

2. Grant any duly authorized representative of the Federal Trade Commission access to all such business records;

3. Furnish to the Federal Trade Commission copies of such records which are requested by any of its duly authorized representatives;

D. Respondent shall, all other provisions of this order notwithstanding, on or before each of the first three (3) anniversary dates 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 preceding year.

It is further ordered, That respondent shall notify the Commission at least thirty 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 respondent which may affect compliance obligations arising out of this order.

It is further ordered, That respondent shall, within sixty days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF

HUGH MOONEY T/A ORGANIC MASQUE CO.

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

Docket C-2645. Complaint, Mar. 6, 1975 - Decision, Mar. 6, 1975

Consent order requiring a Greenwich, Conn., seller and distributor of a skin preparation known as Organic Masque, among other things to cease making false performance and effectiveness claims and misrepresenting the extent to which the product has been tested or the results of its use demonstrated.

Appearances

For the Commission: *Jean F. Greene* and *Mark A. Heller*.

For the respondent: *Charles B. Chernofsky*, Pearl River, 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 Hugh Mooney, individually and doing business as Organic Masque Co., hereinafter

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 this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hugh Mooney is an individual trading and doing business as Organic Masque Co., with his principal place of business at 283 Greenwich Ave., Greenwich, Conn.

PAR. 2. Respondent is now, and for some time past has been, engaged in the advertising, offering for sale, sale and distribution of a skin preparation known as Organic Masque.

PAR. 3. In the course and conduct of his aforesaid business, respondent now causes, and for some time last past has caused his said skin preparation, when sold, to be shipped from his place of business in the State of Connecticut to purchasers thereof located in various other States of the United States, and maintains and at all times mentioned herein, has 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 his aforesaid business, respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning the said product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertising concerning the said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of his aforesaid business, respondent has made, and is now making, numerous statements and representations in magazines, and elsewhere with respect to the ability of the said product to cleanse and cure blemished skin. Typical and illustrative of the statements and representations contained in said advertising and promotional material, but not all inclusive thereof, is the following:

The most fabulous new cosmetic development in years! An incredible new organic face mask that really works * * * that really draws blackheads, hardened oils, tiny facial hairs and imbedded dirt right out of your pores safely, quickly, easily, at once, right before your eyes! * * * in about fifteen minutes or so Organic Masque becomes firm and dry to the touch * * * look closely and you'll see blackheads, bits of hardened oil, imbedded dirt, old make-up, even facial hairs glued firmly to that mask * * *!

* * * * *

This has to be the most fantastic cosmetic product you ever used in your life because you see it work immediately.

PAR. 6. By and through the use of said statements and representations made by respondent in his advertising and promotional materials, respondent is representing and has represented, directly or by implication, that:

1. Organic Masque is a revolutionary development in facial masks;
2. The use of Organic Masque will immediately remove all blackheads and unclog all pores for each individual who uses the product;
3. Organic Masque will produce blemish-free skin on every individual who uses it;
4. Tests or demonstrations which prove the representations numbered 1, 2, and 3 above have been conducted.

PAR. 7. In truth and in fact:

1. Organic Masque is not a revolutionary development in facial masks;
2. The use of Organic Masque will not immediately remove all blackheads and unclog all pores for each individual who uses the product;
3. Organic Masque will not produce blemish-free skin on every individual who uses it;
4. Tests or demonstrations which prove the representations numbered 1, 2, and 3 above have not been conducted.

PAR. 8. In the course and conduct of his business as aforesaid, and at all times mentioned herein, respondent has been in substantial competition in commerce with corporations, firms, and individuals in the sale of skin preparations.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity 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 skin preparation by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, were and are 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 Sections 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations 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 such 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hugh Mooney is an individual, trading and doing business as Organic Masque Co., with principal place of business at 283 Greenwich Ave., Greenwich, Conn.

