IN THE MATTER OF

WATCHUNG POOL SUPPLIES, INC., ET AL.

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

Docket C-2473. Complaint, Oct. 30, 1973—Decision, Oct. 30, 1973.

Consent order requiring a North Plainfield, N.J., retailer and distributor of swimming pools, related accessories, and other products and merchandise, among other things to cease misrepresenting products or services as free or at a discount; misrepresenting prices as reduced or usual and customary; misrepresenting savings that purchasers may realize.

Appearances

For the Commission: *John A. Crowley* and *Kathryn E. McDonnell.*

For the respondents: *Hughes, McElroy, Connell, Foley & Geiser,* Newark, N.J.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Watchung Pool Supplies, Inc., a corporation, and Frank Jannuzzi and Frank C. Jannuzzi, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, 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 1. Respondent Watchung Pool Supplies, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at Route 22 and Maple Avenue, North Plainfield, N.J.

Respondents Frank Jannuzzi and Frank C. Jannuzzi are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of swimming pools, swimming pool accessories and other

merchandise and products.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning said swimming pools and other products by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation, and by means of radio broadcasts transmitted by a radio station having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which had the tendency to induce, directly or indirectly, the purchase of respondents' swimming pools and other products.

In the further course and conduct of their business as aforesaid, respondents have caused, and now cause, their said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other states. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. By means of advertisements inserted in newspapers and disseminated, as aforesaid, respondents have made various statements and representations of which the following are typical and illustrative, but not all inclusive thereof:

Huge January Clearance
15-ft. POOL 99.99 Reg. 174.99
18' x 48" POOL 179.99 Reg. 289.99
16' x 32' x 48" Oval Pool 499.99 Reg. 749.99
Rummage Sale UP TO 50% Off One Week Only!
12' x 42" POOL Reg. 139.99 Only 79.99
15' x 42" POOL Reg. 174.99 Only 99.99
18' x 48" POOL Reg. 309.99 Only 149.99
18' x 48" POOL Reg. 259.99 Only 129.99

FEBRUARY SALE
SPECIALS 3 DAYS ONLY

	Reg.	Sale
12 ft. x 4 ft.	419.96	$235
15 ft. x 4 ft.	470.95	260
18 ft. x 4 ft.	530.95	299
21 ft. x 4 ft.	570.95	340
24 ft. x 4 ft.	620.95	370
18 ft. x 12 ft. x 4 ft.	580.95	360
24 ft. x 16 ft. x 4 ft.	750.95	460
32 ft. x 16 ft. x 4 ft.	920.95	600

Sierra Hyde Park Sale $1499 Reg. $2995
4 DAY PRESIDENTIAL SALE
18' x 48" Sierra Special Reg. 386.96 Sale 289.99
12' x 18' x 48' Special Oval Reg. 476.96 Sale 299.99
4 MORE DAYS Presidential SALE JUST 4 MORE DAYS

PRE-SPRING SALE 4 DAY ONLY Your Choice
15' x 48" 376.96 Value Erected Free!
18' x 48" 391.96 Value Plus All Purpose Panel FREE!
21' x 48" POOL 379.99 Value ONLY $289

ST. PATRICK'S DAY SALE!
Watchung's Spring-Fever Values! ! 3-DAY SALE!
Spring Saving Fling Beat Summer Prices BUY NOW & SAVE!
April Shower of Savings ONE WEEK ONLY Sierra Hyde Park
Reg. 3214.85 Sale $1499
ANNUAL SWIMMING POOL 4-DAY SALE
Sierra Hyde Park Reg. 2499.00 Sale 1499
Savings to 30% on Chemical Packages
Savings to 50% on Filters
SAVE UP TO 50%
Wild Mid-Summer Sale
4 DAY SALE
Save to 50% on Pool Toys and Accessories with these Money Saving Coupons
FREE Winter Cover Kit

4th of July SAVINGS
4 DAYS ONLY Stock Clearance Sale
FABULOUS Warehouse Expansion SALE
After Inventory Sale 60% Off & MORE!

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. Respondents' customers will receive, in certain cases, free products and/or services by virtue of their purchasing respondents' advertised products.

2. Respondents' customers will, in certain cases, receive coupons entitling them to purchase some of respondents' products at discount prices.

3. Respondents' offer to sell swimming pools and other merchandise at "sale" prices is made for a limited time only.

4. The prices advertised as "Reg." are respondents' usual and customary retail prices for the advertised pools and other merchandise.

5. Respondents' customers will be afforded a saving of the

difference between the price advertised by respondent as "Reg." and the price advertised as "sale."

PAR. 6. In truth and in fact:

1. Respondents' customers do not receive free products and/or services by virtue of their purchasing respondents' advertised products. To the contrary, the cost of the "free" service and/or product is included in the increased price of the advertised product.

2. Respondents' customers are made to pay for the cost of the "discounted" coupon products via an increased price of the advertised product.

3. Respondents' offer to sell swimming pools and other merchandise at "sale" prices is not made only for a limited period of time. Said products are advertised consistently at "sale" prices.

4. The prices advertised as "Reg." represent arbitrary figures bearing no relation to the prices at which swimming pools and other merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

5. Respondents' customers are not afforded a saving of the difference between respondents' "Reg." price and "sale" price. To the contrary, said customers receive either no saving at all or a much smaller saving than expected.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of swimming pools, swimming pool accessories and other merchandise and products of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair

and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purpose only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Watchung Pool Supplies, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Route 22 and Maple Ave., North Plainfield, N.J.

Respondents Frank Jannuzzi and Frank C. Jannuzzi are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Watchung Pool Supplies, Inc., a corporation, its successors and assigns, and its officers and Frank Jannuzzi and Frank C. Jannuzzi, individually and as officers of said corporation and respondents' agents, representatives and employees directly or indirectly, in connection with advertising, offering for sale, sale or distribution of swimming pools, swimming pool accessories or any other products or merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a customer is to receive merchandise or services for "free" or at a discount upon the purchase of other advertised products where the respondents, in making such an offer, increase the regular price of the product required to be bought, or decrease the quantity or quality of that product, or otherwise attach strings to the offer.

2. Representing, directly or by implication, through the use of terms such as "OUR LOWEST PRICE EVER," "4 days only," "special sale price," "savings" or in any other manner, that any price is reduced from respondents' former price if respondents' business records fail to establish and show that such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

3. Using the words "value" or "made to sell for" or any other words or terms of similar import in connection with prices of merchandise unless such prices are those at which the merchandise has been sold by respondents in the recent regular course of business, or unless such prices are those at which the merchandise has usually and customarily been sold at retail in the trade area where the representations are made.

4. Representing directly or by implication that any amount is respondents' usual and customary retail price for merchandise unless such amount is the price at which the merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

5. Representing directly or by implication that any saving is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

6. Misrepresenting in any manner, the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced either from the price at which it has been usually and customarily sold by respondents in the recent regular course of business, or from the price at which it has been usually and customarily sold at retail in the trade area where the representation is made.

It is further ordered, That respondent corporation shall forthwith deliver a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

CERTIFIED BUILDING PRODUCTS, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket 8875. Complaint, Feb. 14, 1972—Order and Opinion, Oct. 5, 1973.

Order requiring two Denver, Col., sellers, distributors and installers of residential siding materials, among other things to cease representing that offers of products are limited, prices are special or reduced, customers can receive percentage savings; misrepresenting the durability, performance or quality of its products; misrepresenting its guarantees; failing to make material disclosures to customers regarding the sale of instruments of indebtedness to third parties; and failing to disclose to consumers, in connection with the extension of consumer credit, information as required by Regulation Z of the Truth in Lending Act. Respondents are required to maintain adequate records to substantiate any representations or statements as to savings in price claims, claims regarding comparative values, etc. Further, the order closes the matter as to one of the individual respondents, Mr. Jack Bitman.

Appearances

For the Commission: *E. Eugene Harrison* and *Thomas H. Emmerson.*

For the respondents: *Holland and Hart,* Denver Col. and *Gelt and Grossman,* Denver, Col.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Certified Building Products, Inc., a corporation, and Certified Improvements Company, a corporation, and Michael P. Thiret and Jack Bitman, individually and as officers of said corporations, and Claude Thiret, individually and as general manager of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the implementing regulations promugated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof woud be in the public interest hereby issues its complaint stating in that respect as follows:

PARAGRAPH 1. Respondents Certified Building Products, Inc.,

and Certified Improvements Company, are corporations organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with their principal offices and places of business located at 3553 Brighton Boulevard in the city of Denver, State of Colorado.

Respondents Michael P. Thiret and Jack Bitman are individuals and officers of the corporate respondents. Respondent Claude Thiret is an individual and general manager of the corporate respondents. They formulate, direct, and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents. Respondents have cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of residential siding materials to the public.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. 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 Colorado to purchasers thereof 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 commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of the aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made, and are now making, numerous statements and representations in advertising circulars and other promotional material and in oral statements made by their salesmen and representatives with respect to the nature of their offer, their prices, time limitations, guarantees and performance of their products.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

NOW—You can have your home modernized * * * and also receive up to $300 in CASH.

* * * * * * *

Let us explain how YOU can receive this advertising money we would normally spend in other advertising media to introduce this beautiful new product.

* * * * * * *

Guaranteed in writing for thirty beautiful years. Save Money * * * by eliminating the painting forever.

* * * * * * *

This card must be mailed within five days to qualify.

* * * * * * *

Savings * * * in painting cost * * * will more than pay for your new * * * siding installation.

* * * * * * *

Take the work, worry and expense out of maintaining your home.

* * * * * * *

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not expressly set out herein, separately and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. The offer to sell proposed respondents' materials is for a limited time only.

2. Respondents' siding materials are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling prices.

3. All purchasers of respondents' siding materials will realize a 50 percent savings in their air-conditioning and heating bills.

4. Siding materials sold by respondents will never require repairing.

5. Respondents' siding materials and installations are unconditionally guaranteed in every respect, without condition or limitation, for a period of thirty (30) years or more.

6. The offer of respondents' siding, set forth in its advertising, was being made under a revolutionary new plan that would modernize a prospective customer's home and at the same time allow that prospective customer to receive up to $300 in cash.

7. Homes of prospective purchasers have been specially selected as model homes for the installation of respondents' products; after installation, such homes would be used for demonstration and advertising purposes by respondents; and, that as a result of

allowing their homes to be used as models, purchasers would receive allowances, discounts, or commissions.

8. Purchasers of respondents' siding installations will receive enough commissions, from referrals of other prospective purchasers, to obtain their installation at little or no cost.

9. Prospective purchasers of respondents' siding will receive a free gift if they allow one of respondents' representatives to call on them in their home.

10. Respondents will perform all of the services and provide all of the materials as agreed to, both orally and in writing, by the parties.

PAR. 6. In truth and in fact:

1. The offer to sell respondents' materials is not for a limited time only, but is an offer regularly available to the public.

2. Respondent's siding materials are not being offered for sale at special or reduced prices, and savings are not thereby afforded respondents' customers because of a reduction from respondents' regular selling price, but the price at which respondents' products are sold varies from customer to customer depending on the resistance of the prospective purchaser.

3. All purchasers of respondents' residential siding materials will not realize a fifty (50%) percent savings in their air-conditioning and heating bills. Few, if any, will achieve such savings.

4. Residential siding materials sold by respondents will require repair.

5. Respondents' residential siding materials and installations are not unconditionally guaranteed in every respect without conditions or limitations for a period of thirty (30) years. Such guarantee as may be provided is subject to numerous terms, conditions and limitations.

6. The offer set forth by respondents is not a revolutionary new plan, nor would a prospective customer, who purchased respondents' siding, necessarily receive up to $300 in cash.

7. Homes of prospective purchasers are not specifically selected as model homes for the installations of respondents' products; after installations, such homes are not used for demonstration or advertising purposes by respondents; and purchasers, as a result of allowing their homes to be used as models, are not granted reduced prices nor do they receive allowances, discounts, or commissions.

8. Few, if any, purchasers of respondents' residential siding installation receive enough referral commissions to obtain their installation at little or no cost and respondents seldom, if ever, pay allowances or commissions on referral sales.

9. Prospective purchasers of respondents' siding have not received a free gift in all of the instances that it has been promised to them.

10. Respondents have, in several instances, failed to provide the materials and perform the services as agreed to, both orally and in writing, by the parties.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are unfair, false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their siding materials, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

1. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured through the use of the unfair, false, misleading and deceptive statements and representations set out in Paragraphs Four and Five above, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, may cut off various personal defenses, otherwise available to the obligor, arising out of respondents' failure to perform or out of other unfair, false, misleading or deceptive acts and practices on the part of respondents.

2. In a substantial number of instances, through the use of the unfair, false, misleading and deceptive statements and representations set out in Paragraphs Four and Five above, respondents have been able to induce customers into signing a contract with the respondents on the respondents' initial contact with the customer. In such a situation, it is highly improbable that the customer was able to seek out advice or make an independent decision on whether or not he should enter into the contract and therefore, had to rely heavily on the advice and information given to him by respondents.

Therefore, the acts and practices as set forth in Paragraph

Seven hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and now are in substantial competition, in commerce, with corporations, firms, and individuals in the sale of residential siding materials and other products of the same general kind and nature as that sold by respondents.

PAR. 9. The use by the respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. In the course and conduct of their business as aforesaid, respondents regularly extend, and for some time last past have regularly extended, consumer credit as "consumer credit" is 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.

PAR. 12. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with credit sales as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused and are causing their customers to execute retail installment contracts, hereinafter referred to as contracts Form A and Form B.

PAR. 13. By and through the use of both contracts, Form A and Form B, respondents in a number of instances:

1. Have failed to disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as required by Section 226.8(b) (1) of Regulation Z.

2. Have failed to state the due dates or period of payments scheduled to repay the indebtedness, and the sum of such payments, using the term, "total of payments," as required by Section 226.8(b) (3) of Regulation Z.

3. Have failed to give a clear identification of the property to which any security interest relates or if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify, as required by Section 226.8 (b) (5) of Regulation Z.

4. Have failed to use the terms "cash downpayment" and "total downpayment" and have failed to give the corresponding disclosures with those terms, as required by Section 226.8(c) (2) of Regulation Z.

5. Have failed to use the term, "amount financed," and to give the corresponding disclosure with that term, as required by Section 226.8(c) (7) of Regulation Z.

6. Have failed to use the term, "deferred payment price," and to give the corresponding disclosure with that term, as required by Section 226.8(c) (8) (ii) of Regulation Z.

PAR. 14. By and through the use of contract Form A, respondents have given notice to their customers that a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, has been or will be retained or acquired by the respondents in the real property which is expected to be used as the principal residence of the customer. Respondents' retention or acquisition of a security interest in said real property gives their customers, who are extended consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the right to rescind the transaction until midnight of the third business day following the date of consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

By and through the use of the aforementioned contract Form A, respondents, in a number of instances:

1. Have failed to provide the "Notice of Opportunity to Rescind" to the customer on one side of a separate statement which identifies the transaction to which it relates, as required by Section 226.9(b) of Regulation Z.

2. Have failed to set out the "Effect of Rescission," Section 226.9(d) of Regulation Z in the manner and form required by Section 226.9(b) of Regulation Z.

3. Have failed to furnish two (2) copies of the above referred-to notice to the customers, as required by Section 226.9(b) of Regulation Z.

PAR. 15. By and through the use of contract Form B, respondents have agreed to deliver to the owner of the property receiving the home improvements, the requisite lien waivers, to the end that no lien may attach to the owner's property by virtue of the work and materials to be furnished under the contract Form B.

Respondents have not delivered the above referred-to lien waivers to their customers in a number of instances where delivery of such waivers was contracted for by the parties. In these instances, the security interests which have been or will be retained or acquired, have, therefore, not been effectively waived.

Respondents therefore remain obligated to make the proper disclosures and otherwise act in accordance with Section 226.9 of Regulation Z.

In the instances referred to above, where the respondents have failed to deliver the necessary lien waivers, they have also failed to make the proper disclosures and to otherwise act in accordance with Section 226.9 of Regulation Z.

PAR. 16. Respondents have caused the following additional information and clause to appear in their contract Form B under "customer acknowledgement:"

> That agreement is non-cancellable, and that in case of cancellation, the contractor shall be entitled to 30% of the total amount of this agreement to recover delivery and credit expenses, or the total amount of this agreement if he has commenced work.

By and through the use of the above-quoted additional information and clause, respondents have and are representing to their customers that they are liable for damages in the event that these customers exercise their right to rescind, thereby violating Section 226.9(d) of Regulation Z. And, said additional information has been stated, utilized, or placed by the respondents so as to mis-

lead, or confuse the customer and contradicts, obscures, and detracts attention from the information required by Regulation Z to be disclosed, thereby violating Section 226.6(c) of Regulation Z.

PAR. 17. Respondents have caused the following additional information and clauses to appear in their contracts Form A and Form B under "customer acknowledgement:"

That this agreement contains all agreements between the owner and contractor and no other agreements oral or written will be binding on contractor.

That this agreement becomes binding on purchaser immediately, but does not become binding upon contractor until same is countersigned by credit manager.

Said additional information has been stated, utilized, or placed by the respondents so as to mislead or confuse the customer and contradicts, obscures, and detracts attention from the information required by Regulation Z to be disclosed, thereby violating Section 226.6(c) of Regulation Z.

PAR. 18. Pursuant to Section 105 of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act, and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY DAVID H. ALLARD, ADMINISTRATIVE LAW JUDGE

FEBRUARY 13, 1973

PRELIMINARY STATEMENT

This proceeding was commenced with the issuance of a complaint on February 14, 1972, charging the corporate respondents, Certified Building Products, Inc., Certified Improvements Company, and Michael P. Thiret and Jack Bitman, individually and as officers of said corporations, and Claude Thiret, individually and as general manager of said corporations, with violations of Section 5 of the Federal Trade Commission Act by committing unfair methods of competition and unfair and deceptive acts and practices in commerce and violating the Truth in Lending Act and the implementing regulations promulgated thereunder.

By order issued June 15, 1972, the matter was withdrawn from adjudication by the Commission. By order issued October 10, 1972, the Commission rejected the proposed consent order and re-

manded the matter to the administrative law judge. Hearings were held in Denver, Colorado on November 27, 28, 29 and 30, 1972.[1] At those hearings, testimony and documents were incorporated into the record in support of the complaint as well as in opposition thereto. This proceeding thus is before the administrative law judge upon the complaint, answer depositions, testimony and other evidence, proposed findings of fact and conclusions, and briefs filed by complaint counsel and by counsel for respondents. The proposed findings of fact, conclusions, and briefs in support thereof submitted by the parties have been carefully considered and those findings not adopted, either in the form proposed or in substance are rejected as not supported by the evidence or as involving immaterial matter.

Having heard and observed the witnesses and having carefully reviewed the entire record [2] in this proceeding, together with the proposed findings, conclusions, and briefs submitted by the parties as well as replies, the administrative law judge makes the following findings as to facts, conclusions and order.

FINDINGS OF FACT

1. Respondent Certified Building Products, Inc., was a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado from November 24, 1961 to November 17, 1970, with its principal office and place of business located at 3553 Brighton Boulevard, Denver, Colorado. (Comp. par. 1; Ans. par. 1; CX 1, 4, 5).

2. Respondent Certified Improvements Company is a corporation organized on January 18, 1961, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 3553 Brighton Boulevard, Denver, Colorado. (Comp. par. 1; Ans. par. 1; CX 2, 3). It was reactivated on January 1, 1970; previously, it was dormant for an indefinite period (Tr. 349).

3. Respondent Michael P. Thiret was an officer of respondent Certified Building Products, Inc. He solely formulated, directed and controlled all of the acts and practices of respondent Certified

[1] At an earlier pretrial conference in Denver, Colorado on May 2, 1972, depositions were taken of certain respondents.

[2] References to the record are made in parenthesis, and certain abbreviations are used as follows:

Comp.—Complaint
Ans.—Answer
Tr.—Transcript page
CX—Commission exhibit
RX—Respondent's exhibit

Building Products, Inc. (Comp. par. 1; Tr. 340, 344, 345, 346-47). He also was the majority stockholder.

