereunder. The Federal Trade Commission shall have access to said records. [EIGHT]

[Par. 6] E. Furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondent has reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce. [NINE and TEN]

[Par. 7] IT IS FURTHER ORDERED that the respondents forthwith cease and desist from importing furs or fur products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said furs or fur products and any duty thereon, conditioned upon compliance with the provisions of the Fur Products Labeling Act. [ELEVEN]

Textile Fiber Products Identification Act Complaint Format

Respondents are importers, manufacturers, and wholesalers of textile fiber products, including, but not limited to, wearing apparel in the form of women's suits, dresses, blouses, and slacks.

PARAGRAPH TWO: Respondents are now and for some time past have been engaged in the [3(a)] introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have [3(b)] sold, offered for sale, advertised, delivered, transported, and caused to be transported, textile fiber products which have been advertised or offered for sale in commerce; and have [3(c)] sold, offered for sale, advertised, delivered, transported, and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act. [Paragraph 1]

PARAGRAPH THREE: Certain of said textile fiber products were misbranded by respondents within the intent and meaning of § 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely or deceptively stamped, tagged, labeled, invoiced, or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely women's suits, dresses, blouses and slacks, which contained substantially different amounts and types of fibers than as represented. [This paragraph can be more specific, if necessary.] [Paragraph 2-1]

PARAGRAPH FOUR: Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of § 4(b) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed:

a. To disclose the true generic names of the fibers present in the order of predominance by weight; and

b. To disclose the percentages of such fibers by weight. [Paragraph 2-2]

PARAGRAPH FIVE: Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

a. Fiber trademarks were placed on labels without the generic names of the fibers appearing on such labels in immediate conjunction therewith, as required by Rule 17(a) of the aforesaid Rules and Regulations; and [Paragraph 2-3]

b. Required information as to fiber content was not set forth in a manner that would separately show the fiber content of the separate units of textile fiber products containing two or more units, each of which was of different fiber composition, as required by Rule 29 of the aforesaid Rules and

Regulations. [Paragraph 2-4]

PARAGRAPH SIX: Respondents, in violation of § 5(a) of the Textile Fiber Products Identification Act, have caused and participated in the removal of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefor labels conforming to § 4 of said Act and in the manner prescribed by § 5(b) of said Act. [Paragraph 3]

PARAGRAPH SEVEN: Respondents, in substituting a stamp, tag, label, or other identification pursuant to § 5(b) of the Textile Fiber Products Identification Act, have not kept such records as would show the information set forth on the stamp, tag, label, or other identification that was removed, and the name or names of the person or persons from which such textile fiber products were purchased, in violation of § 6(b) of said Act and Rule 39(b) of the Rules and Regulations promulgated thereunder. [Paragraph 4]

PARAGRAPH EIGHT: Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them in violation of § 6(a) of the Textile Fiber Products Identification Act and Rule 39(a) of the Rules and Regulations promulgated thereunder. [Paragraph 5]

PARAGRAPH NINE: Respondents have furnished false guaranties that certain of their textile fiber products were not misbranded or falsely or deceptively invoiced or advertised, in violation of § 10(b) of the Textile Fiber Products Identification Act. [Paragraph 6]

PARAGRAPH TEN: Respondents have furnished false guaranties that certain of their textile fiber products were not misbranded or falsely or deceptively invoiced or advertised, in violation of § 10(b) of the Textile Fiber Products Identification Act and Rule 38(d) of the Rules and Regulations thereunder, by promulgated representing in writing that they have a continuing guaranty filed with the Federal Trade Commission, when such is not a fact. [Paragraph 6]

PARAGRAPH ELEVEN: Respondents' textile fiber products described in PARAGRAPH FOUR above, were imported by the respondents into the United States and, as particularized in said paragraph, were not stamped, tagged, labeled, or otherwise identified in accordance with the provisions of the Textile Fiber Products Identification Act. The invoices of said imported textile fiber products required by the Tariff Act of 1930 failed to set forth the information with respect to said textile fiber products required under § 4(b) of the Textile Fiber Products Identification Act. The respondents did falsify the consignee's declaration provided for in said information, in violation of § 9 of the Textile Fiber Products Identification Act and § 5 of the Federal Trade Commission Act. [Paragraph 7]

PARAGRAPH TWELVE: The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in or affecting commerce, within the intent and meaning of the Federal Trade Commission Act.

Textile Fiber Products Identification Act Order Format

[Par. 1] IT IS ORDERED that respondents XXX, Inc., a corporation, its successors and assigns, and its officers, and John Doe, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, [3(a)] in connection with the introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or [3(b)] in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or [3(c)] in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the term "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from: [TWO]

[Par. 2] A. Misbranding textile fiber products by:

[Par. 2-1] 1. Falsely or deceptively stamping, tagging,labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of the constituent fibers contained therein. [THREE]

[Par. 2-2] 2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by § 4(b) of the Textile Fiber Products Identification Act. [FOUR)

[Par. 2-3] 3. Using a fiber trademark on labels affixed to textile fiber products without the generic name of the fiber appearing in immediate conjunction therewith in type or lettering of equal size and conspicuousness as required by Rule 17(a) of the Rules and Regulations promulgated under authority of the Textile Fiber Products Identification Act. [FIVE a]

[Par. 2-4] 4. Failing to separately set forth the required information as to fiber content in such a manner as to show the fiber content of the separate units of textile fiber products containing two or more units which are of different fiber composition where such form of marking is necessary to avoid deception, as required by Rule 29 of the Rules and Regulations promulgated under authority of the Textile Fiber Products Identification Act. [FIVE b]

[Par. 3] B. Removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label, or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce, and prior to the tine such textile fiber product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to § 4 of said Act and the Rules and Regulations promulgated thereunder and in the manner prescribed by § 5(b) of the Act. [SIX]

[Par. 4] C. Failing to maintain and preserve, as required by § 6(b) of the Textile Fiber Products Identification Act and Rule 39(b) of the Rules and Regulations promulgated thereunder, such records of the fiber content of textile fiber products as will show the information set forth on the stamps, tags, labels, or other identification removed by respondents, together with the name or names of the person or persons from whom such textile fiber products were received, when substituting stamps, tags, labels, or other identification pursuant to § 5(b)

of the Textile Fiber Products Identification Act. [SEVEN]

[Par. 5] D. Failing to maintain and preserve proper records of fiber content of textile fiber products manufactured by respondents as required by § 6(a) of the Textile Fiber Products Identification Act and Rule 39(a) of the Rules and Regulations promulgated thereunder. The Federal Trade Commission shall have access to said records. [EIGHT]

[Par. 6] E. Furnishing a false guaranty that any textile fiber product is not misbranded or falsely or deceptively invoiced or advertised under the provisions of the Textile Fiber Products Identification Act. [This provision covers both § 10(b)/ Rule 38(d) situations and situations involving § 10(b) only.] [NINE and TEN]

[Par. 7] IT IS FURTHER ORDERED that respondents XXX, Inc., a corporation, successors and assigns and its officers, and John Doe, individually as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from importing, or participating in the importation of, any textile fiber products into the United States except the upon filing of a bond with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of the Textile Fiber Products Identification Act. [ELEVEN]