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 Hugh Mooney, individually and trading and doing business under the name Organic Masque Co., or under any other name, and his successors, assigns, representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of skin preparations or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication that:

1. Any such product is a new or revolutionary development;
2. Any such product removes blackheads or will unclog pores, or that the use of any such product produces or helps to produce clear or blemish-free skin;
3. Has any quality, characteristics, or capacity, or will have any result, or will perform in any given manner, or is effective for any purpose, unless each such quality, characteristic, capacity, result, manner of performance, or effectiveness has been fully substantiated by competent and reliable scientific testing.

B. Disseminating or causing the dissemination of any advertising by United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which misrepresents, directly or by implication:

1. The performance, efficacy, capacity, or usefulness, or any characteristic, property, quality, or the result of use of any such product.
2. The extent to which any such product has been tested, or the results of its use demonstrated.

C. Disseminating or causing the dissemination of any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations, acts or practices prohibited in Paragraphs A or B above.

It is further ordered, That the respondent 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 shall within sixty (60) days and at the end of six (6) months after the effective date of the order served upon him file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of his compliance with the order to cease and desist.

Complaint

85 F.T.C.

IN THE MATTER OF
TAX CORPORATION OF AMERICA (MARYLAND), ET
AL.

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

Docket C-2649. Complaint, Mar. 6, 1975 - Decision, Mar. 6, 1975

Consent order requiring a Montrose, Calif., firm engaged in the sale of personal income tax preparation services, mutual funds, lines of insurance, and individual budgeting and bill paying services, among other things to cease misrepresenting their income tax preparation services, and using tax return information for other purposes without the customer's prior consent.

Appearances

For the Commission: *Louis Rosenman.*

For the respondents: *Lawrence G. Meyer, Patton, Boggs & Blow,*
Wash., D.C.

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 Tax Corporation of America (Maryland) and Tax Corporation of America (Delaware), corporations, 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 Tax Corporation of America (Maryland) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 2441 Honolulu St., Montrose, Calif.

Respondent Tax Corporation of America (Delaware) 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 2441 Honolulu St., Montrose, Calif. It is a wholly-owned subsidiary of, and is managed, directed and controlled by, respondent Tax Corporation of America (Maryland).

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, and sale of personal income tax preparation services, mutual funds, lines of insurance, individual budgeting and bill paying services to the general public.

Respondents sell their aforesaid products through various corporate subsidiaries, affiliates, and counselors, hereinafter referred to, for convenience, as respondents' representatives.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, monies, contracts, business forms and other commercial paper and printed materials, in connection with said income tax preparation, mutual funds, lines of insurance, individual budgeting and bill paying services, to be sent by United States mail from respondents' place of business in the State of California to their local offices, representatives and purchasers of respondents' products and services 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 and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents and their representatives have disseminated, and cause the dissemination of, certain advertisements concerning the said income tax preparation services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said income tax preparation services.

PAR. 5. For the purpose of disseminating such advertisements, respondents and their representatives have employed direct mail literature, newspaper insertions, "door hangers" and point of sale promotional materials.

Typical of the statements and representations in said advertisements, but not all inclusive thereof, is the following:

(a) Your Receipt and Triple Guarantee

GUARANTEED ACCURACY: Our returns triple checked for accuracy of mathematics and reproduction. If we make an error, resulting in any penalty or interest, we will pay that penalty or interest.

GUARANTEED PROTECTION: If your return is questioned by the government, we handle all details at no additional charge.

(b) Please believe me when I say that the average family loses from \$50 to \$100 by trying to stand up to the tax law alone.

(c) Tax Service In Your Home

Computerized

Guaranteed Accuracy

Guaranteed Protection

Reasonable Rates

(d) Nine times out of ten, it doesn't pay to be your own tax expert, and miss valuable deductions.

Of those who asked us to check out their returns, over 90% have saved much more than our low fee.

PAR. 6. By and through the use of the above-quoted statements and

representations, and others of similar import and meaning, but not expressly set out herein, respondents and their representatives have represented, and are now representing, directly or by implication, that:

1. Respondents will reimburse the taxpayer for any payments the taxpayer may be required to make in addition to his initial tax payment if such additional payments result from an error made by respondents and their representatives in the preparation of the tax return.