4. Respondent Michael P. Thiret is an officer of respondent Certified Improvements Company. He solely formulates, directs and controls all of the acts and practices of respondent Certified Improvements Company. (Comp. par. 1; Ans. par. 1; Tr. 349). He is the majority stockholder.[3]

5. From November 24, 1961 to November 17, 1970, respondent Certified Building Products, Inc. was, and since January 1, 1970, respondent Certified Improvements Company is, and with regard to both time periods, respondent Michael P. Thiret was, and is, respectively, engaged in the advertising, offering for sale, sale, distribution of and installation of residential siding materials to the public. (Comp. par. 2; Ans. par. 2).

Count I

With regard to the alleged violations of Section 5 of the Federal Trade Commission Act, the findings of Paragraphs One through Five are incorporated by reference.

6. In the course and conduct of their aforesaid business, respondents,[4] during the periods outlined in Paragraph 5, 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 Colorado to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned, a

[3] In accordance with Section 3.22(e) of the Commission's Rules of Practice, the administrative law judge entered a ruling on the record on November 30, 1972, dismissing the complaint with regard to respondents Jack Bitman and Claude Thiret (Tr. 678). Those rulings are now "taken into account" in the initial decision as contemplated by the rule. Respondent Claude Thiret was the general manager of respondent Certified Building Products, Inc., from October 15, 1968 to December 31, 1969, and the nominal president and minority stockholder of Certified Improvements Company from January 1, 1970 to October 31, 1971 (Tr. 315). Respondent Jack Bitman was a nominal officer of respondent Certified Building Products, Inc., as well as being secretary of respondent Certified Improvements Company (Ans. par. 1). As indicated in Findings 3 and 4, Michael P. Thiret is the sole individual who formulated, directed and controlled the acts and practices of both corporate respondents. These findings stand unrebutted on this record. There is no evidence of record to show that Claude Thiret and Jack Bitman "cooperated and acted together in carrying out the acts and practices" alleged in the complaint. At the hearing, complaint counsel did not oppose respondent Bitman's motion to dismiss (Tr. 645). Moreover, the order proposed by complaint counsel in their "Proposed Findings and Conclusions" filed January 17, 1973, has no reference to either individual respondent, Claude Thiret or Jack Bitman. It would appear, therefore, that complaint counsel agree that the complaint should be dismissed with regard to both of these individual respondents.

[4] Hereinafter, respondents only refers to Certified Building Products, Inc., Certified Improvements Company and Michael P. Thiret, individually as an officer of said corporations.

substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. (Comp. par. 3; Ans. par. 3).

a. Respondents' gross annual revenue amount to $500,000 to $600,000 (Tr. 343).

b. About 10 percent or $50,000 to $60,000 comes from interstate sales (Ans. par. 3).

c. About 300 jobs are involved in the annual volume; as pertinent here, about 30 would be involved in interstate sales (Tr. 630).

d. All operations are within an area of about a 400-500 mile radius of Denver, Colorado (Tr. 341).

7. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents Certified Building Products, Inc. and Michael P. Thiret, utilized national advertising material designed and made by Lumaside Corporation, a national manfacturer of steel siding, for an undefined period during 1965-1966. This maufacturer's national advertisement in Life Magazine indicated the manufacturer's suggested retail price as well as guarantees and performance of the manufacturer's product (CX 68; Tr. 533). There is no evidence of record showing any written statements or representations by these respondents, as alleged in the complaint as "[T]ypical and illustrative." The record merely shows that general oral statements were made by representatives of these respondents up to the date of the legal dissolution of Certified Building Products, Inc. on November 17, 1970—15 months prior to issuance of the complaint herein.

a. Sixteen public witnesses testified about their general recollections about the oral representations made on behalf of respondent Certified Building Products, Inc.

Witness	Date of Transaction	Transcript References	Was Witness Deceived	Customer Satisfied
Esteban Martinez P.O. Box 114 Chimayo, N. Mex.	10–26–66	Tr. 222–245	Yes	Basically (Tr. 243)

	Initial Decision			83 F.T.C.
William D. Reece 1325 N. Bailey North Platte, Neb.	3–3–67	Tr. 492–500	No	Yes (Tr. 498)
Alfred F. Balcom 6210 East Second North Platte, Neb.	3–5–67	Tr. 455–466	No	Yes (Tr. 462, 464)
John Daniels Rural Route 2 Oakley, Kan.	3–20–67	Tr. 517–525	No	Yes (Tr. 521)
Mary Trujillo 815 W. 11th St. North Platte, Neb.	4–4–67	Tr. 407–418	No	Yes (Tr. 417–418)
Robert E. Brown 421 E. North St. North Platte, Neb.	5–10–67	Tr. 291–300	No	Yes (Tr. 299–300)
James L. Gannon 304 Pearl St. Atwood, Kansas	5–18–67	Tr. 525–529	No	Yes (Tr. 529)
Dorothy L. Seckinger 1345 17th St. Gering, Nebraska	5–20–67	Tr. 383-394	No	Yes (Tr. 390, 393)
Charles Rogers 710 Martin Ave. Colby, Kansas	6–27–67	Tr. 562–578	No	Basically (Tr. 571)
Grace Brown 1109 E. 4th St. Ogallala, Neb.	7–10–67	Tr. 501–508	No	Yes (Tr. 504, 508)
Doyle R. Stapp RFD Beaver, Okla.	8–3–67	Tr. 484–492	No	Yes (Tr. 487)
Fred Austin Alamogordo, N. Mex.	11–13–67	Tr. 301–312	No	Yes (Tr. 310, 312–313)

Isabell Montoya Box 234 Roy, N. Mex.	1–8–70	Tr. 275–290	No	Yes (Tr. 287)
Moises Avila 445 W. Hugus Rawlins, Wyo.	3–10–70	Tr. 246–259	No	Basically
Edward Campbell 616 McMicken Rawlins, Wyo.	3–16–70	Tr. 160–190	No	Basically
James A. Cornish Winter, S. Dak.	4–18–70	Tr. 190–221	No	Yes

b. Since a preponderance of the witnesses testified about events that occurred at least five years earlier, only the most general findings can be derived from their testimony with regard to the nature of the offer, prices and time limitations as well as the manufacturer's guarantees and performance of its [the manufacturer's] products.[5]

c. A substantial number of the public witnesses testified that their initial contact with respondents resulted from an unsolicited knock on the door at their homes by respondents' representative (Tr. 192, 247, 261, 276, 292, 309–10, 384, 396, 409, 485, 493, 501, 510, 520, 526). Two learned about respondents having seen respondents work on the house of a neighbor (Tr. 161, 457).

8. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents Certified Improvements Company and Michael P. Thiret have made oral statements with regard to the nature of the offer, prices, time limitations as well as performance by the manufacturer's product as well as manufacturer's guarantees.

a. Six witnesses testified about their general recollections about oral representations made on behalf of respondent Certified Improvements Company.

[5] This finding is based essentially on observing the demeanor of the witnesses. The witnesses generally appeared to be pleased with the work of respondents. Their testimony regarding the matters raised in the complaint seemed unimportant to them at the time they signed the contract. Their recollections generally were hazy. Even the paternalistic overtones to the direct questioning of the witnesses by complaint counsel could not disguise this fact. The witnesses appeared to be intelligent and fully capable of understanding the ramification of the contractual obligations they undertook. As a general proposition, they did not appear to feel deceived in the ordinary meaning of the word. The preponderance of the witnesses were of the opinion that respondents' representatives did not utilize "high pressure" sales techniques.

Witness	Date of Transaction	Transcript References	Was Witness Deceived	Customer Satisfied
James Parette 453 Ann St. Chadron, Neb.	11–18–69	Tr. 467–483	No	Yes (Tr. 479, 480)
Donald W. Alexander 300 E. 4th St. Gordon, Neb.	11–69	Tr. 419–428	No	Yes (Tr. 427)
Robert Dye Willow Roads Garden Dodge City, Kansas	1–8–70	Tr. 428–455	No	Yes (Tr. 451; RX 2)
Robert J. Gaines 2705 E. Pine Enid, Okla.	1–10–70	Tr. 394–407	No	Yes (Tr. 403, 405)
Frances E. Hagen 425 N. Main St. Chadron, Neb.	2–17–70	Tr. 509–517	No	Yes (Tr. 514, 515–516)
Margurite Hauf 1885 Johnson Casper, Wyo.	3–14-70	Tr. 260–275	No	Yes (Tr. 273, 275)

b. These recollections were based on events that occurred about three years prior to the hearing.

9. There is absolutely no evidence of record that respondents are, or have been since March 1970, making any statements or representations, directly or indirectly by implication that:

a. The offer to sell proposed respondents' materials is for a limited time only.

b. Respondents' siding materials are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling prices.

c. All purchasers of respondents' siding materials will realize a 50 percent savings in their air-conditioning and heating bills.

d. Siding materials sold by respondents will never require repairing.

e. Respondents' siding materials and installations are unconditionally guaranteed in every respect, without condition or limitation, for a period of thirty (30) years or more.

f. The offer of respondents' siding, set forth in its advertising, was being made under a revolutionary new plan that would modernize a prospective customer's home and at the same time allow that prospective customer to receive up to $300 in cash.

g. Homes of prospective purchasers have been specially selected as model homes for the installation of respondents' products; after installations, such homes would be used for demonstration and advertising purposes by respondents; and, that as a result of allowing their homes to be used as models, purchasers would receive allowances, discounts, or commissions.

h. Purchasers of respondents' siding installations will receive enough commissions, from referrals of other prospective purchasers, to obtain their installation at little or no cost.

i. Prospective purchasers of respondents' siding will receive a free gift if they allow one of respondents' representatives to call on them in their home.

j. Respondents will perform all of the services and provide all of the materials as agreed to, both orally and in writing, by the parties.

10. Respondent Michael P. Thiret's reputation in the business community is excellent (Tr. 674, 678). There is no factual foundation to even infer anything to the contrary.

Count II

With regard to the alleged violations of the Truth in Lending Act, and the implementing regulations promulgated thereunder, and of the Federal Trade Commission Act, the findings of Paragraphs One through Five hereof are incorporated by reference in Count II.

11. In the course and conduct of their business as aforesaid, during the period July 1, 1969 to about April 1970, respondents regularly extended consumer credit as "consumer credit" is 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.[6] (Comp. par. 11; Ans. par 11; Tr. 642, 643).

12. During the period July 1, 1969 to April 1970, respondents, in the ordinary course and conduct of their business, and in connection with credit sales as "credit sale" is defined in Section 226.2(n) of Regulation Z, caused their customers to execute retail installment contracts, hereinafter referred to as contracts Form A and Form B. (Comp. par. 12; Ans. par. 12; CX 6, 39).

13. By and through the use of both contracts, Form A and Form B, respondents in a number of instances:

a. Have failed to disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as required by Section 226.8(b) (1) of Regulation Z.

b. Have failed to state the due dates or period of payments scheduled to repay the indebtedness, and the sum of such payments, using the term, "total of payments," as required by Section 226.8(b) (3) of Regulation Z.

c. Have failed to give a clear identification of the property to which any security interest relates or if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify, as required by Section 226.8(b) (5) of Regulation Z.

d. Have failed to use the terms "cash downpayment" and "total downpayment" and have failed to give the corresponding disclosures with those terms, as required by Section 226.8(c) (2) of Regulation Z.

e. Have failed to use the term "amount financed," and to give the corresponding disclosure with that term, as required by Section 226.8(c) (7) of Regulation Z.

f. Have failed to use the term "deferred payment price," and to give the corresponding disclosure with that term, as required by Section 226.8 (c) (8) (ii) of Regulation Z. (Comp. par. 13; Ans. par. 13; Tr. 679–80, 681; RX 9).

14. During the period July 1, 1969 to April 1970, by and through the use of contract Form A, respondents gave notice to their customers that a security interest, as "security interest" is defined

[6] The parties filed a stipulation of record in which respondents, in effect, admit the technical violations of the Truth in Lending Act during the period July 1, 1969 to April 1970 (Tr. 679-81). Complaint counsel concede no violations occurred after that date (Tr. 683).

in Section 226.2(z) of Regulation Z, has been or will be retained or acquired by the respondents in the real property which is expected to be used as the principal residence of the customer. Respondents' retention or acquisition of a security interest in said real property gave their customers, who are extended consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the right to rescind the transaction until midnight of the third business day following the date of consummation of the transaction of the date of delivery of all the disclosures required by Regulation Z, whichever is later. (Comp. par. 14; Ans. par. 14).

By and through the use of the aforementioned contract Form A, respondents, in a number of instances technically:

a. Failed to provide the "Notice of Opportunity to Rescind" to the customer on one side of a separate statement which identified the transaction to which it relates, as required by Section 226.9(b) of Regulation Z (CX 7; Tr. 582–83).

b. Failed to set out the "Effect of Rescission," Section 226.9(d) of Regulation Z in the manner and form required by Section 226.9(b) of Regulation Z (CX 6, 7).

c. Failed to furnish two (2) copies of the above referred-to notice to the customers, as required by Section 226.9(b) of Regulation Z (CX 6, 7).

15. During the period July 1, 1969 to April 1970, by and through the use of contract Form B, respondents agreed to deliver to the owner of the property receiving the home improvements, the requisite lien waivers, to the end that no lien may attach to the owner's property by virtue of the work and materials to be furnished under the contract Form B. Respondents did not deliver the above referred-to lien waivers to their customers in a number of instances where delivery of such waivers was contracted for by the parties. In these instances, the security interests would not have been effectively waived (Tr. 584-85).

16. During the period July 1, 1969 to April 1970, additional information and clause to appear in their contract Form B under "customer acknowledgement:"

That agreement is non cancellable, and that in case of cancellation, the contractor shall be entitled to 30% of the total amount of this agreement to recover delivery and credit expenses, or the total amount of this agreement if he has commenced work. (CX 39).

By and through the use of the above-quoted additional information and clause, respondents represented to their customers that they are liable for damages in the event that these customers exercise their right to rescind, thereby violating Section 226.9(d) of Regulation Z.

17. During the period July 1, 1969 to April 1970, respondents caused the following additional information and clauses to appear in their contracts Form A and Form B under "customer acknowledgement:"

That this agreement contains all agreements between the owner and contractor and no other agreements oral or written will be binding on contractor.

That this agreement becomes binding on purchaser immediately, but does not become binding upon contractor until same is countersigned by credit manager.

18. The installment sales contracts executed by respondents during the period July 1, 1969 to April 1970, were prepared by independent legal counsel retained by respondents in advance of July 1, 1969. Respondents intended to comply with the law and had reason to believe that they were in compliance with the law (Tr. 582–83, 636, 712–14). As soon as respondents were notified by officials of the Federal Trade Commission that the forms were not in compliance with the Truth in Lending Act, corrections were immediately made and the forms revised accordingly (RX 9). And the unrebutted evidence of record shows respondents to be in compliance from that date forward.

CONCLUSIONS

1. There is no substantial evidence of record to show that respondents have been or now are in substantial competition, in commerce, with corporations, firms, and individuals in the sale of residential siding materials and other products of the same general kind and nature as that sold by respondents.

a. As found above, the annual dollar volume of respondents' interstate business is only $50,000 to $60,000. Stated in terms of individual jobs, the figure represents about 30 jobs. (Findings 6 a, b, *supra*).

b. Stated in terms of annual jobs per state in the five states: Wyoming, Nebraska, Kansas, Oklahoma and New Mexico, the

average number of jobs per state would only be about six annually, which hardly could be characterized as "substantial competition."

2. There is no substantial credible evidence that respondents have made false, misleading and deceptive statements, representations and practices which have the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

a. There is no substantial evidence of record to ascertain with clarity what, if any, statements, representations and practices by respondents have had or now have the capacity to mislead members of the purchasing public into the purchase of substantial quantities of respondents' products.

(1) Virtually all representations were oral; witnesses had to recollect events that occurred up to five to six years prior to the hearing. No salesmen were called to testify. The record shows absolutely no evidence of any unlawful conduct by respondents for a two year period prior to issuance of the complaint.

(2) The record shows that virtually all of the home improvement work was completed in accordance with the contractual agreement and to the customer's satisfaction.

(3) A preponderance of the public witnesses conceded that they were not deceived but rather thought they had contracted for and received a "good deal."

3. There is no substantial credible evidence that respondents have committed any acts and practices which have resulted in prejudice and injury of the public and of respondents' competitors or which constituted and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

4. The violations of the Truth in Lending Act which occurred during the period July 1, 1969 to April 1970, appear to be technical rather than substantative in character.

a. Customer's obligations were not sold to various financial institutions but rather only to one: the Central Bank & Trust of Denver, Colorado (Tr. 690, 672).

b. No injury or damage to the public is shown of record and the substance of the disclosures required by the Truth in Lending Act

and Regulation Z appear to have been met. For example, the amount of the payments was disclosed and the record shows that customers knew them to be monthly payments.

c. There is no evidence of record to show that the forms challenged in the complaint were designed, utilized or placed by respondents to mislead or confuse the customer or that they contradict, obscure or detract from information required by Regulation Z.

5. The challenged violations of the Truth in Lending Act were discontinued immediately upon notification and the unrebutted evidence of record shows that respondents have been in compliance for almost three years. There is not a scintilla of evidence of record to indicate any reasonable likelihood that violations will be resumed in the foreseeable future.[7]

6. The Federal Trade Commission has jurisdiction of and over respondents as well as the subject matter of this proceeding.

7. For the reasons set forth above, the administrative law judge has determined that the complaint must be dismissed.

ORDER

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

DISSENTING STATEMENT

BY JONES, *Commissioner*:

I dissent from that part of the opinion concluding that it is not necessary here to bar a holder of consumer paper from becoming a holder in due course. I do not agree that notification to the buyer before consummation of the sale of the legal status of a holder in due course is adequate to avoid the unfair and deceptive consequences resulting from the operation of the holder in due course doctrine.

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[7] The senior vice president of the Central Bank & Trust Company of Denver, testified that respondent Michael P. Thiret "is a satisfactory customer who has high integrity and a good moral standing" (Tr. 674). The Regional Administrator for the United States Department of Housing and Urban Development testified that respondent Michael P. Thiret "is highly regarded [in the community] as a businessman and a citizen." (Tr. 678).

OPINION OF THE COMMISSION

BY ENGMAN, *Commissioner*:

This case involves alleged violations of Section 5 of the Federal Trade Commission Act in connection with the promotion and sale of residential steel siding material, as well as violations of the Truth in Lending Act. On February 14, 1972, the Commission filed the complaint in this matter against respondents Certified Building Products, Inc., Certified Improvement Co., Michael Thiret and Jack Bitman, individually and as officers of the corporate respondents, and Claude Thiret, individually and as general manager of the corporate respondents.

Following four days of administrative hearings in Denver, Colorado, the administrative law judge filed his initial decision and order on February 8, 1973, dismissing the complaint in its entirety. He found that complaint counsel had failed to sustain the burden of proof with respect to each of the allegations in Count I of the complaint. He further found that respondents were in violation of the Truth in Lending Act and Regulation Z, as alleged in Count II of the complaint, but he considered the disclosures required by statute and regulation and the alleged violations to be "technical" rather than substantive in nature. He further found that respondents had discontinued the challenged practices during the staff investigation prior to issuance of the complaint and would not resume them in the future. The administrative law judge decided that an order binding respondents to further compliance was unnecessary and dismissed the complaint.

Complaint counsel have appealed to the Commission, requesting review of the findings of fact and the interpretations of applicable law set forth in the initial decision. We have reviewed the record in this proceeding and are vacating the findings of the ALJ with respect to Count I of the complaint. The ALJ's introductory findings of fact,[1] findings of fact with respect to Count II of the complaint, and conclusions, except to the extent they are inconsistent with findings and conclusions made in this opinion, are

[1] Findings of Fact 1–5 [I.D. 2–4] [pp. 1013–14 herein].

supported by the record and are hereby adopted as findings of the Commission.[2]

Respondent Certified Building Products, Inc. was a corporation established under the laws of the State of Colorado and was engaged primarily in the sale and installation of residential steel siding materials to customers residing in Colorado, Wyoming, Nebraska, Kansas, and New Mexico [Tr. 330, 341]. It ceased doing business in November, 1970. Respondent Certified Improvements Co. was organized in 1961 but remained a dormant corporation until activated in January, 1970 [Ans. Sec. I; CX 2, 3; Tr. 349]. From the date of its activation, Certified Improvements has carried on and continued the business of Certified Products from the same offices with the same personnel, using the same business practices and under substantially the same ownership and control [Ans. Par. 2; Tr. 349, 579]. In this proceeding, these two corporations will be treated as one [*P. F. Collier & Son Corp.* v. *FTC*, 427 F.2d 261 (6th Cir. 1970), *cert. denied,* 400 U. S. 926].