2. If the customer's tax return is audited, respondents and their representatives are authorized and/or will provide to their customers legal representation, without charge, by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service.

3. In fact over ninety percent of respondents' tax preparation customers have saved more than the amount of the fee respondents charged by having respondents prepare their tax return.

PAR. 7. In truth and in fact:

1. Respondents and their representatives do not reimburse the taxpayer for all payments he is required to make in addition to his initial tax payment if such additional payments result from an error made by respondents and their representatives in the preparation of the tax return.

2. In instances where the customer's tax return is audited, respondents and their representatives are not authorized and are prohibited by the Internal Revenue Service from providing to their customers legal representation by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service.

3. The percentage of respondents' tax preparation customers who have saved more than the amount of the fee charged by respondents by having respondents prepare their tax returns is only an estimation and does not necessarily represent a true percentage.

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

PAR. 8. In the further course and conduct of their business, respondents and their representatives enter into a relationship with their tax preparation customers which is impliedly represented as, and is inherently confidential and private in nature. As a result of the aforesaid relationship, respondents and their representatives are provided and receive certain information from their tax preparation customers. Respondents and their representatives retain a copy of the forms submitted by their representatives for each customer, on the basis of information provided by the customer, ostensibly for respondents' use in the preparation of the customer's tax return. The aforesaid forms contain private and confidential data of both a personal

and financial nature for each tax preparation customer of respondents and their representatives.

Respondents and their representatives, during the initial interview with the customer and at various times subsequent thereto, make a determination as to whether they should solicit the customer for the sale of insurance, mutual funds and other services offered by respondents or other companies. On the basis of such determination respondents and their representatives solicit the tax preparation customer, either orally and in person, or by mail or telephone, for the purpose of inducing the customer to purchase insurance, mutual funds or other services.

Respondents use, and have used, the aforesaid information gathered as a result of the preparation by respondents and their representatives of their customers' income tax returns in the manner hereinabove described without the express consent of said customers, and respondents have failed to disclose such use and intended use to their customers.

PAR. 9. The aforesaid acts and practices of respondents, and the special relationship created by respondents with their customers as described in Paragraph Eight hereof, have had, and now have, the capacity and tendency to mislead respondents' customers into the erroneous and mistaken belief that the information they provided will only be used for the purpose of preparation of their income tax returns.

Therefore, the respondents' failure to disclose the use of the aforesaid information for purposes other than the preparation of their customers' tax returns is false, misleading and deceptive.

Furthermore, respondents' use of the aforesaid information for purposes other than the preparation of their customer's tax returns without the express consent of their customers is contrary to, and in substantial disregard of, the special relationship between respondents and their customers as described in Paragraph Eight hereof, and is, and was, unfair.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents and their representatives have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of income tax preparation services of the same general kind and nature.

PAR. 11. The use by respondents and their representatives of the aforesaid false, misleading and deceptive statements and representations, and unfair acts and practices, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' and their representatives'

income tax preparation services by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents and their representatives as herein alleged, were and are all to the prejudice and injury of the public and of respondents' and their representatives' 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 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, an admission by the respondents 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 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 sixty (60) 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Tax Corporation of America (Maryland) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 2441 Honolulu Street, Montrose, Calif.

Respondent Tax Corporation of America (Delaware) 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 2441 Honolulu St., Montrose, Calif. It is a wholly-owned

subsidiary of, and is managed, directed and controlled by, respondent Tax Corporation of America (Maryland).

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 Tax Corporation of America (Maryland), and Tax Corporation of America (Delaware) their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary or other device, in connection with the preparation of income tax returns or the offering for sale and sale of insurance, mutual funds or any other product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

2. Representing, directly or by implication, that respondents will reimburse their customers for any payments the customer may be required to make in addition to his initial tax payment, in instances where such additional payments result from an error by respondents in the preparation of the tax return; *Provided, however,* Nothing herein shall prevent truthful representations that respondents will reimburse their customers for interest or penalty payments resulting from respondents' errors.

3. Failing to disclose, clearly and conspicuously, whenever respondents make any representation, directly or by implication, as to their responsibility for, or obligation resulting from, errors attributable to respondents in the preparation of tax returns, that respondents will not assume the liability for additional taxes assessed against the taxpayer; *Provided, however,* That it shall be a defense in any enforcement proceeding for respondents to establish that they make such deficiency payments.

4. Representing, directly or by implication, that respondents will provide legal representation to customers whose tax returns may be audited; or misrepresenting, in any manner, the type or manner of assistance provided by respondents to customers whose tax returns may be audited; *Provided, however,* Nothing contained herein shall prevent truthful representations of the type or manner of assistance that respondents will provide to customers whose returns may be audited.

5. Representing, directly or by implication, the amount, or the number, or the percentage of respondents' tax preparation customers who have saved more than the amount of the fee charged by respondents and/or their representatives by having respondents prepare their tax returns; *Provided, however*, Nothing herein shall prevent truthful and substantiated representations of the savings enjoyed by respondents' tax preparation customers.

6. Failing to disclose, clearly and conspicuously, at the initial time respondents or their representatives obtain information for the preparation of the customer's tax return, that respondents also are engaged in the business of offering for sale, and sale to the general public of mutual funds, lines of insurance, individual budgeting, bill paying services, and any and all other lines of business and/or services and that respondents send, from time to time, a newsletter discussing respondents' lines of business and/or services.

7. Using any information concerning any customer of respondents or respondents' representatives including the name and/or address of the customer, obtained as a result of the preparation of the customer's tax return for any purpose which is not essential or necessary to the preparation of said tax return, without clearly and conspicuously disclosing to the customer, prior to the obtaining of any information relative to the preparation of the tax return, that respondents intend to use the information for purposes other than the preparation of the customer's return, the exact information which will be used, the particular use which will be made of such information and a description of the parties or entities to whom the information will be made available; *Provided, however*, That nothing herein shall prohibit respondents from using names and addresses only of customers for the purposes of communication with such customers solely concerning respondents' income tax preparation business.

8. Failing to provide each customer in instances where the information described in paragraph 7 hereof will be used for any purpose other than the preparation of the tax return, with a form to be signed by the customer prior to the obtaining of any such information clearly stating that respondents intend to use the information for purposes other than the preparation of the return, the exact information to be used, the particular use to be made of such information, a description of the parties or entities to whom the information will be made available, and a statement that the customer consents to the use of such information.

Nothing in the above provisions is intended to relieve respondents of any further requirements imposed on them by the Revenue Act of

1971, Pub. L. 92-178, title III, §316(a), Dec. 10, 1971; 26 U.S.C. §7216 or regulations issued pursuant to it.

It is further ordered, That:

(a) respondents herein deliver a copy of this decision and order to each of their present and future representatives and any other persons, partnerships or corporations authorized by respondents to engage in the commercial preparation of income tax returns.

(b) respondents inform each such person so described in paragraph (a) above that respondents are obligated by the terms of this order to notify the Commission of those persons, partnerships or corporations whom respondents have actual knowledge that they have continued on their own the deceptive practices prohibited by this order.

(c) respondents inform each such person or party so described in paragraph (a) that the respondents are obligated by this order to discontinue the authorization of persons or parties who continue on their own the deceptive acts or practices prohibited by this order.

It is further ordered, That respondents herein shall, within sixty (60) days after service of this order, include on the front page of the respondents' newsletter to be sent to the last known address of each of their tax preparation customers and customers of their representatives for the most recent past year, clearly and accurately explaining (1) the terms, conditions and limitations of respondents' policy regarding their responsibility for, or obligation resulting from errors attributable to respondents in preparation of tax returns; and (2) the type or manner of assistance provided by respondents to customers whose returns may be audited.

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

It is further ordered, That respondents herein shall notify the Commission at least thirty (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 respondent corporations which may affect compliance obligation arising out of this order.