A. COUNT I OF THE COMPLAINT

Questions of fact rather than law predominate in this appeal. Indeed, most of the legal issues are well settled. In essence, the key question is whether the testimony of respondents' customers is reliable. After a trial in which testimony was received from 22 of those customers, the ALJ was unable to determine from the record whether claims challenged in the complaint had actually been made [I.D. 5, 6 pp. 1015–17 herein]. He did find one witness who had been deceived; but in his view, all witnesses appeared to be satisfied with the work respondents had performed.[3] As noted by the ALJ, these findings were based upon his

[2] The following abbreviations will be used for citations:
Comp.—Complaint
I.D.—Initial Decision of the Administrative Law Judge (ALJ)
Pre. Tr.—Prehearing Transcript
Tr.—Transcript of Testimony
CX—Commision Exhibit
RX—Respondents' Exhibits
App. Br.—Brief on Appeal of Complaint Counsel (CC)
Ans. Br.—Answering Brief
Rep. Br.—Reply Brief
O.A.—Transcript of Oral Argument on Appeal

[3] We need not dwell at length over the test consistently applied by the Commission and upheld by the courts in determining the legality of sales promotions under Sec. 5 of the FTC Act. The questions before us on this appeal are whether claims challenged in the complaint were made by respondents' salesmen, and if so, whether such claims have a tendency

observation of the demeanor of witnesses testifying before him. It was the administrative law judge's impression that the witnesses were generally "hazy" in recalling the precise details of the representations made to them in the course of the sales presentation and that he, therefore, could not rely upon their testimony as an evidentiary basis supporting a specific finding relating to any of the challenged claims.

The Commission has examined the record for evidence of "hazy" recall on the part of each witness testifying in this proceeding. This examination disclosed direct and specific testimony relating to claims which the witnesses could recall. The consumer witnesses testified to the best of their recollections as to the nature and content of the representations made to them by respondents' salesmen. They admitted candidly, upon direct and cross-examination, their inability to recollect with certainty every specific detail of the presentations. But this does not warrant the conclusion that the testimony is unreliable in its entirety.

We do not require that a witness demonstrate an instant-replay memory before we will accord any weight to that witness' testimony. The transactions and communications with which we are concerned took place in the homes of these witnesses. Oddly enough, respondents' salesmen who were listed as potential witnesses and who might have refuted the testimony of respondents' customers were not called to testify. Thus, there is no need on this record to weigh conflicting testimony or to determine which of two witnesses is better able to recall the content of a particular sales "pitch." We need only assess the evidentiary value to be accorded the unrebutted testimony of each witness as revealed on

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or capacity to mislead the purchasing public. *U. S. Retail Credit Ass'n.* v. *FTC*, 300 F.2d 212, 221 (4th Cir. 1962). It was not complaint counsel's burden to establish that respondents' customers were injured by the claims, and the fact that respondents had satisfied customers is irrelevant. *Basic Books, Inc.* v. *FTC*, 276 F.2d 718 (7th Cir. 1960); *Erickson Hair and Scalp Specialists* v. *FTC*, 272 F. 2d 318 (7th Cir. 1959), *cert. denied*, 362 U. S. 940; *Exposition Press, Inc.* v. *FTC*, 295 F.2d 869, 873 (2d Cir. 1961), *cert. denied*, 370 U. S. 917 (1962); *Independent Directory Corp.* v. *FTC*, 188 F.2d 468 (2d Cir. 1951); *Charles of the Ritz Distributors Corp.* v. *FTC*, 143 F.2d 676, 680 (2d Cir. 1944). The Commission's concern here is with "methods designed to get a consumer to purchase a product, not with whether the product, when purchased, will perform up to expectations." *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 388 (1965).

In this proceeding, the standard which will be applied and against which claims established on this record will be evaluated is whether such claims have a tendency or capacity to mislead. The ALJ did not reach this question in his initial decision [I.D. Findings 7(a) and (b), 8(a) and (b)].

the record in determining whether or not he or she could recall the salesman making a particular claim.

Our review of the record discloses numerous instances where different witnesses recall similar claims by different salesmen. These common threads linking the testimony of several witnesses provide corroboration for testimony of the individual witness and persuade us that the ALJ was in error in dismissing the testimony on the ground of "hazy recollection." At the request of respondents' counsel, before the first witness was called the ALJ issued an order excluding all non-party witnesses from the hearing room and directing counsel to instruct each witness not to discuss the subject matter of the testimony with other prospective witnesses in this proceeding [Tr. 54, 55, 58–60]. This was a prudent precaution taken to deter the witnesses from sharing their experiences; and we believe the ALJ should have considered the effect of his instructions in evaluating testimony on this record, particularly where witnesses demonstrated a common recollection of events. In these circumstances, we find no basis for completely ignoring direct corroborated testimony responsive to the charges at issue.

The ALJ, however, also noted cryptically that his findings of fact essentially were based on his observations of the witnesses' demeanors. Since the initial decision accords very little weight to much of the specific testimony relating to the claims in issue, we must assume this reference to demeanor addresses a separate issue of credibility.

Ordinarily we leave undisturbed those findings of an ALJ derived from his observations of the demeanor of witnesses and the bearing this has on his evaluation of the character and quality of the testimony received at trial. We appreciate the unavoidable deficiency of hearing transcripts in failing to capture the voice inflections, mannerisms, and appearance of the witness which round out and give additional meaning to the words spoken. For this reason, the ALJ, whose presence at the trial permits him to acquire important insight into the record, is charged with responsibility of assessing the demeanor of witnesses appearing before him and to base his decision upon the whole record, including his impression of witness credibility. This is a vital function of the administrative law judge in Commission adjudicative proceedings; but where the ALJ is found to have acted arbitrarily in

dismissing the testimony of a witness for reasons of his demeanor at trial, the Commission will set aside the ALJ's ruling.

In this instance, the ALJ considered the demeanor of 22 witnesses sufficiently questionable to justify dismissal of testimony concerning their encounters with respondents' salesmen. Eschewing details, the ALJ failed to indicate with any degree of particularity what it was about the demeanor of these witnesses which influenced his decision to disregard the testimony on a wholesale basis. Since the demeanor and credibility of each witness is a matter requiring individual evaluation and appraisal by the judge, it appears most unusual to find only one general and ambiguous observation in a footnote in the initial decision which casts a cloud over the testimony of respondents' customers.

Furthermore, we question whether demeanor and credibility evaluations are properly controlling since the consumer testimony in question was received without objection. It stands unrefuted.

After reviewing the record in its entirety, we find that we are unable to agree with the ALJ's assessment of the reliability of the cumulative testimony and we find he has not explained adequately his findings relative to demeanor. Accordingly, we will consider whether the record before us, as a whole, otherwise supports the ALJ's dismissal of Count I of the complaint. Each of the relevant charges will be considered separately.

1. Model Home Representations

Numerous witnesses testified that they were offered substantial discounts on the price of the siding for granting respondents permission to use their homes as models or demonstrators for advertising puorposes. Respondents deny that their salesmen made such offers and contend that they had employed only two sales promotion programs [Res. App. Br. 15].[4] The first promotion

[4] It should be noted that respondents employ five or six experienced salesmen who earn commissions on the sale of respondents' product [Tr. 340, 628–29]. These salesmen are provided with credentials identifying them as respondents' authorized representatives [Tr. 627–28] and canvas door-to-door, soliciting customers for residential steel siding installations. The salesmen are not assigned to specific territories [Tr. 628–29, 635] but generally limit their operations within a 400-to-500 mile radius of Denver [Tr. 341]. Respondents equip each salesman with customary sales aids, including samples of siding in different colors, promotional literature, and copies of respondents' retail installment contract and referral commission agreement. In these circumstances, respondents are clearly responsible for the acts and practices employed by the salesmen to induce the sale of respondents' products and services. *International Art Co.* v. *FTC*, 109 F.2d 393 (7th Cir. 1940), *cert. denied*, 310 U.S. 632 (1940); *Standard Distributors* v. *FTC*, 211 F.2d 7 (2d Cir. 1954); *Goodman* v. *FTC*, 244 F.2d 584 (9th Cir. 1957); *Consumer Sales Corp.* v. *FTC*, 198 F.2d 404 (2d Cir. 1952), *cert. denied*, 344 U.S. 912 (1953).

involved the use of an advertisement placed in Life Magazine by respondents' supplier [CX 68, Tr. 533–35, Ans. Br. 9]. This advertisement listed a manufacturer's suggested retail price for the siding at $1.95 per square foot. Since respondents customarily charged $1.50 per square foot for the same siding,[5] they contend that this advertisement was employed as a sales promotion for the limited purpose of showing customers the difference between the manufacturer's suggested price and the price at which respondents would be willing to sell the same siding [M. Thiret, Tr. 533, 608]. Respondents deny representing the manufacturer's suggested price as their regular price or representing their regular price as a reduced or discount price available only to selected customers [M. Thiret, Tr. 533, 608–09].

Respondents' second sales promotion consisted of a referral commission agreement executed contemporaneously with the retail installment contract [CX 25, 41, 46, 55, 57, 71]. This program encouraged customers to submit the names of relatives, friends, and neighbors who might be interested in purchasing respondents' siding. In this way, respondents were introduced to prospective customers through "leads" provided by past customers. When a sale resulted, the customer who had made the referral received a commission from respondents [Tr. 346, 579]. Approximately 15 percent of respondents' sales volume is attributable to "leads" acquired by referrals; and the evidence discloses that commismissions were, in fact, paid to customers under terms of the referral agreement [Tr. 347]. Complaint counsel contends, however, that respondents exaggerated the amount of commissions ordinarily received by participants in the referral program and misrepresented the terms and conditions of payment under the program.

It is clear on this record that neither the comparative price promotion nor the referral progam were limited by respondents with respect to time, neither program entitled the customer to a discount from respondents' regular price, and under neither promotion did respondents use the customer's home as a model or demonstrator for which respondents' regular selling price would

[5] Respondents regularly and customarily charged $1.50 per square foot for siding "if there was no other considerations besides the siding to go into a contract" [M. Thiret, Tr. 533]. Mr. M. Thiret testified that prices might vary from job to job depending upon estimates of the cost of labor required to prepare the exterior of the home or cut and fit the siding, but he did not indicate that any promotional discounts were offered [Tr. 536].

be reduced [M. Thiret, Tr. 369, 370, 582, 533–34; CX 38, 134; Res. App. Br. 11, 15, 16].

Respondents believe the passage of time has led to confusion on part of their customers, and this accounts for the failure of the record to describe accurately how the Life Magazine ad was used or to distinguish between the use of a home as a model home in connection with the referral commission agreement and the offering of a price reduction for use of a home as a model or demonstrator [Res. App. Br. at 17]. Respondents argue that the witnesses merely inferred on their own, unassisted by the salesmen, that since they would be paid commissions on any referral cards sent in which resulted in a consummated transaction, they could, in essence, use their own home as a model home or a show home [Res. App. Br. 16].

(a) *Discount Price Representation*

Respondents' contentions are contrary to the undisputed record evidence. Respondents' salesmen represented to several customers that the contract price for the installation reflected a discount from respondents' regular price because the customer's home had been chosen as a model home and would be used in respondents' advertising [Cornish, Tr. 192, 194–95, 219; Avila, Tr. 248; Gaines, Tr. 400, 406; Trujillo, Tr. 410–11; Parette, Tr. 471, 474; G. Brown, Tr. 503, 506]. These customers were told they had been selected to receive a special bargain price, a discount on the price which other customers paid for siding, as compensation for the use of their homes in respondents' promotion. To lend further credibility to the model home representation, customers were told that signs advertising the home as a product of respondents' workmanship would be placed in their yards and that pictures of the home would be taken before and after installation of the siding as a demonstration of respondents' capability in improving the appearance of a home [Cornish, Tr. 192; Gaines, Tr. 399–400; Trujillo, Tr. 410, 417; G. Brown, Tr. 506; O.A. 38, 29]. Moreover, there is unrefuted testimony that customers were induced to accept the model home offer immediately because the promotion was represented as being available for a limited time only [Seckinger, Tr. 384–85, 391–92; Parette, Tr. 470–71, 474]. As Mr. Cornish, one of respondents' customers, testified: "* * * they told me if I bought at that time I would save a thousand dollars if they could use my house for advertising purposes." [Tr. 192].

Subsequently, this witness testified: "If I didn't take it, he [the salesman] was going to go to another place that they had in mind with the same offer * * * I asked him if we could discuss it and he said they were just there for two days and they had some other people they wanted to see, so it was either then or forget the thousand dollars, but we could still get the siding." [Tr. 194–95].

On this record we conclude that respondents claimed to offer a special limited-time-only model home promotion for which a reduction or discount from respondents' regular price would be granted. The capacity for deception inheres in these false claims, even though customers may have failed to perceive it and may have testified that they were satisfied in their dealings with respondents. As one witness described his reaction when respondents subsequently failed to use his home as a model: "* * * they did give me the thousand dollars off, which was no big complaint as far as I was concerned." [Cornish, Tr. 196]. Thus, customers may indeed have been satisfied in their delusions fostered by respondents' salesmen—and, in fact, may have had "no big complaint" with regard to the results after respondents' departure. Nonetheless, just as the misplaced elation of an art aficionado does not vitiate the fraud in the sale to him of a 1973 Rembrandt, so, too, the apparent contented state of mind of respondents' customers cannot excuse the deceptive practices of respondents.

(b) *Manufacturer's Suggested Price Represented as Regular Price*

We also find that respondents' salesmen falsely represented the manufacturer's suggested retail price of $1.95 per square foot, listed in the Life Magazine ad, as the price at which they ordinarily sold siding materials and that they falsely represented the regular price of $1.50 as a special discount price available to the consumer because his home had been selected for display.[6] They thereby deceived the consumer into believing that he could obtain the siding at a bargain price. As the Commission has observed in the past, "* * * one of the most effective ways of selling [people] something is to tell them they are getting a bargain price. A misrepresenta-

[6] Tr. 471, 474, 192, 194, 248, 256, 511, 512. Copies of the advertisement in question, although placed in Life Magazine by respondents' supplier, were furnished by respondents to their salesmen for use as a sales aid [M. Thiret, Tr. 533-34]. As such, respondents must bear responsibility under Section 5 of the Federal Trade Commission Act in instances where the ad was used by the salesmen in a way which possessed a tendency and capacity to deceive the public. *See, Perma-Maid Co.* v. *FTC*, 121 F.2d 282 (CA-6, 1941).

tion of the existence or extent of the bargain * * * has long been held a violation of Section 5." *Diener's, Inc.*, Docket No. 8804 (December 21, 1972) [81 F.T.C. 945,974]. Respondents' claims fall within this proscribed category.

(c) *Misrepresentations as to Terms and Conditions of the Referral Program*

The record further shows that respondent's salesmen misrepresented the terms and conditions of the referral commission program and exaggerated the amount of commission payments customarily received by participants in the program. Respondents' referral commission agreement form reads: "This Agreement can be worth $1,500 to the Owner * * *." Pursuant to this agreement, respondents agreed to pay $100 for each referral a customer submitted which resulted in a contract for installation of siding similar to that used on the customer's home.[7] The agreement further required the customer to submit the names of people who might be interested in purchasing respondents' siding.

While there is undisputed evidence of commission payments having been made to customers under this agreement, there is substantial evidence of misrepresentation employed by respondents' salesmen in using this agreement as a sales aid. For example, on several occasions, salesmen represented that homes would be used as models by them to demonstrate the improvements which might be made to the homes of prospective customers and that commissions would be paid to "model home" owners from sales consummated in this way [Tr. 224, 522–25, 528–29].

Contrary to these representations, respondents do not use their customers' homes for model or demonstration purposes. We find, therefore, that these representations possess a tendency and capacity to mislead customers into an erroneous and mistaken belief about the terms and conditions of payment under the referral program, the respective obligation of respondents in using the home for demonstration purposes, and the customer's obligation to find and submit to respondents the names of prospective customers.

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[7] If the referred customer installed siding different from the siding installed by the contracting owner, the contracting owner received a $50 commission [CX 134]. At one time, respondents made referral payments in the form of two shares of the stock in U. S. Steel Corp. [M. Thiret, Tr. 346].

As an additional inducement, respondents salesmen in several instances misrepresented the amount of commissions a customer could reasonably expect to receive through participation in the referral program. Respondents' salesmen represented to several customers that commissions from the referral program would permit them to purchase the siding at little or no cost [Martinez, Tr. 224; Stapp, Tr. 488–89; Hauf, Tr. 272; Austin, Tr. 308]. Yet respondents admitted in their answer that few, if any, customers received enough referral commissions to obtain their installation at little or no cost; and evidence of a single customer who had paid for the installation in this way was not introduced at trial. Accordingly, we find that respondents have misrepresented the benefits of the referral program to prospective customers in order to induce the sale of their product and, in so doing, have violated Section 5 of the Federal Trade Commission Act.

2. Fuel Bill Savings Claims

The complaint also alleged misrepresentation by respondents in describing the insulation qualities of steel siding and in claiming that it would reduce by 50 percent the cost of heating and cooling a home.[8] In a nutshell, the record evidence demonstrates that respondents' customers ordinarily do not realize fuel bill reductions which respondents' salesmen touted, and several customers realized no savings at all [Campbell, Tr. 166; Avila, Tr. 249, 252; Hauf, Tr. 270–71; R. Brown, Tr. 296; Cornish, Tr. 195, 211, 217; Parette, Tr. 472, 479; Seckinger, Tr. 386, 393; Daniels, Tr. 522]. Thus, we find respondents' false fuel bill savings claim possesses a tendency and capacity to mislead prospective customers into a mistaken belief as to the effectiveness of the insulation and the reductions which reasonably could be expected in the cost of heating and cooling a home. We conclude that respondents' exaggerated fuel bill savings claims violate Section 5 of the Federal Trade Commission Act.

3. Representations Relating to Workmanship and Materials

We next turn to the charge that respondents failed to provide the materials and perform the services agreed upon. The testimony

[8] Although the evidence does not conform precisely to this allegation, it clearly was directed at exaggerated and misleading insulation claims, and the issues were fully briefed on appeal.

of respondents' customers and the documents in evidence establish that, in many instances, respondents agreed to complete the installation in workmanlike manner to the customer's satisfaction; and we find the record evidence insufficient to establish a failure by respondents to provide the promised services.

Respondents also represented U. S. Steel Corporation as the producer of the siding [CX–70; Stapp, Tr. 487; Seckinger, Tr. 388; Parette, Tr. 473]. Undisputed evidence shows that respondents' suppliers purchased steel coils from U. S. Steel which were imprinted, coated with vinyl, reformed, cut into precise sizes, and packaged for resale [M. Thiret, Tr. 720]. Respondents argue in their answer brief that customers were not particularly concerned about the source of the raw steel; rather, their major concern was the performance of the finished product as installed on their homes. We believe the evidence shows, however, that respondents have misrepresented the identity of the manufacturer of the finished product.

As is discussed in greater detail later, respondents' sales representations emphasized the durability of the siding, including characteristics of color fastness and resistance to peeling, chipping, and scratching which relate to the application and quality of the vinyl covering. By misrepresenting the identity of the manufacturer of the finished product, respondents deprive their customers of information which may bear upon the customer's perception of quality and the anticipated reliability of a product represented to last 30 years. Furthermore, the siding is represented as guaranteed by the manufacturer for a period of 30 years, and it is clearly deceptive to identify incorrectly the firm which is offering the guarantee. Accordingly, we find the manner in which respondents used the name "U. S. Steel" has a tendency and capacity to mislead prospective customers and to cause them to believe U. S. Steel produced and guaranteed the steel siding.

4. Claims Relating to the Durability of Siding

The complaint further charged respondents with misrepresentations, both express and implied, in describing the durability of the siding materials and in claiming that it will "never require repairing." In their answer, respondents admit the siding will require repair but deny making representations to the contrary [Ans. pg. 7]. On appeal, respondents assert two additional grounds

in defense to this charge. First respondents contend that any representations relating to the need for repairs were limited to specified characteristics of durability, such as the ability to withstand the impact of hail, color fastness, and scratch resistance. Second, respondents rely upon evidence of satisfaction with the siding's performance by the majority of witnesses testifying at the trial [Ans. Br. 14].

Several witnesses testified that respondents' salesmen extolled the excellence of the product, claiming, without qualification, that it would not chip, peel, dent, or discolor, and further guaranteeing such performance unconditionally [Cornish, Tr. 195; Gaines, Tr. 397–98; Avila, Tr. 250–51; Seckinger, Tr. 392–93; Alexander, Tr. 421; Parette, Tr. 469; Stapp, Tr. 486–87; Reese, Tr. 495].

These unqualified claims of durability possess a tendency and capacity to lead consumers to believe that the siding would not incur damage from contact with everyday hazards and the need for repairs would not arise from such contacts. Since these durability claims were made without qualification, we have evaluated the claims in the same context and find evidence that the siding was not damage resistant even within the limited range of durability characteristics specifically claimed.[9] Accordingly, we find these representations false and in violation of Section 5 of the FTC Act. Since it is clear that the siding may be damaged and repairs may be needed under conditions in which respondents have expressly described the siding as damage resistant, it is unnecessary to decide whether respondents represented that the product would never, under any circumstances, require repair.

5. Representations of an Unconditional Guarantee

The complaint also charged respondents with misrepresenting the terms and conditions of the guarantee applicable to the siding materials and with claiming both materials and labor are guaranteed unconditionally for 30 years. Respondents assert in response that the siding materials were guaranteed in writing by the manufacturer and that purchasers received no additional guarantees [Ans. 7]. Respondents point to the written guarantees provided by the manufacturers which contain numerous terms and conditions to limit the scope of coverage to siding materials only,

[9] Gaines, Tr. 403; Daniels, Tr. 521.

thus excluding defects in workmanship which might occur during installation, and the cost of labor in replacing defective materials. These guarantees also include provisions for *pro rata* decrements in the manufacturers' liability over a 30-year period based on the number of years the siding is in place [CX 47, CX 43(a) and (b)]. In addition to the contention that customers received only the manufacturer's written guarantee, respondents' defense is also predicated upon the durability of the siding [10] and an alleged absence of evidence indicating respondents failed to honor whatever guarantees were given to their customers.

Contrary to respondents' assertions, the record shows that respondents represented that the siding materials and the workmanship are guaranteed for a period of 30 years [Cornish, 195, 196; Avila, 250, 251; Alexander, 421; Reese, 495; Hauf, 262-63; Montoya, 281; Parette, 469, 472; Gaines, 398; Trujillo, 412; Stapp, 486–87]. Although respondents dismiss the consumer testimony as evidencing faulty recollection on the part of these witnesses and as demonstrating the extent to which their memories of the representations made had dimmed [Res. App. Br. 15], there is documentary evidence in the record which corroborates this testimony and establishes that respondents claimed to offer an unconditional guarantee.[11] The record shows that respondents have represented their guarantee as unconditional, both orally and, in some instances, in the customer's retail installment contract.

The record does not support respondents' further contention that no evidence was adduced at trial to indicate a failure on their

[10] Respondents argue that the siding, in nearly every instance, has performed in a manner consistent with the written guarantee [Res. App. Br. 14, 15]. This, of course, is irrelevant. Whether the product actually performs as represented in a majority of installations is not the test of respondents' liability. When respondents represent the product as guaranteed for 30 years without disclosing the limitations and conditions of their performance, customers are justified in believing that risks of damage or defects in material and workmanship and the cost of all repair rest with respondents. The purpose of the guarantee is to cover damages which may occur over an extended period of time; and neither the demonstrated durability of the siding in a majority of installations, nor the fact that very few claims are submitted, provide justification for misleading customers in respect to respondents' performance under the guarantee if and when damage is incurred.

[11] In several installment contracts, respondents represented that: "Faulty work or material to be replacd free of charge." [CX 6, 10, 21, 40, 58, 60, 64, 67]. The term "faulty material" is not defined in the contract, and standing alone it fails to reflect clearly the kinds of "faults" which respondents may have intended it to include. However, in view of the oral representations by the salesmen that the guarantee was unconditional, and in view of the durability claims noted in Paragraph 4 *supra*, the Commission believes that consumers perceive the meaning of the term "faulty material" as including material which in any manner fails to perform as represented.

part to live up to the guarantees given to their customers [Res. Br. 14]. In the only instance noted in this record in which a customer submitted a claim under the guarantee as a result of damage incurred from a hailstorm,[12] respondents failed to perform in accordance with the customer's contract, which provided: "We [respondents] will replace any faulty workmanship or material at any time." [CX 64, 65; Tr. 521–22]. Shortly after this claim was filed with respondents, the witness was requested by Mr. Thiret to submit "* * * measurements as to the extent of damage along with pictures showing this area, then we could give you an accurate cost of repair which I am sure will be covered by your insurance." [CX 66]. This request not only required the customer to incur the cost of inspecting the damage, a condition not disclosed in the guarantee as represented,[13] but it indicated respondents would not bear the cost of repairs. Respondents did nothing further about the claim; and as the witness recalled, "I dropped it, and I guess they did, too." [Daniels, Tr. 522].

In view of respondents' answer which denies any guarantee was given to purchasers other than the manufacturer's written guarantee, and in view of their demonstrated failure to perform in accordance with a written representation of an unconditional guarantee in the customer's contract, we conclude that respondents' representations of unconditional guarantees, whether oral or written, are false and deceptive.

6. Negotiable Instruments

When a prospect agrees to become a customer of respondents, retail installment contracts and promissory notes are executed. Respondents then customarily negotiate this commercial paper to the Central Bank and Trust Co. of Denver, Colorado. The complaint charged a violation of Section 5 of the Federal Trade Commission Act by reason of respondents' practice of negotiating customer obligations procured through the use of false, misleading and deceptive statements and representations. The complaint

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[12] The written guarantees submitted to the purchasers by the manufacturers expressly excluded defects or damage resulting from faulty installation and weather conditions [Ans. Br. 14; CX 47, 43(a) and (b)]. Several witnesses, however, were led to believe that they would receive a guarantee which would cover such hazards [Avila, Tr. 250-251; Alexander, Tr. 421; Reese, Tr. 495; Parette, Tr. 469; Stapp, 486–87].

[13] *See, Benrus Watch Co.* v. *FTC*, 352 F.2d 313 (8th Cir. 1965), *cert. denied*, 384 U. S. 939 (1966).

further alleged that negotiation of the instruments of indebtedness may cut off various personnel defenses (otherwise available to the customer) which arise out of the misleading and deceptive acts and practices of the respondents or their failure to perform under the contract. In essence, the complaint challenged respondents' practice of negotiating consumer paper on allegations well grounded under Section 5 in that negotiation to a holder in due course may materially alter the nature of the transaction and may mislead and deceive the customer as to the rights and liabilities he initially contemplated under the contract.

Respondents contend that the record evidence is insufficient to establish a violation since the only financial institution to respondents negotiated their customer obligations did not, as a matter of policy, assert the holder in due course doctrine as a defense with regard to home improvement paper. Although the record demonstrates the accuracy of this assertion, the Commission is not persuaded that its decision should rest upon the internal policies of the bank with which respondents now choose to conduct business. The Commission has observed before that the practices of the assignee are not controlling; rather, it is the seller's practice of routinely neogtiating consumer paper to a holder in due course which may materially alter the nature of the transaction the buyer believes he is entering. What is deceptive and prohibited under Section 5 is respondents' failure to disclose to the buyer how his rights may be limited and his exposure to liability increased by negotiation to a holder in due course. *In the Matter of All-State Industries of North Carolina, Inc.*, FTC Dkt. 8738, 75 FTC 465, 490 (1969), *affirmed, All-State Industries of N. C., Inc.* v. *FTC*, 423 F.2d 423 (4th Cir. 1970), *cert. denied*, 400 U.S. 828.

Moreover, it is clear that the finding of deception is not, as respondents seem to contend, predicated upon a showing of actual consumer injury caused by the seller's assignment. The absence of testimony by consumers who had confronted the holder in due course defense in legal proceedings is immaterial since the deception occurs in respondents' customer relations well before the consumer would actually be exposed to the legal defenses of an assignee. As the Commission found in *Household Sewing Machine Co.*, 76 FTC 237, 246 (1969):

> The buyer must be made to understand—*before* the sale is consummated—

that a demand for payment from a third party assignee may not be defeated even if the product turns out to be defective or worthless, even if the seller fails to perform contractual obligations—and even if the seller goes out of business.

The practice of negotiating consumer obligations introduces a third party to the transaction with whom the consumer must deal and against whom the consumer is virtually defenseless even though the instrument of indebtedness may have been procured by misleading and deceptive sales practices. In such circumstances, the Commission finds that the status of the debtor of a holder in due course must be imparted to consumers before the transaction is closed if deception as to the nature of the transaction is to be avoided.[14] Our order will so require.

In formulating our order, we have considered the argument of complaint counsel urging us to require respondents to notify assignees that the instrument of indebtedness may be vulnerable to buyer claims and defenses. We believe that it may be necessary to bar a holder of consumer paper from becoming a holder in due course where it is demonstrated that the doctrine is unfair to consumers. We have observed, for example, that such relief may be entered in appropriate cases where a pattern of default by the seller is evident subsequent to negotiation of consumer contracts. However, complaint counsel have made no showing of unfairness, and we conclude that the broader relief advocated in this particular instance is not warranted.

B. COUNT II OF THE COMPLAINT

The ALJ found, and respondents concede, that retail installment contracts executed by respondents between July 1, 1969, and June, 1970, violated the Truth in Lending Act, Regulation Z and Section 5 of the Federal Trade Commission Act as alleged in the complaint [I.D. 9–12 [pp. 1019–22 herein]; Res. Br. 30]. He also found, however, that respondents' 12 violations were unintentional technical violations which were discontinued over a year before the complaint was first served upon respondents in September, 1971 [I.D. 12, 13] [pp. 1022–23 herein]. The ALJ did not issue an order and complaint counsel have appealed.

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[14] Our order is fashioned to take into account the laws of any jurisdiction which may impose more stringent requirements upon transactions involving negotiable instruments than would our order.

1. Substantiality of the Violations

The ALJ's curious distinction between technical and substantive violations of this law can find neither support nor refuge in the statutory framework and purpose of the act and implementing regulations. It is true that the disclosure and notice requirements of the law are detailed, but they were deemed to be necessary by the Congress to effectuate a better understanding by the consumer of the terms and conditions applicable to a credit transaction and the cost of dealing on a time-payment basis. Thus, the statute and regulations require the disclosure of credit terms in precise and technical language to promote uniformity of information provided to consumers and to insure a basis for rational cost comparisons. Moreover, the importance which Congress assigned to these disclosure requirements is evident in enforcement Sections 108, 112, and 130 of the act, which provide for administrative remedies and, in appropriate cases, civil damages and criminal penalties. Since it is clearly the intent and purpose of the statute and the regulations to require creditors to disclose specific information to consumers in a useful form, we are unable to agree with the ALJ that respondents' failure to comply with these disclosure requirements in 12 respects is an insubstantial violation of law.

2. Bona Fide Errors

Respondents also rely upon Section 130(c) of the Truth in Lending Act which provides that a creditor shall not be liable under Section 130 if it is established that the violation resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Respondents argue that these administrative proceedings qualify as a civil action and that their errors, having been caused by the advice obtained from independent legal counsel, were bona fide; therefore, no order can issue against them [Res. Br. 32, 33].

In view of the plain language of the statute, which expressly limits Section 130(c) to actions brought by debtors for the recovery of civil damages, respondents' defense must fail. The Commission need not determine whether the facts as alleged by respondents might constitute a defense in a private damage suit brought under Section 130 since it is clear this section is not applicable to administrative proceedings initiated pursuant to Sec-

tion 108(c) of the Truth in Lending Act and enforced under the Federal Trade Commission Act. While a creditor may assert certain good-faith defenses to violations established by a debtor under Section 130, no similar defenses are provided for in enforcement proceedings under Section 5 of the FTC Act before this Commission. *Koch* v. *FTC*, 206 F.2d 311, 320 (6th Cir. 1953); *Charles of the Ritz* v. *FTC*, 143 F.2d 676 (2d Cir. 1941); *Feil* v. *FTC*, 285 F.2d 879 (9th Cir. 1960); *Merck & Co., Inc.* v. *FTC*, 392 F.2d 921, 925 (6th Cir. 1968).

3. Issue of Abandonment

The ALJ concluded that the challenged violations of the Truth in Lending Act were discontinued by respondents immediately after they were questioned about their retail installment contract forms by Commission staff personnel investigating respondents' business practices. He also found no record evidence of any reasonable likelihood that these violations will be resumed in the future [I.D. 14] [p. 1024 herein]. Complaint counsel dispute these findings. They contend that respondents have failed to sustain the burden of establishing abandonment of the challenged practices and have failed to adduce evidence sufficient to show that an order preventing violations in the future is not in the public interest.

As the Commission observed in *Zale Corp.*, Docket 8810, 473 F.2d 1317 (5th Cir. 1973), *rehearing denied,* (March 9, 1973): "[T]he mere fact that the offending practices have been discontinued prior to issuance of the complaint does not provide, by itself, the requisite assurance that an order is unnecessary and not in the public interest." The record shows that respondents have not rushed headlong into compliance. First, they revised their retail installment contract forms in June, 1970, subsequent to a visit by Commission investigators who questioned the legality of the forms and the extent to which they complied with the Truth in Lending Act [Tr. 714, 716; RX 9 (b, c, and d)]. These revised forms, however, still failed to disclose the date on which the finance charge began to accrue if different from the date of the transaction as required by Section 226.8(b)(1) of Reg. Z [RX 9(b and c); I.D. 10] [p. 1020 herein]; and respondents offered

no evidence to show that the finance charge began to accrue on the date of the transaction.[15]

In addition, respondents failed to delete from the revised forms the objectionable language which purported to bind the customer immediately to the transaction. This notwithstanding, respondents claim they were providing the notice of the three-day right of rescission in accordance with Section 226.9(a) of Regulation Z [RX 9(b), (c) and (d)]. Clearly, respondents' revised forms continued to contradict and detract from the required rescission notice, thereby misleading and confusing customers as to their rights under the law.[16]

Thus, it was not until August or September of 1972, when respondents revised their forms a second time subsequent to the issuance of the complaint in September, 1971, that respondents

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[15] Following the inquiry by Commission staff personnel, respondents, by letter of June 9, 1970, submitted copies of the revised forms to the investigating attorney and requested his comments as to the legality of the forms. In a subsequent conversation with Mr. Thiret, the staff attorney allegedly expressed the view that the revisions were "O.K." or "fine." This advice, although mistaken, would not otherwise preclude the Commission from taking such action as may be required in the public interest. *Compare, P. Lorillard Co.* v. *FTC*, 186 F.2d 52, 55 (4th Cir. 1950); *Utah Power & Light Company*, v. *U.S.*, 243 U.S. 389, 409 (1917), *with U.S.* v. *American Greetings Corps.*, 168 F. Supp. 45, 50 (N.D. Ohio, 1958), *affirmed*, 272 F.2d 945 (6th Cir. 1959), a civil penalty proceeding in which the court ruled that the failure of Commission employees over a four-year period to speak out against practices which violated a Commission order would be considered in mitigation of the penalty but would not preclude enforcement of the order. The case law demonstrates that inadvertence or mistake on the part of staff counsel does not bar entry of an order, the effect of which is wholly prospective and which is designed to insure against the resumption of practices found unlawful.

[16] It is established that a security interest under the act does include liens which arise against the buyer's home by operation of law, and transactions which may give rise to the creation of such liens must include a three-day right to rescind. *Fabbis, Inc.*, Dkt. 8833 (October 30, 1972) [83 F. T. C. 678]. *See also, Gardner and North Roofing and Siding Corp.* v. *Board of Governors of the Federal Reserve Systm*, 464 F.2d 838 (C.A.D.C. 1972); *N. C. Freed Co., Inc.* v. *Board of Governors of the Federal Reserve System*, 473 F.2d 1210, (2d Cir. 1973).

Further, and notwithstanding the above, we note in the revised form a statement which assured the customer "that no security interest is or will be retained or acquired in the * * * real estate property" of the customer. Yet, the record shows that respondents did not customarily seek to extinguish all liens which these transactions may spawn. Mr. M. Thiret's testimony is quite clear in this regard:

> I never took liens so I never gave lien waivers unless they were requested * * * if I had to give out lien waivers, it would have made such a mess, a lot of times there are things that are purchased in a little lumberyard and maybe you would have to go through fifteen or twenty material men to get lien waivers. It would be asking way too much * * *." [Tr. 584–85].

From this it may be inferred that respondents were well aware of the possibility that by their actions others might acquire security interests in the customer's home, and it is contradictory and misleading to represent that no such security interests would or could arise.

apparently brought themselves into compliance with the Act.[17] As such, the alleged discontinuance occurred after respondents were aware that their practices were under investigation; and the fact that respondents have not resumed these practices during the time in which they were under investigation and administrative proceedings were in progress does not persuade us that such practices will not be resumed in the future. *Giant Food, Inc.* v. *FTC*, 322 F.2d 977, 986–87 (C.A.D.A. 1963), *cert. denied*, 376 U. S. 967 (1964); *Automobile Owners Safety Insurance Co.* v. *FTC*, 255 F.2d 295, 297–98 (8th Cir. 1958), *cert. denied*, 358 U.S. 875 (1958); *Merck & Co., Inc.* v. *FTC*, 392 F.2d 921, 927 (6th Cir. 1968). *See also, Marlene's, Inc.* v. *FTC*, 216 F.2d 556, 559 (7th Cir. 1954); *Clinton Watch Co.* v. *FTC*, 291 F.2d 838, 841 (7th Cir. 1961), *cert. denied*, 368 U.S. 952; *Galter* v. *FTC*, 186 F.2d 810, 813 (7th Cir. 1951), *cert. denied*, 342 U.S. 818; *FTC* v. *Goodyear Tire & Rubber Co.*, 304 U.S. 257, 260 (1938). Since the Commission cannot assume voluntary compliance will meet the objectives of its order, we conclude that an order is necessary to protect the public against the resumption of the practices found unlawful in this proceeding.

C. LIABILITY OF INDIVIDUAL RESPONDENTS

The complaint in this matter named Michael P. Thiret and Jack Bitman individually andas officers of the corporate respondents and Claude Thiret individually and as general manager of the corporate respondents, charging them with responsibility for the acts and practices alleged. In his initial decision, the ALJ found that respondent Michael Thiret solely formulated, directed, and controlled all of the acts and practices of the corporate respondents, and he dismissed the complaint as to Bitman and Claude Thiret [I.D. 3, 4] [pp. 1013–14 herein]. Complaint counsel have appealed the ALJ's findings in respect to the dismissal of respondent Claude Thiret.[18]

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[17] RX 10, 11; Tr. 716. Respondents' most recently revised forms entered on the record are "For use in Wyoming." There is evidence, however, that respondents may be using different forms to transact business in other states, depending upon the particular requirements of state law [Tr. 717, 718]. Whether forms which respondents may be using in states other than Wyoming are in compliance with the Truth in Lending Act is not apparent on this record.

[18] Respondent Michael Thiret admitted his responsibility for the formulation, direction, and control of acts and practices of the corporate respondent; and as such, he is personally liable

The evidence shows that Claude Thiret was general manager of respondent Certified Building Products, Inc. from October 15, 1968, to December 31, 1969 [Pre. Tr. 21]. On January 1, 1970, he purchased 40 percent of stock in Certified Improvement Co. and served as the president of that company until October 31, 1970, when he started a home improvement business of his own [Tr. 315–17; Pre. Tr. Dep. 40, 41, 121]. In a prehearing deposition, entered on record by order of the ALJ on November 27, 1972. Thiret admitted his responsibility for the daily operations of the business of both corporations [Pre. Tr. 38, 40, 41]. He frequently discussed selling practices employed by the salesmen, and the evidence indicates he was aware that deceptive practices were being used by the salesmen [Pre. Tr. 31–34, 37; Tr. 326–27]. Moreover, he had supervisory authority over the salesmen [Tr. 327–329; Pre. Tr. 89, 90; M. Thiret Pre. Tr. 112–113]. That Thiret may have instructed the salesmen to avoid deception in their sales presentation [Tr. 337] does not relieve him of ultimate responsibility for their acts and practices. He testified that respondents employed a limited number of salesmen in order to maintain control of their activities [Tr. 336], and his demonstrated failure to exercise that control while in a position to do so subjects him to personal liability under Section 5 of the FTC Act. *Goodman* v. *FTC, supra; Parke, Austin & Lipscomb, Inc.* v. *FTC,* 142 F.2d 437 (2d Cir. 1944); *Benrus Watch Co.* v. *FTC,* 352 F.2d 313 (8th Cir. 1965), *cert. denied,* 384 U.S. 939 (1966); *Sebrone Co.* v. *FTC,* 135 F.2d 676 (7th Cir. 1943); *FTC* v. *Standard Education Society,* 302 U.S. 112 (1937).