Complaint

85 F.T.C.

IN THE MATTER OF

ROBERT N. BARNES T/A NATIONAL CREDIT
EXCHANGE, ETC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS*Docket C-2646. Complaint, Mar. 10, 1975 - Decision, Mar. 10, 1975*

Consent order requiring a Canton, Ill., consumer credit reporting agency, among other things to cease violating the Fair Credit Reporting Act by furnishing credit reports to persons who do not have permissible purpose for receiving such information.

Appearances

For the Commission: *David G. Grimes, Jr.* and *Ronald G. McCauley.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act 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 Robert N. Barnes, an individual, trading and doing business as National Credit Exchange and National Fraudulent Check Bureau, hereinafter 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 Robert N. Barnes is an individual trading and doing business as National Credit Exchange and National Fraudulent Check Bureau, with his office and principal place of business located at 445 W. Elm St., Canton, Ill.

PAR. 2. Subsequent to Apr. 25, 1971, in the ordinary course and conduct of his business, respondent has compiled and published lists containing, among other things, the names and addresses of consumers together with statements or indications that such consumers have outstanding unpaid bills, or together with statements or indications that such consumers have issued forged checks, checks drawn upon nonexistent accounts, or checks which have been returned by the drawee bank because of insufficient funds or other reasons.

The information contained in the aforesaid lists concerning consumers whose names and addresses appear therein bears on said consumers' credit worthiness, credit standing, credit capacity, charac-

ter, general reputation, personal characteristics and/or mode of living. Therefore, each of the aforesaid lists constitutes a series of consumer reports as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

Respondent is, and has been, for monetary fee, regularly engaged in the practice of assembling such information on consumers for the purpose of furnishing such lists to third parties, and regularly uses a means or facility of interstate commerce for the purpose of preparing and/or furnishing said lists. Therefore, respondent is a consumer reporting agency as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. At the time respondent furnishes the aforesaid consumer reports in list form, respondent does not have reason to believe that each person to whom the consumer reports are furnished has a legitimate business need for the information in connection with a business transaction involving each consumer reported upon, nor does respondent have reason to believe that each recipient otherwise intends to use the information for a purpose set forth in Section 604 of the Fair Credit Reporting Act. Further, the furnishing of such consumer reports is neither in response to a court order nor in accordance with the written instructions of each consumer to whom the reports relate.

Respondent, in the ordinary course and conduct of his business, as aforesaid, furnishes consumer reports to persons, as "person" is defined in Section 603(b) of the Fair Credit Reporting Act, who do not have a legitimate business need or other permissible purpose to receive the consumer reports furnished to them, as required by Section 604(3) of the Act.

By furnishing consumer reports as described above, respondent has violated and is violating Section 604 of the Fair Credit Reporting Act.

PAR. 4. By and through the acts and practices described in Paragraph Three above, respondent has failed to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act, and has furnished consumer reports to persons under circumstances in which there are reasonable grounds for believing that such reports will not be used for a purpose listed in Section 604 of such Act. Therefore, respondent has violated and is violating Section 607(a) of the Fair Credit Reporting Act.

PAR. 5. The acts and practices set forth in Paragraphs Three and Four above, were and are in violation of the Fair Credit Reporting Act, and, pursuant to Section 621(a) of that Act, said acts and practices

constitute unfair or deceptive acts or 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 Bureau of Consumer Protection 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, making the following jurisdictional findings, and enters the following order:

1. Respondent Robert N. Barnes is an individual trading and doing business as National Credit Exchange and National Fraudulent Check Bureau, with his office and principal place of business located at 445 W. Elm St., Canton, Ill.
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 Robert N. Barnes, an individual, trading and doing business as National Credit Exchange, National Fraudulent Check Bureau, or any other name or names, his successors and assigns, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with

the collecting, preparation, assembling and/or furnishing of consumer reports as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. L. 91-508, 15 U.S.C. §1601, *et seq.*), shall forthwith cease and desist from:

1. Furnishing any consumer report to any person unless such report is furnished:

a. in response to the order of a court having jurisdiction to issue such order; or

b. in accordance with the written instructions of the consumer to whom the report relates; or

c. to a person which respondent then has reason to believe intends, at the time the information is furnished, to use the information:

(1) in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) for employment purposes; or

(3) in connection with the underwriting of insurance involving the consumer; or

(4) in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) in connection with a business transaction involving each consumer reported upon.