For the reasons herein set forth, the appeal of complaint counsel is granted and an order will be entered as to all respondents, with the exception of Mr. Jack Bitman. The complaint against Mr. Bitman will be dismissed without prejudice. An appropriate order accompanies this opinion.

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for the practices found unlawful in this proceeding [Pre. Tr. 111, Tr. 345]. Complaint counsel have not appealed the dismissal as to Mr. Jack Bitman. The evidence shows that Bitman was a nominal officer of the corporate respondents, serving principally as secretary and bookkeeper [Pre. Tr. Dep. 45, 46, 95, 100, 104-05, 116, 118]. He had no authority over the salesmen and did not formulate, direct, or control sales policies [Pre. Tr. Dep. 117-18]. Accordingly, we affirm the ALJ's dismissal of the complaint as to respondent Bitman.

FINAL ORDER

Counsel supporting the complaint having filed an appeal from the initial decision of the administrative law judge, and the matter having been heard upon briefs and oral argument; and

The Commission having rendered its decision determining that the initial decision issued by the judge should be modified in accordance with the views and for the reasons expressed in the accompanying opinion, and, as so modified, adopted as the decision of the Commission:

It is ordered, That the initial decision be modified by striking the order dismissing the complaint and substituting therefor the following:

ORDER

I.

It is ordered, That respondents, Certified Building Products, Inc., a corporation, and its officers; Certified Improvements Company, a corporation, and its officers; and Michael P. Thiret and Claude Thiret, individually and as officers of said corporations; trading under said corporate names or under any trade name or names; and respondents' agents, representatives and employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution or installation of residential siding materials or other home improvement products or services or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, orally or in writing, or by any other means that:

1. Respondents' offer of products and/or services is limited as to time, or is limited in any other manner.

2. Any price for home improvements or other products and/or services is a special or reduced price from the price respondents normally charge, unless respondents can affirmatively show that such price constitutes a significant reduction from the price at which respondents have sold or installed substantially similar home improvements or other products or services for a reasonably substantial period of time in the recent regular course of their business.

3. Purchasers of respondents' residential siding materials and/or services will realize any specific percentage or amount of savings, or that substantial savings can be had generally in their air-conditioning or heating bills.

4. Residential siding materials and/or services sold by respondents will never require repairing; or misrepresenting, in any manner, the durability, performance, or quality of respondents' products.

5. Any of respondents' products or installations are guaranteed, unless the nature, extent, and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in writing to the purchaser before the transaction is consummated, and unless the guarantor will, in fact, perform as stated in the disclosed guarantee.

6. The home of any of respondents' customers or prospective customers has been specially selected as a model home to be used or will be used as a model home, or otherwise, for advertising, demonstration or sales purposes, or that such customers will thereby be granted any allowance, discount, or commission.

7. Purchasers will receive compensation in any form, including but not limited to commissions and/or discounts from referrals which will permit the purchase of respondents' products or services at little or no cost.

B. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness executed by the purchaser, with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

1. The disclosures, if any, required by federal law or the law of the state in which the instrument is executed;

2. Where negotiation of the instrument is executed; party is not prohibited by the law of the state in which the instrument is executed, that the trade acceptance, conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party; and

3. Where the law of the state in which the instrument is executed does not preserve as against any holder of the instrument all the legal and equitable defenses the purchaser may assert against the seller, that in the event the instrument is negotiated or assigned to a finance company or other third party, the purchaser may have to pay such finance company or other third party the full amount due under his contract whether or not he has claims against the seller's merchandise as defective; the seller refuses to service the merchandise; or the seller is no longer in business, or other like claims.

II.

It is further ordered, That respondents, Certified Building Products, Inc., a corporation, and its officers; Certified Improvements Company, a corporation, and its officers; and Michael P. Thiret and Caude Thiret, individually and as officers of said corporations; trading under said corporate names or trading or doing business under any other name or names; and respondents' representatives, agents, and employees, successors and assigns, directly or through any corporate or other device, in connection with any extension of consumer credit or 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 (Pub.L. 90–321, 15 U. S. C. 1601 *et seq.*), forthwith cease and desist from:

A. Failing to disclose the date on which the finance charge begins to accrue when that date is different from the date of the transaction, as required by Section 226.8(b) (1) of Regulation Z.

B. Failing to disclose the due dates or period of payments scheduled to repay the indebtedness, and the sum of such payments, using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

C. Failing to disclose a clear identification of the property to which any security interest relates or if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify, as required by Section 226.8(b) (5) of Regulation Z.

D. Failing to use terms "cash downpayment," and "total downpayment;" and failing to disclose the corresponding information with these terms, as required by Section 226.8(c)(2) of Regulation Z.

E. Failing to use the term "amount financed" and failing to give the corresponding disclosures with that term, as required by Section 226.8(c) (7) of Regulation Z.

F. Failing to use the term "deferred payment price" and failing to give the corresponding disclosures with that term, as required by Section 226.8(c) (8) (ii) of Regulation Z.

G. Failing to provide the "Notice of Opportunity to Rescind," to the customer, on one side of a separate statement which identifies the transactions to which it relates, as required by Section 226.9(b) of Regulation Z.

H. Failing to set out the "Effect of Rescission," Section 226.9(d) of Regulation Z, in the manner and form as required by Section 226.9(b) of Regulation Z.

I. Failing to furnish two copies of the above referred to notices to the customer as required by Section 226.9(b) of Regulation Z.

J. Failing to give notice to the customer of his right to rescind the transaction, as required by Section 226.9(b) of Regulation Z, when all of the security interests in the customer's principal residence which have been or will be retained or acquired, have not been effectively waived.

K. Entering into any other type or means of contractual relationship with a customer which results in an evasion of Regulation Z.

L. Representing, directly or by implication, on retail installment contracts, promissory notes, or on any written document or orally, that customers will or may be liable for damages, penalties, or any other charges for exercising their right to rescind that is provided by Section 226.9 of Regulation Z.

M. Supplying any additional information, contract clause, or other statement about the customer's liability or obligations in the event that the customer exercises his right to rescind except that information furnished in accordance with Section 226.9 of Regulation Z.

N. Supplying any additional information, contract clause, or other statement pertaining to a transaction generally; un-

less such additional information, contract clause, or other statement is provided in a fashion which complies with Section 226.6(c) of Regulation Z.

O. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form, and amount required by Sections 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen and/or other persons engaged in the sale of respondents' products and/or services, and to all present and future personnel of respondents, engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising of that consumer credit, and shall secure from each such salesman and/or other person a signed statement acknowledging receipt of said order.

It is further ordered, That with respect to Jack Bitman the matter be, and it hereby is, closed, without prejudice to the right of the Commission to take such further action as future events may warrant.

It is further ordered, That respondents notify the Commission at least thhirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents maintain adequate records which disclose the factual basis for any representations or statements as to any type of savings claims, including reduced price claims and comparative value claims, and as to any similar representations or statements of the type disclosed in the various

paragraphs of this order; and from which the validity of the aforesaid representations or statements can be determined.

It is further ordered, That respondents herein shall, within sixty (60) days after service on them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Jones dissenting.

IN THE MATTER OF

FASHION TWO TWENTY, INC., ET AL.

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

Docket C-2474. Complaint, Nov. 5, 1973—Decision, Nov. 5, 1973

Consent order requiring an Aurora, Ohio, manufacturer, purchaser, distributor and seller of cosmetics, toiletries, skin care and associated items commonly sold through a party-plan merchandising program, among other things to cease certain anticompetitive selling practices and agreements.

Appearances

For the Commission: *Joseph S. Brownman.*

For the respondents: *Donald T. Goldman* of *Kottler & Danzig*, Cleveland, Ohio.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C., Section 41 *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties listed in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Fashion Two Twenty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio. Prior to approximately Dec. 10, 1968, the corporate name of respondent corporation was Maw-Vack, Inc. Respondent Fashion Two Twenty, Inc., maintains its home office and principal place of business at 14 Hudson Road, Aurora, Ohio.

PAR. 2. Respondent Vernon G. Gochneaur is chairman of the board of

directors of respondent corporation and is also its chief executive officer and largest stockholder, with a holding of approximately 48.7 percent of the common stock. Together with others, Mr. Gochneaur has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of respondent corporation. Mr. Gochneaur's office address is the same as that of respondent corporation.

Respondent Roger V. Gochneaur is the president of corporate respondent and is also a director and member of its executive committee. Together with others, Mr. Gochneaur has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of respondent corporation. Mr. Gochneaur's office address is the same as that of respondent corporation.

PAR. 3. Respondents are engaged in the manufacture, purchase, distribution, offering for sale and sale of cosmetics, toiletries, skin care and associated items which are marketed under the name Fashion Two Twenty Cosmetics, to distributors located throughout the United States. Respondent corporation's product sales volume is approximately nine (9) million dollars per year. The sales of respondent corporation's products at retail is approximately thirty (30) million dollars per year.

PAR. 4. In the course and conduct of its business of manufacturing and distributing Fashion Two Twenty Cosmetics, the respondents ship or cause such products to be shipped from the state in which they are warehoused to distributors located in various other States throughout the United States who engage in resale to other distributors and to members of the general public. There is now and has been for several years a constant, substantial and increasing flow of such products in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that actual and potential competition has been lessened, hampered, restricted and restrained by reason of the practices hereinafter alleged, respondents' distributors and dealers, in the course and conduct of their business in distributing, offering for sale and selling of Fashion Two Twenty Cosmetics are in substantial competition in commerce with one another, and corporate respondent and its distributors are in substantial competition in commerce with other firms or persons engaged in the manufacture or distribution of similar products.

PAR. 6. Respondents have formulated a distribution system involving four levels of distributors or dealers. The respondent corporation sells its products directly to "Directors," the highest level in the distribution network. Directorships are sold by the respondent corporation for a fee of approximately $10,000. For this fee the director is allotted and

restricted to a territory covering approximately 250,000 people, and the agreement of respondent corporation that it will not establish another distributorship in that area, or authorize the establishment or maintenance of a cosmetics studio therein by anyone other than the contracting director. Respondent corporation sells its cosmetic products to directors at approximately a 70 percent discount off the retail prices.

The level of distributor below director is that of "Associate Director." An associate director pays a fee of approximately $1,400 to $8,000 for his distributorship, which fee is split equally between respondent corporation and the sponsoring director, The director resells the cosmetic products to his associate director at discounts ranging approximately from 62 percent to 66 percent of the retail list price, which figure includes additional discounts, depending on the associate director's monthly volume of sales.

The associate director (or director if there is no associate director in a given area) then resells the cosmetic products to "Managers" or "Beauty Consultants," which are the two lowest levels in the distribution network. The participants at these lower levels are recruited by the director or associate director. The associate director (or director) for the area in which a particular manager or beauty consultant operates sells the cosmetic products at discounts ranging from approximately 35 percent to 49 percent off the list price, including additional discounts. A beauty consultant who achieves a certain qualifying volume may become a manager, and purchase the cosmetic products at discounts ranging from approximately 50 percent to 56 percent off the list price, including additional discounts, depending upon the volume purchased.

Beauty consultants, managers and associate directors all sell respondent corporation's products at retail to the ultimate consumer. While directors for the most part sell only at wholesale, they do occasionally sell to the ultimate consumer as well. The method by which the beauty consultant normally sells respondent corporation's cosmetics products to the public is the "party plan." Under this plan, the beauty consultant arranges with various women to serve as hostesses for beauty shows given in their homes. During such home beauty shows or parties, the beauty consultant, using one of the guests as a model, demonstrates the procedures and techniques for the proper use of respondent corporation's products, and following such demonstration, seeks to sell the company's products.

PAR. 7. All distributors or dealers are independent contractors; they are required to abide by all the rules and regulations of respondents, agree to do so and are threatened with termination for failure to do so. Certain of those are the following:

1. Associate directors and directors enter into franchise agreements

with respondents which provide in part that respondents will not establish another distributorship in the area described therein, or permit the establishment or maintenance of a cosmetics studio therein by any one other than the contracting distributor.

2. A sponsored associate director must obtain respondent corporation's approval for a franchise, and if the franchised area is within an area franchised to an existing director, the sponsored associate director must also obtain the approval of said director.

3. Beauty consultants agree not to recruit and sign up as a consultant under their sponsorships a persons who is either a customer of another beauty consultant, or someone who is already a beauty consultant.

4. Other cosmetics companies' distributors may not be sponsored into respondents' program.

5. All purchases of respondents' products by any distributor or dealer must be made from the sponsoring manager, associate director, or director.

6. Respondents' products may not be sold in retail stores or beauty salons.

7. Directors are required to sell respondents' cosmetic products to their associate directors at approximately a 62 percent discount, f.o.b. the directors' place of business.

8. Directors agree to pay their associate directors their share of additional discounts on a monthly basis, with payment within thirty (30) days of the end of the month in which the associate directors qualified for such additional discount.

9. Directors, associate directors and managers must pay refund bonuses (based upon monthly volume) to consultants by the fifth day of the following month, and directors and associate directors must pay refund bonuses to managers by the tenth day of the following month.

10. All beauty consultants must buy respondents' products from their managers, associate directors or directors at wholesale prices established by the respondents, and distributors or dealers are required to sell to the consuming public at the resale prices published and established on respondents' price schedules.

11. Directors agree to maintain accurate monthly records of purchases of products by their associate directors, and to promptly report these purchases to respondent corporation no later than the tenth day of the following month.

12. Associate directors agree to keep accurate and complete monthly records of sales of all products and make same available to respondent corporation.

13. Associate directors and directors must pay refund bonuses due a

consultant of manager within ten (10) days of the date of termination of a consultant's agreement.

14. Respondent corporation agrees to pay refund bonuses earned if it is unsuccessful in attempting to cause distributors to pay bonuses due.

15. Beauty consultants must send copies of their retail orders directly to respondent corporation after a sale is made.

16. All distributors or dealers are required to buy from and sell to one another on a cash basis.

17. Beauty consultants are not permitted to advance monies to their managers, associate directors or directors, to be held on deposit in anticipation of future deliveries.

18. Directors and associate directors may distribute or deal in no products or merchandise other than that manufactured, sold or distributed by respondent corporation.

19. Beauty consultants may not enter into or engage in any similar or competitive business.

20. All distributors agree not to develop or create advertising literature or sales aids without the prior authorization of respondent corporation.

21. Distributors who are separated are required to refrain from engaging in similar business activities throughout the United States for a period of three (3) years.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 8. The allegations of Paragraphs One through Seven are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 9. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of the allocation of the territories in which various of respondents' distributors or dealers may resell their products or otherwise engage in legitimate selling activities.

Said acts, practices, and methods of competition, engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting or likely to result therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 10. The allegations of Paragraphs One through Seven are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of, restricting the customers to whom respondents' distributors or dealers may sell their products, restricting the sources from which respondents' distributors or dealers may obtain their products, and restricting and preventing distributors and dealers from reselling or allowing their products to be sold in retail stores or beauty salons.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting or likely to result therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 12. The allegations of Paragraphs One through Seven are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 13. The acts, practices, and methods of competition engaged in, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of, fixing, maintaining or otherwise controlling the prices and terms or conditions of sale at which respondents' products are sold, in both the wholesale and retail markets; and fixing, maintaining or otherwise controlling various fees, discounts or rebates required to be paid by one distributor or dealer to another distributor or dealer.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting or likely to result therefrom consitiute unreasonable restraints of trade and unfair methods of competition in commerce

within the intent and meaning of Section 5 of the Federal Trace Commission Act, as amended.

COUNT IV

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 14. The allegations of Paragraphs One through Seven are incorporated by reference in Count IV as if fully set forth verbatim.

PAR. 15. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because the selling of products and the granting of distributorships or dealerships is on the condition, agreement or understanding that said distributors or dealers shall not use, sell or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor of respondent corporation, or of another supplier.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 16. The allegations of Paragraphs One through Seven are incorporated by reference in Count V as if fully set forth verbatim.

PAR. 17. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of restricting or prohibiting distributors or dealers from advertising their products or services in a manner which they may unilaterally deem to be in their best interests, and restricting distributors as to the financial and marketing arrangements which they may choose to enter into with businesses or individuals of their choice.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting therefrom, consititute unreasonable restraints of trade

and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VI

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 18. The allegations of Paragraphs One through Seven are incorporated by reference in Count VI as if fully set forth verbatim.

PAR. 19. The acts, practices, or methods of competition engaged in, pursued, followed or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of restricting or prohibiting competition by former distributors in the same or similar type of business.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of Section 5 of the Federal Trade Commission Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in said complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges

in that respect and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Fashion Two Twenty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Route 43, Aurora, Ohio.

2. Respondent Vernon G. Gochneaur is chairman of the board of directors, a member of the executive committee, chief executive officer and largest shareholder of Fashion Two Twenty, Inc. Together with others, he formulates, directs and controls the policies, acts and practices of said corporation and his business address is the same as that of said corporation.

3. Respondent Roger V. Gochneaur is the president, a member of the executive committee, and a director of Fashion Two Twenty, Inc. Together with others, he formulates, directs and controls the policies, acts and practices of said corporation, and his business address is the same as that of said corporation.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent Fashion Two Twenty, Inc., a corporation, its officers, agents, representatives, employees, successors and assigns, and respondents Vernon G. Gochneaur and Roger V. Gochneaur, as officers and directors of Fashion Two Twenty, Inc., their agents, representatives or employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, or distribution of goods or commodities in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Requiring, coercing, contracting or entering into an agreement with any distributor or dealer to refrain from selling or sales activities in any geographic area of his choosing; *Provided, however*, That the definition of sales activities shall not include the establishment of a place of business as a physical entity.

2. Requiring or coercing any distributor or dealer into obtaining the approval of any other distributor or dealer as a prerequisite for engaging in any business activities.

3. Requiring, agreeing with or coercing any distributor or dealer to refrain from selling any merchandise in any quantity to or through any specified person, class of persons, business or class of business.

4. Requiring, agreeing with or coercing any distributor or dealer into purchasing product needs only from those persons who sponsored or recruited him into respondents' program, or into whose organizations they have been assigned.

5. Requiring, agreeing with or coercing any distributor or dealer into obtaining the approval or permission of any other distributor or dealer prior to sponsoring another person into the sales organization of the recruiting distributor.

6. Requiring, agreeing with or coercing any distributor or dealer to refrain from sponsoring or recruiting persons who are customers of other distributors or dealers.

7. Fixing, establishing, maintaining or otherwise controlling the prices, discounts, rebates, overrides or terms or conditions of sale upon which goods or commodities may be resold.

8. Requiring, agreeing with or coercing any distributor or dealer to pay a refund, bonus or other consideration or thing of value to any other distributor or dealer, or require any such payment by a specified date or time period.

9. Requiring, agreeing with or coercing any distributor or dealer into making pricing information available either to respondents or to any other distributor or dealer.

10. Requiring, agreeing with or coercing any distributor or dealer into forwarding retail orders or copies thereof to respondents.

11. Requiring, agreeing with or coercing any distributor or dealer to refrain from advancing monies to other distributors or dealers.

12. Requiring, agreeing with or coercing any distributor or dealer to buy from or sell to any other distributor or dealer on a cash basis only.

13. Requiring, agreeing with or coercing any distributor or dealer to refrain from purchasing merchandise or equipment or contracting for services with persons of his own choosing.

14. Requiring, agreeing with or coercing any distributor or dealer to refrain from distributing or dealing in the products of a competitor of respondents, or of another cosmetic company, so long

as such competitor or other cosmetic company does not falsely represent respondents as the source of its products.

15. Requiring, agreeing with or coercing any distributor or dealer to refrain from recruiting distributors or dealers of other cosmetic companies.

16. Requiring, agreeing with or coercing any distributor or dealer to refrain from developing or creating any advertising literature or sales aids which he may choose to; *Provided, however,* That respondents may require submission thereof and approval by respondents prior to their use; *And provided further* That respondents may not require that the material submitted include territorial references and price quotations, and respondents may not withhold approval of such material because such information is lacking.

17. Requiring, agreeing with or coercing any terminated, former or separated distributor or dealer to refrain from selling, distributing or dealing in any product of a competitor, like, similar, or related to respondents' products.

II

1. Nothing contained herein shall prevent respondents from availing themselves of the benefits, if any, accruing to them by virtue of the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act.

2. Nothing contained herein shall prevent respondents from complying with the provisions of Paragraphs 7 and 14 of the court order duly entered in United States District Court, Eastern District of New York, entitled *Fashion Two Twenty, Inc.* v. *Rudolph Steinberg, et al.*, civil action No. 71 Civ. 665, and Paragraphs 7 and 16 of the court order duly entered in United States District Court, Northern District of Indiana, entitled *Fashion Two Twenty, Inc.* v. *Marjo, Inc., et al.*, civil action No. 72 F. 71; said paragraphs to expire June 13, 1974 and Sept. 13, 1973, respectively.

III

It is further ordered, That respondent Fashion Two Twenty, Inc., within sixty (60) days from the effective date of this order, shall:

1. Mail or deliver a conformed copy of this order to cease and desist to all directors, associate directors, persons performing the functions of directors and associate directors, and other persons known by it to have received copies of the prior "How Manual," and who are known to it to be engaged in the sale or distribution of respondent's products or services.

2. Offer distributorships or dealerships to any former distributor or dealer who was terminated or suspended by respondent solely for the violation of any rule, regulation or policy which contravenes any of the provisions of this order.

It is further ordered, That respondent shall furnish a conformed copy of this order to all future directors, associate directors, and persons performing the functions of directors and associate directors.

IV

It is further ordered, That the respondents herein shall within sixty (60) days from the effective date of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IN THE MATTER OF

P. J. NEE COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF THE TRUTH IN LENDING AND FEDERAL TRADE COMMISSION ACTS

Docket C-2475. Complaint, Nov. 12, 1973—Decision, Nov. 12, 1973

Consent order requiring a Rockville, Md., retailer and distributor of furniture, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Bernard Rowitz*.

For the respondent: *Francis X. Quinn*, Rockville, Md.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act, and the implementing regulation promulgated thereunder, 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

P. J. Nee Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, 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 1. Respondent P. J. Nee Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 1800 Rockville Pike, Rockville Md.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale and retail sale and distribution of furniture to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondent regularly extends consumer credit, as "consumer credit" is 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.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course of their business, as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute retail installment contracts, hereinafter referred to as "the Contract." By and through the use of the contract respondent:

1. Failed to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c) (2) of Regulation Z.

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

3. Failed to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c) (7) of Regulation Z.

4. Failed to disclose the term "finance charge" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

5. Failed to employ the term "annual percentage rate," as required by Section 226.6(a) of Regulation Z.

6. Failed to disclose the sum of the cash price, all 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 required by Section 226.8(c) (8) (ii) of Regulation Z.

7. Failed to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

8. Failed to disclose the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b) (7), of Regulation Z.

9. Failed to make all the required disclosures in one of the following three ways, in accordance with Section 226.8(a) of Regulation Z:

(a) Together on the contract evidencing the same side of the page and above or adjacent to the place for the customer's signature; or

(b) On one side of a separate statement which identifies the transaction; or

(c) On both sides of a single document containing on each side thereof the statement "Notice: See other side for important information," with the place for the customer's signature following the full content of the document.

10. Failed in some instances to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of the Regulation Z constitutes violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in

that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent P. J. Nee Company, is a corporation orgainzed, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1800 Rockville Pike, city of Rockville, State of Maryland.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent P. J. Nee Company, a corporation, 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 of consumer credit or 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 (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c) (2) of Regulation Z.

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

3. Failing to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c) (7) of Regulation Z.

4. Failing to disclose the term "finance charge" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

5. Failing to employ the term "annual percentage rate," as required by Section 226.6(a) of Regulation Z.

6. Failing to disclose the sum of the cash price, all 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 required by Section 226.8(c) (8) (ii) of Regulation Z.

7. Failing to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

8. Failing to disclose the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b) (7), of Regulation Z.

9. Failing to make all the required disclosures in one of the following three ways, in accordance with Section 226.8(a) of Regulation Z.

(a) Together on the contract evidencing the same side of the page and above or adjacent to the place for the customer's signature; or

(b) On one side of a separate statement which identifies the transaction; or

(c) On both sides of a single document containing on each side thereof the statement "Notice: See other side for important information," with the place for the customer's signature following the full content of the document.

10. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

11. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.8, and 226.10 of Regulation Z.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the computation, preparation or execution of consumer credit documents or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission

a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

ECONOMY RUG COMPANY, INC., TRADING AS KIM RUG COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF THE TEXTILE FIBER PRODUCTS IDENTIFICATION AND FEDERAL TRADE COMMISSION ACTS

Docket C-2476. Complaint, Nov. 19, 1973—Decision, Nov. 19, 1973

Consent order requiring a Dalton, Ga., purchaser and wholesaler of carpeting, among other things, to cease misbranding its textile fiber products, and failing to maintain records as required by the Textile Fiber Products Identification Act.

Appearances

For the Commission: *Joel Thwaites.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Textile Fiber Products Identification Act, Rule 39 of the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Economy Rug Company, Inc., a corporation, d/b/a Kim Rug Company and Scott Rug Company and William B. Chitwood, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act, 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 1. Respondent Economy Rug Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. The respondent corporation maintains its office and principal place of business at 508 South Spencer Street, Dalton, Ga.

Respondent William B. Chitwood is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the

corporate respondent, including those hereinafter referred to. His address is the same as that of the corporate respondent.

Respondents are engaged in the business of purchasing carpet remnants, to include finished and unfinished carpet rolls, as well as rugs, from various sources and the wholesaling of such in the form of carpet rolls and rugs. Respondents are also engaged in the business of purchasing carpet yarns from various sources, tufting such into carpet rolls, or having such tufted into carpet rolls to their specifications, and the wholesaling of such carpet rolls, or area or throw rugs made from such carpet rolls.

PAR. 2. Respondents are now and for some time last past have been engaged in the 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 sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. 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 Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act. Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely area rugs and carpet rolls, which did not have labels affixed thereto disclosing:

1. The percentages of the fibers present by weight.
2. The generic names of the fibers present.
3. The name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to Section 3 with respect to such product.

Also among such textile fiber products, but not limited thereto, were textile fiber products, namely area rugs, which had labels affixed thereto disclosing a registered identification number assigned to a firm which was neither the manufacturer of the product, nor a firm or person subject to Section 3 with respect to such product.

PAR. 4. 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 that in disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or

paddings, such disclosure was not made in such a manner as to indicate that such required fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

PAR. 5. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products fabricated from their yarns and manufactured to their specifications, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the regulations promulgated thereunder.

PAR. 6. Respondents, in violation of Section 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 therefore labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 7. Respondents in substituting stamps, tags, labels, or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act have not maintained such records as will show the information set forth on those stamps, tags, labels, or other identification removed, together with the name or names of the person or persons from whom such textile fiber products were received, in violation of Section 6(b) of the Textile Fiber Products Identification Act.

PAR. 8. 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 methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and Rule 39 of the regulation promulgated thereunder.

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft

of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating the charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedures prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Economy Rug Company, Inc., is a corporation d/b/a Kim Rug Company and Scott Rug Company organized, existing and doing business under and by virtue of the laws of the State of Georgia. Its general offices and principal place of business are located at 508 South Spencer Street, Dalton, Ga.

Respondent William B. Chitwood is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including those hereinafter referred to. The address of William B. Chitwood is the same as the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Economy Rug Company, Inc., a corporation, its successors and assigns, also doing business as Kim Rug Company and Scott Rug Company, or any other name, and its officers, and William B. Chitwood, 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 introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, or any textile fiber product which has been advertised or offered for sale in commerce; or 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 terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding such textile fiber products by failing to affix a stamp, tag, label, or other means of identification to each such textile fiber product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to disclose on labels the required fiber content information as to floor coverings, containing exempted backings, fillings, or paddings, in such manner as to indicate that it relates only to the face, pile or outer surface of the floor covering and not to the exempted backing, filling or padding.

C. Failing to maintain and preserve, as required by Section 6(b) of the Textile Fiber Products Identification Act, 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 Section 5(b) of the Textile Fiber Products Identification Act.

D. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondents, as required by Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the regulations promulgated thereunder.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, Economy Rug Company, Inc., such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents deliver a copy of this order to

cease and desist to all present and future personnel of proposed respondents engaged in the offering for sale, or sale of any product, and that proposed respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

TEXAS INDUSTRIES, INC.

Docket 8656. Complaint, Jan. 22, 1965—Modifying Order, Nov. 20, 1973

Order reopening proceedings and modifying the last paragraph of Part I of a consent order to cease and desist, 68 F.T.C. 992, 30 F.R. 1004, by increasing from 35% to 50% the limitation on the amount of all portland cement supplied each year by respondent for consumption by the divested ready-mix facility (as long as it retains a security interest in any of the divested assets).

Appearances

For the Commission: *James T. Halverson.*

For the respondent: *Locke, Purnell, Boren, Laney & Neely*, Dallas, Tex. and *Covington & Burling*, Washington, D. C.

ORDER REOPENING PROCEEDING AND MODIFYING CONSENT ORDER

The respondent in this matter, Texas Industries, Inc., moves for a reopening of this proceeding and a modification of the consent order entered herein on Dec. 3, 1965.

The December 3, 1965 order required the respondent to divest certain ready-mix concrete facilities located in Shelby County, Tenn., to a purchaser or purchasers approved by the Commission within two years from the effective date of the order. The divestiture was accomplished. The order also prohibits Texas Industries, so long as it retains a security interest with respect to any of the assets divested, from supplying in any calendar year more than 35 percent of the cement purchased by Fischer Concrete Company, Inc., the acquirer of the divested ready-mix facilities, for consumption in the divested plants. The order further provides that Texas Industries' sales of cement for consumption in the divested ready-mix concrete facilities as the result of the specification by a customer in an oral or written agreement with the operator of the facilities are not to be taken into consideration in computing the amount of cement supplied or consumed.

A controversy has developed over whether the order allows respondent to exceed the 35 percent cement supply limitation as a result of specifications for Texas Industries' cement that were directly solicited by it. The modification sought would amend the pertinent paragraph and place a 50 percent limit on the amount of all portland cement supplied each year by respondent for consumption by the divested ready-mix facility (as long as it retains a security interest in any of the divested assets). Calculation of the 50 percent limitation would include cement supplied or consumed as a result of specification by a customer for respondent's cement.

The Bureau of Competition in their answer to the petition agrees that the order should be so modified, stating that change represents a workable accommodation to the views of both parties.

The Commission has reviewed the grounds requested for the change and finds that it would be in the public interest to grant the petition.

Accordingly,

It is ordered, That the paragraph in Part I of the order, beginning on page 3 thereof (68 F.T.C. at 998), be, and it hereby is, amended to read as follows:

Nothing in this paragraph shall be deemed to prohibit Texas Industries from retaining, accepting and enforcing bona fide liens, mortgages, deeds of trust or other forms of security on all or parts of the assets required to be divested hereunder for the purpose of securing to Texas Industries full payment of the price at which said assets are disposed of or sold, or to prohibit Texas Industries from accomplishing the required divestiture in whole or in part by means of a lease-purchase agreement or agreements, or a conditional sale or sales, pursuant to which Texas Industries retains title to the assets until the purchase price is fully paid; *Provided*, *however*, That if, after bona fide disposal pursuant to the divestiture order, Texas Industries, by enforcing a bona fide lien, mortgage, deed of trust or other form of security, or by reason of the purchaser's failure to comply with the terms of a lease-purchase agreement or conditional sale agreement when and as required, regains control of any of said assets Texas Industries shall divest itself of said assets within twelve months from the time of said reacquisition to a purchaser or purchasers approved by the Federal Trade Commission, and *Provided further*, That so long as Texas Industries retains a security interest with respect to any of the assets divested hereunder, or with respect to assets as to which divestiture is made by lease-purchase or conditional sale agreement any part of the sale price remains unpaid and owing, Texas Industries shall not in any calendar year commencing in the year 1973 supply more than fifty

percent of the portland cement purchased by the purchaser of said assets for consumption in ready-mix concrete producing facilities divested hereunder.

IN THE MATTER OF

GENERAL ELECTRIC COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 8 OF THE CLAYTON ACT

Docket C-2477. Complaint, Nov. 26, 1973—Decision, Nov. 26, 1973

Consent order requiring a New York City manufacturer and seller of residential and commercial air conditioners, among other things to cease interlocking from directors with Chyrsler Corporation so long as they compete in the manufacture and sale of any product.

Appearances

For the Commission: *Jonathan Gaines* and *Allee A. Ramadhan.*
For the respondent: *Weil, Gotshal & Manges*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent has violated the provisions of Section 8 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the interest of the public, issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent General Electric Company (General Electric) is a corporation organized and existing under and by virtue of the laws of the State of New York, maintaining its principal place of business at 570 Lexington Avenue, New York, N.Y. At all times relevant to this complaint, General Electric had capital, surplus, and undivided profits aggregating in excess of 2 billion dollars. In 1971 General Electric had revenues of approximately 9.4 billion dollars.

PAR. 2. Chrysler Corporation (Chrysler) is a corporation organized and existing under and by virtue of the laws of the State of Delaware, maintaining its principal place of business at Detroit, Mich. At all times relevant to this complaint, Chrysler had capital, surplus, and undivided profits aggregating in excess of 1 billion dollars. In 1971 it had revenues of approximately 8 billion dollars.

PAR. 3. Mr. Edmund W. Littlefield is a resident of the State of California. In 1964 he was elected to the board of directors of General Electric and has served in that capacity from the time of his election to

and including the date of this complaint. In 1969 he was elected to the board of directors of Chrysler, and he was a director of Chrysler from that time until Mar. 22, 1973. He resigned from Chrysler's board of directors after having been notified of the Commission's intention to issue a complaint in this matter.

PAR. 4. General Electric's and Chrysler's respective businesses each encompasses the manufacture and sale of residential and commercial air conditioners.

PAR. 5. (a) General Electric and Chrysler by the nature of their business and location of operations are competitors of each other with respect to residential and commercial air conditioners.

(b) The elimination of competition by agreement between General Electric and Chrysler would hinder, foreclose, and restrain competition or tend to create a monopoly in the residential and commercial air conditioner markets.

PAR. 6. (a) The products referred to in Paragraph Four are sold and distributed by General Electric and Chrysler from locations in various States of the United States to purchasers located in many other States of the United States.

(b) General Electric and Chrysler each engages in commerce as that term is defined in the Clayton Act and Federal Trade Commission Act.

PAR. 7. The director interlock, as hereinabove alleged, constitutes a violation of Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty

(30) days, and having duly considered the comment filed thereafter pursuant to Section 2.34 (b) of its rules, now in further conformity with the procedure prescribed in Section 2.34 (b) of its rules, the Commission hereby issues its complaint, in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent General Electric is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 570 Lexington Avenue, New York, N.Y.

2. The Federal Trade Commission had jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the pubic interest.

ORDER

I

It is ordered, That respondent General Electric Company (General Electric), a corporation, its successors and assigns, do forthwith cease and desist from interlocking the directors of said respondent with Chrysler Corporation (Chrysler) through Edmund W. Littlefield, or any other individual, so long as said respondent and Chrysler, by virtue of their business and location of operation, compete in the manufacture and sale of any product.

II

It is further ordered, That respondent, for a period ending five years from the date of this order shall, within 30 days after the service upon it of this order and prior to the election of any director to its board, transmit to each such candidate or director a copy of this complaint and order together with a request that said director identify in writing to respondent the principal product or products manufactured and sold by each other corporation having capital, surplus, and undivided profits in excess of $1,000,000 on whose board of directors he/she also serves.

III

It is further ordered, That for a period ending five years from the date of this order, if any director or any candidate for director of respondent shall fail to respond to respondent's request pursuant to Paragraph II above, respondent shall not permit said director or candidate to serve on its board of directors; or if any director or any candidate shall pursuant to Paragraph II above identify as a principal product of such corporation on whose board he/she also serves, a product which is also a principal product of respondent, respondent shall not permit said director or candidate to serve on its board of directors so long as (a) said

product continues to be a principal product of respondent and, pursuant to Paragraph II above, continues to be identified as a principal product of the other corporation on whose board said director serves and (b) respondent, by virtue of its business and location of operation is a competitor of said corporation in the manufacture and sale of said product, and (c) said director or candidate continues to serve on the board of the other thus competing corporation.

IV

It is further ordered, That respondent General Electric notify the Commission at least 30 days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of this order.

V

It is further ordered, That respondent herein shall, within 60 days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

CITY INVESTING COMPANY, ET AL.

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

Docket C-2478. Complaint, Dec. 3, 1973—Decision, Dec. 3, 1973

Consent order requiring a New York City holding company and one of its enterprises engaged in the manufacture and sale of residential central air conditioning equipment, among other things to cease misrepresenting the comparative qualities or properties of their products; making statements as to their products' performance characteristics without substantiation backing-up such representations; and failing to maintain accurate records. Further, respondents are required to maintain documenting records for a three-year period following future performance characteristics claims.

Appearances

For the Commission: *James P. Carty* and *Kermit C. Morrison.*
For the respondents: *Daniel H. Brown*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that City Investing Company, a

corporation and Rheem Manufacturing Company, a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, 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 1. Respondent City Investing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal offices and place of business located at 767 Fifth Avenue, New York, N.Y.

Respondent Rheem Manufacturing Company, is a wholly-owned corporate subsidiary of City Investing Company, and is organized, existing, and doing business under and by virtue of the laws of the State of California with its principal offices and place of business located at 400 Park Avenue, New York, N.Y.

The aforesaid respondents cooperate and act together in carrying out the acts and practices herein set forth.

PAR. 2. Respondent City Investing Company, is now, and for some time last past has been, engaged in holding diversified industrial and real estate enterprises, including, but not limited to, Rheem Manufacturing Company.

Respondent Rheem Manufacturing Company, is now, and for some time last past has been, engaged in the manufacturing, advertising, sale, and distribution of, among other items, Corsaire and Rheemaire brand residential central air conditioning equipment.

PAR. 3. Respondents City Investing Company and Rheem Manufacturing Company cause the said products, when sold to be transported from their place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents City Investing Company and Rheem Manufacturing Company have been and now are in substantial competition in commerce, with corporations, firms, and individuals in the sale of products of the same kind and nature as that sold by said respondents.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of Corsaire and Rheemaire residential central air conditioning equipment, the respondents have made,

and are now making, numerous statements and representations in advertisements and commercials with respect to said products.

Typical and illustrative of said statements and representations, but not inclusive thereof, are the following excerpts:

(1) And because it's Rheem you know you're getting the * * * most efficient central cooling you can get.

(2) The revolutionary cooling * * * system that reconditions and refreshes inside air every second.

(3) And because it's Rheem, you know you're getting the quietest * * * central cooling you can get.

PAR. 6. Through the use of said advertisements, and others not specifically set out herein, respondents have represented and are now representing, directly or by implication, that:

(1) Rheem Manufacturing Company residential central air conditioning systems are the most efficient central cooling systems one can buy;

(2) Rheem Manufacturing Company residential central air conditioning systems are revolutionary cooling * * * systems that recondition and refresh inside air every second, making Rheem systems more advanced than other systems available to consumers.

PAR. 7. In truth and in fact:

(1) Rheem Manufacturing Company residential central air conditioning systems are not the most efficient central cooling systems one can buy;

(2) Rheem Manufacturing Company residential central air conditioning systems are not revolutionary cooling systems, but are similar to other systems available to consumers.

Therefore, the statements and representations as set forth in Paragraphs Five and Six were and are false, misleading and deceptive.

PAR. 8. Through the use of said advertisements, and others not specifically set out herein, respondents have also represented and are now representing, directly or by implication, that:

(1) Rheem residential central air conditioning systems are the quietest systems available to consumers, in comparison with like systems made by other manufacturers;

(2) At the time they made the representation set forth in Section (1) of this paragraph, they had a reasonable basis from which to conclude that Rheem residential central air conditioning systems were the quietest systems available to consumers, in comparison with like systems made by other manufacturers.

PAR. 9. In truth and in fact, at the time the representation set forth in Section (1) of Paragraph Eight was made, respondents had no reasonable basis from which to conclude that Rheem residential central air conditioning systems were the quietest systems available to con-

sumers, in comparison with like systems made by other manufacturers.

Therefore, the statements and representations as set forth in Paragraphs Five and Eight were and are false, misleading and deceptive.

PAR. 10. Furthermore, the making of the representation that Rheem Manufacturing Company residential central air conditioning systems are the quietest systems available to consumers, without a reasonable basis for making such representation, is in itself an unfair act or practice in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 11. The use by respondents of the aforesaid false, misleading, and deceptive acts or practices and the heretofore described unfair act or practice has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair or deceptive acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, a statement that solely for the purpose of the consent agreement and order the respondents shall not contest the jurisidictional facts set forth in Paragraphs 1, 2, 3, 4, and 12 of the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint

in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent City Investing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 767 Fifth Avenue in the city of New York, State of New York.

Respondent Rheem Manufacturing Company is a wholly-owned corporate subsidiary of City Investing Company, and is organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 400 Park Avenue, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents City Investing Company and Rheem Manufacturing Company, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Rheem Manufacturing Company residential air conditioning products or systems, do forthwith cease and desist from:

1. Representing, directly or by implication, that Rheem Manufacturing Company residential air conditioning products or systems are:

(a) The most efficient cooling products or systems available unless, at the time such representation is made, respondents have a reasonable basis for such representation, which shall consist of competent scientific tests, or industry-wide standards based on such tests established by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc. or other standards for comparing the efficiency of residential air conditioning products promulgated by similar organizations and based on competent scientific tests.

(b) Revolutionary or more advanced products or systems as compared to those offered by competitors because they recondition and refresh inside air every second; or representing in any manner that any such products or systems are revolutionary or more advanced than other products or systems in any respect unless the characteristics which actually render the products or systems more revolutionary or more advanced

are clearly and conspicuously disclosed in immediate conjunction therewith.

2. Representing, directly or by implication, that Rheem Manufacturing Company residential air conditioning products or systems are the quietest such products or systems available to consumers unless, at the time such representation is made, respondents have a reasonable basis for such representation, which shall consist of competent scientific tests, or industry-wide standards based on such tests established by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc. or other standards for comparing sound or noise levels of residential air conditioning products promulgated by similar organizations and based on competent scientific tests.

3. Making, directly or by implication, any other statements or representations as to the performance characteristics of any residential air conditioning products or systems unless, at the time of such representations or statements, respondents have a reasonable basis for making such representations or statements which shall consist of competent scientific, engineering, or other similar objective material.

4. Failing to maintain accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) Which consist of documentation to support any and all claims made after the effective date of this order in advertising or sales promotion material concerning the performance characteristics of any and all residential air conditioning products or systems;

(b) Which provided the basis upon which respondents relied as of the time those claims were made; and

(c) Which shall be maintained by respondents for a period of three years from the date such advertising or sales promotion material was last disseminated.

It is further ordered, That each respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions involved in the advertising promotion, distribution, or sale of Rheem residential air conditioning products or systems.

It is further ordered, That respondents shall notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

ECCLES MOTOR COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE TRUTH IN LENDING AND FEDERAL TRADE COMMISSION ACTS

Docket C-2479. Complaint, Dec. 3, 1973—Decision, Dec. 3, 1973

Consent order requiring a Klamath Falls, Oreg., retailer of new and used motor vehicles, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Stephen A. Kikuchi* and *Thornton P. Percival.*
For the respondents: *Richard C. Beesley*, Klamath Falls, Oreg.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, 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 Eccles Motor Company, a corporation and Julian W. Eccles, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and implementing 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 in that respect as follows:

PARAGRAPH 1. Respondent Eccles Motor Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 606 South Sixth Street, Klamath Falls, Oreg.

Respondent Julian W. Eccles is an individual and an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been

engaged in the offering for sale, and retail sale of new and used motor vehicles to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is 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.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing their customers to execute a binding order, hereinafter referred to as the "Order Contract." Respondents do not provide these customers with any other consumer credit cost disclosures before the transaction is consummated, except in those instances noted in Paragraph Five below, when respondents furnish a retail installment contract.

By and through the use of the order contract, respondents:

1. Fail in some instances to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the vehicle, as required by Section 226.8(c)(1) of Regulation Z.

2. Fail to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c) (2) of Regulation Z.

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

4. Fail to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8 (c) (7) of Regulation Z.

5. Fail to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the "finance charge," as required by Section 226.8 (c) (8) (i) of Regulation Z.

6. Fail to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8 (b) (2) of Regulation Z.

7. Fail to disclose the sum of the cash price, all 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 required by Section 226.8 (c) (8) (ii) of Regulation Z.

8. Fail in some instances to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as required by Section 226.8 (b) (3) of Regulation Z.

9. Fail to identify the amount or the method of computing the amount

of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8 (b) (4) of Regulation Z.

10. Fail to describe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8 (b) (5) of Regulation Z.

11. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8 (b) (7) of Regulation Z.

12. Fail to furnish customers with a duplicate of the instrument or a statement on which the disclosures prescribed by Sections 226.8 of Regulation Z are made, as required by Section 226.8 (a) of Regulation Z.

PAR. 5. Subsequent to July 1, 1969, respondents, in the ordinary course of business, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute, in addition to said order contract, a retail installment contract, hereinafter referred to as the "Installment Contract." In some instances, respondents furnish the customer with a copy of the installment contract before the transaction is consummated but do not make any other consumer credit cost disclosures, with the exception of those set forth in the order contract.

By and through such use of the installment contract, respondents:

1. Fail in some instances to obtain specific dated and separately signed affirmative written indication of the customer's desire for credit life and disability insurance, as required by Section 226.4 (a) (5) (ii) of Regulation Z.

2. Fail in some instances to furnish to the customer before the transaction is consummated, a duplicate of the instrument or a statement on which the disclosures prescribed by Section 226.8 of Regulation Z are made, as required by Section 226.8 of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules;

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Eccles Motor Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 606 South Sixth Street, Klamath Falls, Oreg.

Respondent Julian W. Eccles is an individual and an officer of the said corporation. He formulates, directs and controls the policies, acts and practices of the corporation, and his address is the same as that of the corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Eccles Motor Company, a corporation, and its officers, and Julian W. Eccles, individually and as an officer of said corporation, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or 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 (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of the vehicle, as required by Section 226.8(c)(1) of Regulation Z.

2. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

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

4. Failing to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8(c)(7) of Regulation Z.

5. Failing to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

6. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

7. Failing to disclose the sum of the cash price, all 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 required by Section 226.8(c)(8)(ii) of Regulation Z.

8. Failing to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe said sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

9. Failing to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

10. Failing to describe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

11. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

12. Failing to obtain specific dated and separately signed affirmative written indication of the customer's desire to have insurance coverage, after furnishing to him a clear written disclosure of the cost of such insurance as provided in Section 226.4(a)(5)(ii).

13. Failing to furnish to the customer, before the transaction is consummated, a duplicate of the instrument or a statement on

which the disclosures prescribed by Section 226.8 of Regulation Z are made, as required by Section 226.8(a) of Regulation Z.

14. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, at the time and in the manner, form and amount required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation or placing of advertising, and that respondent secure from each person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

It is further ordered, That the individual respondent named herein notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

BERKEY PHOTO, INC.

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

Docket C-2480. Complaint, Dec. 5, 1973—Decision, Dec. 5, 1973

Consent order requiring a New York City seller of film and photo processing services,

among other things to cease misrepresenting merchandise as free; misrepresenting the terms, conditions and extent of any guarantee; misrepresenting services offered by respondent, misrepresenting the size or extent of respondent's business; misrepresenting the nature of their business; misrepresenting percentage savings; misrepresenting refunds. Further, respondents are ordered to maintain for a minimum of two years copies of all promotional material made for distribution of film and/or inducing mail order finishing of amateur photographic film.

Appearances

For the Commission: *Jerry W. Boykin* and *Richard C. Donohue.*

For the respondent: *James M. Nicholson, Nicholson & Carter,* Wash., D.C. and *Henry Flattau, Parker, Chapin & Flattau,* New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Berkey Photo, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, 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 1. Respondent Berkey Photo, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 77 East Thirteenth Street, New York, N.Y.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution to the public of mail order photofinishing; *i.e.,* the developing, printing and processing of color negative and black and white photographic film sold for amateur use. Respondent sells film and processing services under several trade names, including Multi-Print, Just-Rite Film Co., Pictures U.S.A., Camera Club of America, Processing Laboratories, Springfield Photo Service, Champaign Photo Service, Keystone Club, Milford Photo Service, and Mail-A-Way Photo Service.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, its color negative and black and white photographic film, coupled with a film processing offer, when distributed, to be mailed from its place of business in the State of New York to prospective purchasers located in the various States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business and for the purpose of distributing a cartridge or roll of film and inducing the mail order finishing of aforesaid photographic film, the respondent has made, and is now making, numerous statements and representations in advertisements inserted in newspapers and magazines disseminated through the mails, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, coupon solicitations, requests for film attached to general merchandise, direct mail and in-store solicitations of literature and promotional material. Typical and illustrative of the foregoing, but not all-inclusive thereof, are the following:

FREE Kodak Film with low cost processing.
You need never buy film again.
We guarantee that Multi-Print Film and Processing will give you the satisfaction you have a right to expect. If for any reason you are not completely satisfied with either, your money will be promptly refunded.
IMPORTANT: This film requires special processing and can only be processed full size for 24 picture service by a Multi-Print laboratory.
Two full size prints from each negative.
Multi-Print Processing Laboratories For Multi-Print Or Regular Film Processing

Box 530 Cooper Station
New York, N.Y. 10003
Box 214
Boston, Mass. 02129
Box 1074
Washington, D.C. 20013
Box 4606
Atlanta, Ga. 30302
Box 5135
Chicago, Ill. 60680
Box 1328
Minneapolis, Minn. 55440
Box 22329
Dallas, Texas 75222
Box 222
Denver, Colo. 80202
Box 54764 Terminal Annex
Los Angeles, Calif. 90060
c/o 788 7th & Mission Sts.
San Francisco, Calif. 94101.

Tell your friends They will enjoy this Convenient * * * CAMERA CLUB OF AMERICA SERVICE!
Custom Quality Photographs.
All for ONLY $4.25 Regular Value $9.90.
SAVE over 50% on Color Film & Processing.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondent has represented, and is now representing, directly and by implication that:

1. The Kodak film a customer receives when he purchases processing is free.
2. Mail order customers will receive free a new roll of film and will never have to buy film again.
3. Respondent guarantees that mail order customers who are not satisfied with their finished pictures will have their money promptly refunded.

4. The film supplied by the respondent is a special film which may be developed safely only on special equipment in possession of respondent and, in order to warn the customer against ruining the film by having it developed by a film processing company other than respondent, a cautionary warning is necessary.

5. Customers will receive two "full size" prints from each negative when they utilize respondent's film and processing services.

6. Respondent maintains processing plants in ten locations around the United States.

7. Respondent's Camera Club of America is an actual film club and maintains a membership service.

8. Unprocessed film is given special, individual custom processing.

9. Respondent previously offered this processing service for $9.90, and is now offering it for $4.25.

10. Customers utilizing respondent's processing services will save over 50 percent of the price previously paid to respondent for these same services.

PAR. 6. In truth and in fact:

1. Mail order customers do not receive as a bonus a new roll of Kodak film; the processing fee charges include the cost of the replacement roll of film.

2. Customers will have to buy film again. The cost of the replacement roll of film is included in the processing fee charges.

3. Mail order customers who are not completely satisfied with respondent's service will not have their money promptly refunded unless and until the customer returns the pictures, new roll of film, credit coupons, and specifically requests a cash refund. Furthermore, the credit coupons issued do not inform the customers that a cash refund is available under any circumstances.

4. The film supplied by respondent is not a special film which may be safely developed only on special equipment in possession of respondent. The film may be developed on regular photofinishing equipment by firms other than respondent and there is nothing inherent in the film that makes a cautionary statement necessary.

5. Customers will not receive two "full size" prints from each negative when they have their Multi-Print film processed by respondent. They will receive prints which are smaller than full size.

6. Respondent does not have ten processing locations located throughout the United States for processing mail order customers' film. In some instances, these locations are only post office boxes from which customers' film is remailed to a processing plant.

7. Respondent's Camera Club of America is not an actual film club; nor does it maintain any membership services.

8. Film is not custom processed and given individual attention. It is processed together with all orders of film, and does not receive special attention.

9. This processing service has never been offered by respondent for $9.90.

10. Customers will not save over 50 percent of the price previously paid to respondent for these same services.

Therefore, the statements and representations as set forth in Paragraphs Four and Five, hereof, were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and is now, in substantial competition, in commerce, with corporations, firms and individuals engaged in the advertising, offering for sale, the sale and finishing of merchandise of the same general kind and nature as that advertised, offered, sold and finished by the respondent.

PAR. 8. The use by the respondent of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondent's products and services by reason of said erroneous and mistaken belief.

PAR. 9. The acts and practices of the respondent as set forth above were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by re-

spondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Berkey Photo, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 77 East Thirteenth Street, New York, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Berkey Photo, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of film or photo processing services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally or in writing, directly or by implication, that film or any article of merchandise is being given free or without charge or cost or as a gift, in connection with the purchase of film processing services, when the stated price for the processing services required to be purchased in order to obtain said film is more than the customary and usual price charged for processing services without film for a substantial period of time in the recent and regular course of respondent's business; or misrepresenting, in any manner, the terms and conditions of a free offer.

2. Misrepresenting, orally or in writing, directly or by implication, that customers need never buy film again or utilizing words of similar import or meaning.

3. Representing, orally or in writing, directly or by implication, that any merchandise and/or service is guaranteed, (a) unless the

terms, conditions and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed, and (b) unless respondent, within a reasonable time, not to exceed ten (10) working days from receipt of the request, performs each obligation directly or indirectly represented with said guarantee; or misrepresenting, in any manner, the terms, conditions and extent of any guarantee.

4. Representing, orally or in writing, directly or by implication, that film sold by respondent requires special processing or must be processed by respondent when said film can adequately be processed by companies other than respondent.

5. Representing, orally or in writing, directly or by implication, through the device of a cautionary statement or warning, that film must be processed by respondent, unless such film does actually require special processing.

6. Representing, orally or in writing, directly or by implication, that respondent will develop full size prints from negatives unless respondent does develop prints in the size generally accepted as full size by the photo processing industry; or misrepresenting, in any manner, the size of prints developed by respondent.

7. Representing, orally or in writing, directly or by implication, that respondent has more film processing locations than it actually operates; or misrepresenting, in any manner, the number of processing locations operated by respondent.

8. Representing, orally or in writing, directly or by implication, that the Camera Club of America is a club; or misrepresenting, in any manner, the organization or nature of respondent's business.

9. Representing, orally or in writing, directly or by implication, custom processed; or misrepresenting, in any manner, the nature of processing methods or the individual attention given.

10. Using the representation "all for $4.25, regular value $9.90," or "save over 50%," or any other representation or representations of similar import or meaning in conjunction with a stated dollar or percentage amount of savings, unless the stated dollar or percentage amount of savings actually represents the difference between the offering price and the actual bona fide price at which such processing services have been sold or offered for sale on a regular basis to the public by respondent for a reasonably substantial period of time in the recent, regular course of its business.

11. Representing, orally or in writing, directly or by implication, that refunds are made, cash or credit, without clearly and conspicuously disclosing all of the terms and conditions of said refunds.

It is further ordered, That respondent deliver a copy of this order

to cease and desist to all present and future personnel of respondent engaged in the offering for sale, sale or distribution of film or photo processing services or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent maintain for at least a two (2) year period, copies of all advertisements, direct mail and instore solicitation literature, coupon solicitation requests, and any other such promotional material made for purposes of distributing film and/or inducing the mail order finishing of amateur photographic film.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

BIOCHEMIC RESEARCH FOUNDATION, ET AL.

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

Docket C-2481. Complaint, Dec. 11, 1973—Decision, Dec. 11, 1973

Consent order requiring a Salt Lake City, Utah, marketer of natural flake salt, among other things to cease misrepresenting that its product differs in any way to commercially processed salt; misrepresenting the medicinal or therapeutic properties of its product; representing one of the individual respondents, Robert W. Reid, is a doctor of medicine or otherwise qualified as a professional or expert in any medical or scientific field; using the words "research" or "foundation" in the corporate name and representing respondents are other than a private business enterprise for profit.

Appearances

For the Commission: *Barry E. Barnes.*

For the respondents: *William Merchant Pease, Barnett, Robben, Blauert & Pease,* Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that Biochemic Research Foundation and Biochemical Research Foundation, corporations, and Robert W. Reid and Allan A. Reid, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Biochemic Research Foundation is a corporation organized, existing and doing business under and by virture of the laws of the State of Utah, with its principal office and place of business located at 1973 Windsor Street, Salt Lake City, Utah.

Respondent Biochemical Research Foundation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington with its principal office and place of business located at 11432 First Avenue South, Seattle, Wash.

Respondent Robert W. Reid is an individual and an officer and director of and distributor for both corporations. He formulates, directs and controls the policies, acts and practices of both corporate respondents, including the acts and practices hereinafter set forth. His present address is 232 Hubbard Avenue, Salt Lake City, Utah.

Respondent Allan A. Reid is an individual and an officer of and distributor for both corporate respondents. Together with respondent Robert W. Reid he participates in formulating, directing and controlling the acts and practices of both corporate respondents, including the acts and practices hereinafter set forth. His present address is 11432 First Avenue South, Seattle, Wash.

PAR. 2. Unless otherwise required by context, the following definitions shall apply for purposes of this complaint and the accompanying order to cease and desist:

The term "natural flake salt" means an unprocessed crystalline flake form of sodium chloride with no additives, as distinguished from "commercially processed salt" which means a processed crystalline form of sodium chloride with one or more additives.

PAR. 3. Respondents are now, and in the past have been, engaged in the packaging, advertising, offering for sale, sale and distribution of natural flake salt, a "food" and "drug" as those terms are defined in Section 15 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents have

disseminated and caused to be disseminated certain advertisments concerning natural flake salt by United States mails to stores and individuals in various parts of the United States and Canada and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. These advertisements have been disseminated for the purpose of inducing and with the likelihood of inducing, directly or indirectly, the purchase of natural flake salt.

PAR. 5. Typical and illustrative of the statements and representations made in said advertisements, but not all inclusive thereof, are the following:

Since salt is necessary to maintain a healthy body, the question arises—Why are so many people with heart and other diseases placed on a salt-restricted diet? The problem is not the salt itself, but its condition.

* * * * * * *

Doctors advise salt-free diets because salt hardens the muscles, particularly the heart. They are speaking of the common table salt with additives, preservatives, free-running agents, etc. THEY ARE RIGHT. Everyone should be on a diet free of this type of salt; however, the human body needs sodium chloride to perform its many functions properly. Sodium chloride in its pure, unadulterated, and unprocessed form * * * automatically relates perfectly to the saline solution of the blood, leaving a cleansed and chemically perfect blood serum.

* * * * * * *

The function of sodium chloride is disturbed if the natural elements are processed, heated, or combined with preservatives or chemicals. The consequences of this disturbance in the body are profound nutritive changes and alteration of the blood.

* * * * * * *

Most salt is approximately one-half to one percent calcium by volume. Calcium is an absolute necessity in body chemistry. When heated in the drying kilns, the calcium is damaged; the body tries to make use of it and fails. This results in calcium being deposited on the inner linings of the blood vessels (hardening of the arteries), in the joints (arthritis) and in the muscles (inflammation).

* * * * * * *

Because it dissolves in fluid, it (natural flake salt) will not cause calcification, and even tends to dissolve damaging calcium deposits throughout the body.

* * * * * * *

High blood pressure, meaning "too much blood high in the body," is largely prevented by thinning the blood and keeping the capillaries open with chlorides.

* * * * * * *

Many people believe that salt is harmful to the human body. Actually, there is not enough sodium chloride in our natural foods, and we must add it to our diet.

* * * * * * *

¼ teaspoon in a glass of warm water relieves headache and indigestion quickly.

¼ teaspoon in a glass of warm water before breakfast tends to neutralize acidity, supply the daily need of hydrochloric acid, and lessen pain in varicose veins.

½ cup in ¼ cup of water used as a paste reduces athlete's foot bacteria.

Pack dry salt around gums a few minutes daily to relieve pyorrhea in a few days.

* * * * * * *

By Dr. Robert Reid or Dr. Robert Wm. Reid or Dr. R. W. Reid (appearing at the beginning or end of the advertisements in a manner indicating authorship).

PAR. 6. Through the use of the above statements and representations, and other similar thereto but not specifically set out herein, respondents have represented directly and by implication that:

1. Natural flake salt differs from commercially processed salt in its effects on persons with physical conditions requiring low-salt or salt-free diets.

2. Natural flake salt may be safely ingested by persons who have been placed on a low-salt or salt-free diet because of heart disease or other ailment.

3. Ingestion of natural flake salt in place of commercially processed salt will prevent, cure or relieve arthritis, calcification, muscular inflammation, hardening of the arteries, and high blood pressure.

4. Use of natural flake salt will neutralize stomach acidity, lessen pain in varicose veins, relieve headache, indigestion, athlete's foot and pyorrhea.

5. A normal diet does not contain enough salt and it is necessary to add salt to normal diets.

6. Respondent Robert W. Reid is a doctor of medicine or is otherwise qualified by academic training as a professional or an expert in medical or scientific research.

PAR. 7. In truth and in fact.

1. Natural flake salt in no way differs from commercially processed salt in its effects on persons with physical conditions requiring low-salt or salt-free diets.

2. Natural flake salt may not be safely ingested by persons who have been placed on a low-salt or salt-free diet because of heart disease or other ailment. Natural flake salt is dangerous, perhaps fatal to such persons.

3. Ingestion of natural flake salt in place of commercially processed salt will not prevent, cure or relieve arthritis, calcification, muscular inflammation, hardening of the arteries, and high blood pressure.

4. Use of natural flake salt will not neutralize stomach acidity, will not lessen pain in varicose veins, and will not relieve headache, indigestion, athlete's foot and pyorrhea.

5. A normal diet does contain enough salt and it is not necessary to add salt to normal diets.

6. Respondent Robert W. Reid is not a doctor of medicine; he is a doctor of divinity of the New Age Church of Everett, Wash. His academic training does not qualify him to do research in any medical or scientific field.

PAR. 8. Furthermore, through the use of the words "research" and "foundation" as a part of their trade or corporate name, alone and in conjunction with said advertisements, respondents have represented and are now representing, directly and by implication, that they are a foundation, institution or organization engaged in the conduct or sponsorship of medical or scientific research and are supported in part by disinterested, eleemosynary funds.

PAR. 9. In truth and in fact respondents are not engaged in the conduct or sponsorship of medical or scientific research. Neither respondents nor any persons employed or associated with them in any capacity are qualified to do such research. Respondent corporations are not a foundation, institution or organization supported in part by disinterested, eleemosynary funds and are not a foundation in the sense of the word as understood and accepted by the general public. Rather respondents are primarily engaged in the business of selling their natural flake salt for profit.

PAR. 10. The advertisements referred to in Paragraph Four and the statements and representations referred to in Paragraphs Five, Six and Eight constituted and now constitute "false advertisements," as that term is defined in the Federal Trade Commission Act, and were and are false, misleading and deceptive.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and the dissemination of the aforesaid "false advertisements" has had, and now has, the tendency and capacity to mislead and deceive members of the consuming public into the erroneous and mistaken belief that said statements, representations and advertisements were and are true and into the purchase of substantial quantities of respondents' natural flake salt.

PAR. 12. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and are now in substantial competition in commerce with corporations, firms, and individuals in the sale of food and drug products of the same general kind and nature as that sold by respondents.

PAR. 13. The aforesaid alleged acts and practices of respondents, including the dissemination of false advertisements, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in commerce in violation of Section 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute and admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Biochemic Research Foundation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 1973 Windsor Street, Salt Lake City, Utah.

Respondent Biochemical Research Foundation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 11432 First Avenue South, Seattle, Wash.

Respondent Robert W. Reid is an individual and an officer and director of and distributor for both corporations. He formulates, directs and controls the policies, acts and practices of both corporate respondents. His present address is 232 Hubbard Avenue, Salt Lake City, Utah.

Respondent Allan A. Reid is an individual and an officer of and distributor for both corporate respondents. Together with respondent Robert W. Reid he participates in formulating, directing and controlling the acts and practices of both corporate respondents. His present address is 11432 First Avenue South, Seattle, Wash.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondents Biochemic Research Foundation and Biochemical Research Foundation, corporations, their successors and assigns, and their officers, and Robert W. Reid and Allan A. Reid, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of natural flake salt or any similar product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing in writing, orally, visually, or in any other manner, directly or by implication:

1. That natural flake salt differs in any way from commercially processed salt in its effects on persons with physical conditions requiring low-salt or salt-free diets.

2. That natural flake salt may be safely ingested by persons who have been placed on a low-salt or salt-free diet because of heart disease or other ailment.

3. That ingestion of natural flake salt in place of commercially processed salt will prevent, cure, or relieve arthritis, calcification, muscular inflammation, hardening of the arteries and high blood pressure.

4. That use of natural flake salt will neutralize stomach acidity, lessen pain in varicose veins, relieve headache, indigestion, athlete's foot and pyorrhea.

5. That use of any such product will prevent, cure, or relieve any health condition or will have any therapeutic effect whatever, unless, at the time such statement or representation is made, respondents have a reasonable scientific basis for such statements or representation.

6. That a normal diet does not contain enough salt and that it is necessary to add salt to normal diets.

7. That respondent Robert W. Reid is a doctor of medicine or is otherwise qualified as a professional or expert in any medical or scientific field.

8. That any statements or representations in respondents' advertisements are those of a doctor or other person qualified as a professional or expert in any research field, unless respondents can establish such fact.

B. Using the words "research" or "foundation" or any word of similar import or meaning as a part of respondents' trade or corporate name, to represent in any manner, directly or by implication:

1. That respondents conduct or sponsor research, experimentation, investigation or study of any kind or have any persons employed or associated with them in any capacity who are qualified to do such research, experimentation, investigation or study, unless respondents can establish such fact.

2. That respondent corporations are a foundation, institution or organization supported in part by disinterested, eleemosynary funds or are a foundation in the sense of the word as understood and accepted by the general public.

3. That respondents are other than a private business enterprise for profit.

II.

It is further ordered, That respondents Biochemic Research Foundation and Biochemical Research Foundation, corporations, their successors and assigns, and their officers, and Robert W. Reid and Allan A. Reid, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of natural flake salt or any food or drug product do forthwith cease and desist from:

A. Disseminating or causing to be disseminated, by United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of such food or drug, any advertisement containing any of the words or representations prohibited in Paragraph I of this order.

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such food or drug in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the words or representations prohibited by Paragraph I of this order.

III.

It is further ordered, That respondents include clearly and conspicuously in each advertisement of natural flake salt and on each package

label thereof, with nothing to the contrary or in mitigation thereof, the following disclosure:

Warning

1. Natural flake salt in no way differs from commercially processed salt with respect to its effects on persons with physical conditions requiring low-salt or salt-free diets.

2. Natural flake salt is harmful to persons on low-salt or salt-free diets and natural flake salt is dangerous, perhaps fatal to persons who have been placed on salt-free diets for reasons of heart disease or other ailment.

IV.

It is further ordered, That respondents recall and retrieve, from each and every retail store and place of distribution or sale of natural flake salt, each and every advertisement for natural flake salt which contains any of the words or representations prohibited by Paragraph I of this order or which fails to make the affirmative disclosure required by Paragraph III.

V.

It is further ordered, That respondents mail to each individual, partnership, corporation or other entity to which respondents have disseminated any advertisement containing any of the words or representations prohibited by Paragraph I of this order or which fails to make the affirmative disclosure required by Paragraph III, a letter stating clearly and conspicuously that none of said representations are true, and making the affirmative disclosure required above.

VI

It is further ordered, That:

A. Respondents deliver, by registered mail, a copy of the decision and order of the Federal Trade Commission in this matter to each of respondents' present and future officers, directors, agents, employees, distributors, and to all other persons, partnerships, corporations, and other entities engaged in the promotion, sale or distribution of natural flake salt;

B. Respondents institute a program of continuing surveillance adequate to reveal whether the business practices of each of the persons or entities engaged in the promotion, sale or distribution of natural flake salt conform with the provisions and requirements of this order;

It is further ordered, That respondents maintain at all times in the future, for a period of not less than three (3) years, complete business

records relative to the manner and form of their continuing compliance with the above terms and provisions of this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in a corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, a change in corporate name or address, or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and/or their affiliation with a new business or employment in which (1) they are involved in a management, policy-making or ownership capacity, or (2) which involves a "food" or "drug" as defined in the Federal Trade Commission Act. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged, as well as a description of their duties and responsibilities.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

ITT CONTINENTAL BAKING COMPANY, INC., ET AL*

Docket 8860. Complaint, Aug. 24, 1971—Modifying order Dec. 14, 1973

Order modifying Commission decision and order issued Oct. 19, 1973 (38 F.R. 31827), by deleting from Paragraph I.1.a. the requirement that respondent identify the basis relied upon for nutritional claims. Further, order denies respondents' petitions for reconsideration.

Appearances

For the Commission: *H. Robert Field, Thomas J. Donegan, Lynne C. McCoy, William S. Busker* and *David O. Bickart.*

For the respondents: *Herbert Dym* of *Covington & Burling*, Washington, D.C., *Laurence T. Sorkin* of *Cahill, Gordon, Sonnett, Reindel & Ohl*, Washington, D.C. and *Gordon A. Thomas* and *Alan C. Davis* of Rye, N.Y. for ITT Continental Baking Company, Inc. *Elhanan C. Stone* for Ted Bates & Company, Inc., New York, N.Y.

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*For Complaint, Decision and Order, see p. 865 herein.

ORDER RULING ON PETITIONS FOR RECONSIDERATION

Respondents ITT Continental Baking Company, Inc. ("ITT") and Ted Bates & Company, Inc. ("Bates") have filed petitions for reconsideration of the Commission's decision and order of Oct. 18, 1973. Complaint counsel have filed a response opposing the petitions. We will limit our consideration of the petitions to new matters raised by our decision and order upon which petitioners had no prior opportunity to argue. See Commission Rule 3.55.

I.

Petitioners argue that the particular violation found by the Commission was not alleged in the complaint. In our decision we upheld the allegation of misrepresentation contained in Paragraph 10 of the complaint but dismissed allegations of other misrepresentations charged in the complaint. Paragraph 10 charged that:

> Certain of the aforesaid advertisements are addressed primarily to children or to general audiences which include substantial numbers of children, which advertisements tend to exploit the aspirations of children for rapid and healthy growth and development by falsely portraying, directly and by implication, said Wonder Bread as an extraordinary food for producing dramatic growth in children.
>
> Therefore, the aforesaid acts and practices of respondents were and are false, misleading, deceptive and unfair.

As our opinion of Oct. 19, 1973, recognized (p. 4 [p. 949 herein]), the thrust of this charge is directed to the effect of the challenged advertisements on children. Our finding of violation was based upon this view of Paragraph 10. It is true, as pointed out by respondents, that in our opinion we did not limit our discussion to effects on children but also found that the challenged advertisements were designed "to convince parents as well as children" that Wonder Bread had very important properties for children's healthy growth and development. (Opinion, p. 17 [p. 959 herein]) We concluded that the advertisement "had the capacity to deceive children and parents because they portrayed Wonder Bread as an extraordinary food for producing dramatic growth* * *." (Opinion, p. 18 [p. 960 herein]) However, we find no inconsistency between these findings and the charge in Paragraph 10.

As our opinion made clear, in dealing with the allegations of Paragraph 10, we concerned ourselves only with the advertisements that were seen on *children's* programs and those TV commercials containing, for instance, the fantasy growth sequence, which commercials, although not shown on children's programs, were shown as early as 10:00 a.m. with *children* constituting a substantial part of the viewing audience. (Opinion, pp. 5, 18 [pp. 950, 960 herein].) In addition to the ads

themselves, evidence was presented by complaint counsel that these advertisements were deceptive to the entire audience viewing them. (Opinion, Ftns. 18–19 and text [p. 961 herein].) The conclusion was inescapable from this evidence and the commercials themselves that the advertisements had the capacity to lead parents, as well as children, to believe that Wonder Bread is an extraordinary food for producing dramatic growth in children. Evidence of this effect on parents was clearly probative on the issue raised in Paragraph 10, since it is reasonable to assume that advertisements which have the capacity to deceive the more sophisticated adult portion of a viewing audience would *a fortiori* have the capacity to deceive the children in that audience. We find no error in relying upon this evidence and making the findings which we did.

Petitioners raise a number of objections to provisions of the Commission's order to cease and desist. We will deal with these arguments *seriatim.*

Paragraph 1 a. Paragraph 1 a of the Commission's order forbids respondents, in food advertisments, from representing:

> The nutritional properties of any such product in generalized terms such as "rich in nutrients," vitamins or iron fortified, "enriched," or other similar nutritional references, without identifying the basis relied upon for the nutritional claims, and unless the advertised nutritional value can be substantiated for the average and ordinary use of the product by consumers or by particular groups of consumers provided they are specified.

Respondents object to this provision on the ground, among other things, that it is unrelated to the violation found. As to the requirement in this provision that references in general terms to nutritional value must be substantiated for the average use of the product by consumers, we disagree. One of the major techniques used in the advertisements found to have falsely represented that Wonder Bread was an extraordinary food for growth in children was the repeated and exaggerated reference to the nutritional qualities of ITT's bread. The Commission, in addition to proscribing the false representation found to have been made in the past, is entitled to go further and prohibit or regulate types of claims that are reasonably related to the past representations and which might constitute alternate roads to the same general goal of deceiving the public. *Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419 (1957).

However, on reconsideration we are persuaded that the requirement in this part of the order that respondents must identify in the advertisement "the basis relied upon" for nutritional claims is not justified in view of the nature of the violation found in this case. As indicated above,

the deception in the advertisements involved in the violation arose from the use of repeated and exaggerated references to nutritional ingredients in Wonder Bread and representations as to their growth-producing properties. Challenges that these and other advertisements were misleading because they failed to disclose certain additional facts relating to nutrition were dismissed by the Commission. Although a different and more limited type of affirmative disclosure requirement is justified (see discussion *infra* of Paragraph 1 b), we have concluded that the requirement of affirmative disclosure of the "basis relied upon" for nutritional claims is not warranted in this particular case. This part of the order will be modified.

Paragraph 1 b. This provision requires respondents, whenever they represent "the comparative nutritional efficacy or value " [1] of a food product, to state the "brand, product, or product category" to which the comparison is made.

Petitioners again object on the ground that there is no relationship to the violation. But the misrepresentation found by the Commission—that Wonder Bread is an extraordinary food for producing growth in children—was itself a comparative claim, as it clearly suggested that Wonder Bread is superior to *some* food products as far as nutritional qualities are concerned.[2]

We have concluded that it is necessary to assure that respondents do not in the future make nutritional claims that falsely imply superiority over other food products. As a means of reaching that objective, it is necessary to require respondents to designate clearly the brand or products to which any nutritional comparison is made.

Paragraph 1 c. This provision prohibits representations that a food product is essential as a source of a particular nutritional value if there are other food products which are also sources of the same or similar nutritional values and unless the claim can be substantiated for normal use of the product. Again, although we did not find this exact type of representation to have been made in the past by respondents, it is the type of representation that, if made, would be closely related to previous claims that implied that Wonder Bread was an extraordinary food for producing growth in children, *e.g.*, respondents' assertions that Wonder Bread supplies "proteins, minerals, carbohydrates, and vitamins * * * all vital elements for growing minds and bodies." (Opinion,

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[1] The parties have raised the question whether "value" means nutritional value or has a broader meaning. The term "value" in this provision is modified by the foregoing term "nutritional." The same is true with respect to the terms "efficacy or functional value" appearing in Paragraph 3 of the order.

[2] The fact that the Commission did not find a basis for the charge that Wonder Bread was represented as superior or unique as against "all" (as distinguished from "some" or "most") other foods or brands, as was alleged in Paragraph 8(a) of the complaint, is not inconsistent with this observation.

p. 6 [p. 951 herein].) We affirm the necessity of the presence in the order of this provision.

Paragraph 1 d. Paragraph 1 d forbids representations in food advertising of:

> The functional value or other attributes of any such product to a user through the use of demonstrations or other visual techniques unless the demonstrations are actual depictions of the actual value of the product by actual persons and represent the average and ordinary experience of consumers with the use of the product.

This provision was included because of the previous use of the highly exaggerated "growth sequence" commercials found to have the capacity to deceive. The provision prohibits future use of demonstrations or visual techniques unless they accurately reflect a real life situation. *Cf. Federal Trade Commission* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 388 (1965). This provision will be retained notwithstanding respondents' objections.

Paragraph 3. Paragraph 3 forbids respondents from "misrepresenting in any manner the nutritional content, efficacy or functional value" of any food product. Respondents object to this paragraph on the ground the provision is overly broad in view of the Commission's dismissal of various charges in the complaint and affirmance of what one respondent characterizes as a "single violation." But the violation found was hardly "single" or of *de minimis* proportions. The advertisements found to be deceptive ran for a period of several years and involved millions of dollars of sales. In view of the magnitude of the violation and the importance to children and consumers of correct nutritional information, we deem it necessary to assure that respondents are prohibited from engaging in any type of false advertising of the nutritional qualities of food products.

Finally, we have examined respondent Bates' arguments relating to that portion of our opinion describing the responsibility of advertising agencies in cases of this kind. We find no reason to retract any of our language.

It is ordered, That Paragraph I 1 a of the Commission order to cease and desist, entered herein on Oct. 19, 1973, be modified to read as follows:

> The nutritional properties of any such product in generalized terms such as "rich in nutrients," vitamins or iron fortified, "enriched," or other similar nutritional references, unless the advertised nutritional value can be substantiated for the average and ordinary use of the product by consumers or by particular groups of consumers provided they are specified.

It is further ordered, That the petitions for reconsideration filed

by respondents, except to the extent they have been granted by this order, be, and they hereby are, denied.

Commissioners Thompson and Hanford not participating.

IN THE MATTER OF

GREAT WESTERN UNITED CORPORATION, ET AL.

Docket C-2306. Complaint, Oct. 20, 1972—Modifying order, Dec. 14, 1973

Order modifying previous Commission order, 81 F.T.C. 661, as modified, 82 F.T.C. 1263, against a Denver, Colo., real estate developer, by altering and modifying Paragraphs IB2 and IB3 of the order relative to the required disclosure of certain statements in printed advertisements concerning respondents' real estate projects.

Appearances

For the Commission: *Perry W. Winston.*

For the respondents: *Richard S. Levenberg,* Denver, Colo.

ORDER MODIFYING FINAL ORDER

Pursuant to Section 3.72(b)(2) of the Commission's Rules of Practice, and after consideration of respondents' petition of Oct. 4, 1973 to reopen and modify paragraphs IB1 and IB3 of the Final Order to Cease and Desist dated Oct. 20, 1972, subsequently modified by Commission order dated Apr. 25, 1973, and after further consideration of Commission counsel's response in support of such petition.

It is ordered, That Paragraphs IB1 and IB3 be altered and modified to read as follows:

IB1

Failing to clearly and conspicuously disclose the following statement in all printed advertisements concerning California City:

Obtain HUD property report from developer and read it before signing anything. HUD neither approves the merits of the offering nor the value of the property as an investment, if any.

IB3

Failing to clearly and conspicuously disclose the following statement in all printed advertisements concerning real estate projects other than California City, however limited to projects in existence at the time this order becomes effective and to any future projects (1) covered by the Interstate Land Sales Full Disclosure