2. Furnishing consumer reports in list form, unless the identity of the consumer to whom the information relates is not disclosed on such list and cannot be determined without the use of a unique identifier, such as social security number, drivers' license number, or bank account number. The identifier used must be provided by the consumer at the time of the transaction with the user.

3. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Act as provided by Section 607 of the Act.

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 preparation and/or furnishing of consumer reports, and that respondent secure a signed statement acknowledging receipt of said order from all such personnel.

It is further ordered, That respondent 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

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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 respondent shall, within sixty days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he had complied with this order.

IN THE MATTER OF

UNIVERSAL CREDIT ACCEPTANCE CORPORATION, ET
AL.

MODIFIED ORDER, IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8821. Decision, Feb. 16, 1973 - Modified Order, Mar. 11, 1975

Order modifying an earlier order dated February 16, 1973, 82 F.T.C. 570, 38 F.R. 7545, pursuant to order of the United States Court of Appeals for the Ninth Circuit dated Sept. 11, 1974 (503 F.2d 321), by setting aside the portions of the order which required individual respondent John Clifford Heater to make refunds of monies to certain past victims of the violations found.

Appearances

For the Commission: *Alfred Lindeman, W. T. Mitchell, William A. Arbitman and Harrison J. Sheppard.*

For the respondents: *Alfred L. Young, San Mateo, Calif.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent John Clifford Heater having filed in the United States Court of Appeals for the Ninth Circuit on Apr. 26, 1973, a petition to review and set aside those portions of the order to cease and desist issued herein on Feb. 16, 1973, which required him to make refunds of monies to certain past victims of the violations found; and the Court having rendered its decision and entered judgment on Sept. 11, 1974, directing that the order provisions for refunds to past victims be set aside;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court to read as follows:

ORDER

It is ordered, That respondents Universal Credit Acceptance

Corporation, Continental Credit Card Corporation, International Credit Card Corporation, also trading as National Credit Service, corporations, and their officers, and John Clifford Heater, individually and as an officer of Universal Credit Acceptance Corporation and International Credit Card Corporation, and Howard P. Gingold, individually and as an officer of Continental Credit Card Corporation, and respondents' franchisees, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale or sale of franchises or credit card services, or any other products or services, or in the operation of any credit card service or other business in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

1. (A) Representing that franchisees will earn or can reasonably expect to earn or receive any stated or gross or net amount of earnings or profits; or representing, in any manner, the past earnings of franchisees unless in fact the past earnings represented are those of a substantial number of franchisees in the geographical area about which such representations are made and accurately reflect the average earnings of said franchisees under circumstances similar to those of the person to whom the representation is made.

(B) Representing that franchisees can expect to remain active franchisees for many years; or representing, in any manner, the longevity or tenure of past or existing franchisees unless in fact the periods of time represented are those for which a substantial number of franchisees actively pursued membership sales efforts.

(C) Selling, or offering franchises for sale, in any manner, without disclosing clearly and conspicuously in writing at or before the time of the first oral sales presentation, or in the event no oral sales presentation is made, reasonably prior to the execution of a franchise application, agreement or contract:

(i) the median and mean gross earnings from the sale of memberships in respondents' program by franchisees in the most recent calendar year (who were active for the entire year) preceding the year in which such sale or offer is made;

(ii) the total number of franchisees in the most recent calendar year preceding the year in which the sale or offer is made;

(iii) the total number of franchisees in subparagraph (ii) above who had earnings from the sale of memberships during the designated year in the following dollar amounts:

- a. \$1,000 or less
- b. over \$1,000 but not over \$5,000
- c. over \$5,000 but not over \$10,000

- d. over \$10,000 but not over \$20,000
- e. over \$20,000

(iv) the number of franchisees referred to in subparagraph (ii) above who sold memberships for the following periods of time:

- a. 1 year or less
- b. over 1 year but not over 2 years
- c. over 2 years but not over 3 years
- d. over 3 years but not over 4 years
- e. over 4 years

(v) the total number of members submitting credit charges in respondents' program during the most recent calendar year preceding the year in which the sale or offer is made;

(vi) the number of members referred to in subparagraph (v) above who submitted credit charges under respondents' program for the following periods of time:

- a. 1 year or less
- b. over 1 year but not over 2 years
- c. over 2 years but not over 3 years
- d. over 3 years but not over 4 years
- e. over 4 years

(vii) the percentage of credit charges recoured to members during the most recent calendar year and the full number and nature of reasons for which respondents may recourse charges;

(viii) the name and current address of each of respondents' franchisees in the most recent calendar year preceding the year in which such sale or offer is made;

(ix) a financial statement reflecting respondents' assets and liabilities (stating separately fixed assets and liquid assets) for the most recent calendar year;

(D) Selling, or offering memberships for sale, in any manner, without disclosing clearly and conspicuously in writing at or before the time of the first oral sales presentation, or in the event no oral sales presentation is made, reasonably prior to the execution of any application, agreement or contract:

(i) the percentage of credit charges recoured to members during the most recent calendar year preceding the year in which the sale or offer is made and the full number and nature of reasons for which respondents may recourse charges;

(ii) the total number of members submitting credit charges in respondents' program during the most recent calendar year preceding the year in which the sale or offer is made;

(iii) the number of members referred to in subparagraph (ii) above who participated for the following periods of time:

- a. 1 year or less
- b. over 1 year but not over 2 years
- c. over 2 years but not over 3 years
- d. over 3 years but not over 4 years
- e. over 4 years

(iv) a financial statement reflecting respondents' assets and liabilities (stating separately fixed assets and liquid assets) for the most recent calendar year.

Provided, however, That in the event respondents operated or used any corporate or trade name for a period of less than five years, the disclosures called for in this paragraph shall reflect the operations of the last preceding business entity used by respondents to sell and administer franchises and memberships.

2. Selling, or offering franchises for sale, in any manner, without furnishing to each prospective purchaser reasonably prior to the execution of a franchise application or agreement, a copy of the Federal Trade Commission Consumer Bulletin No. 4, "ADVICE FOR PERSONS WHO ARE CONSIDERING AN INVESTMENT IN A FRANCHISE BUSINESS."

3. (A) Representing that persons do not risk any loss of money in coming to respondents' offices, or any other place, for a franchise interview, or that respondents authorize the reimbursement of air fare expenses for such interviews, without disclosing clearly and conspicuously in writing prior to the expenditure of any funds by such persons, all conditions which must be met to receive reimbursement, including the exact amount of any deposit or downpayment required.

(B) Failing to reimburse travel expenses to any person respondents have promised such reimbursement.

4. Representing that persons do not risk losing the deposits or downpayments submitted with applications for franchises; or that such deposits or downpayments are refundable when such deposits or downpayments may be forfeited if the applicants withdraw or fail to pay the balance due after acceptance of their application by respondents, or for any other reason;

Provided, however, That respondents may make such representations if they do in fact refund such deposits.

5. Misrepresenting that any geographical area offered as a franchise has not been previously franchised by respondents or misrepresenting that such area has been franchised before by respondents and was profitable for the prior franchise holder.

6. Misrepresenting that respondents have a franchise committee which actually checks the qualifications of prospective franchisees, or

misrepresenting, in any manner, that respondents check, or have checked the qualifications of a prospective franchisee.

7. Misrepresenting that respondents have a regional manager who will interview, or has interviewed, prospective franchisees for a particular geographical area; or that respondents have applications pending for a particular area; or that any person must act immediately to be considered for a franchise; or misrepresenting, in any manner, the nature and extent of interest of others in any particular franchise, or franchises in general.

8. Representing that franchise holders receive substantial benefits from renewals of memberships or from annual bonuses based on a percentage of net credit charges submitted by members; or representing, in any manner, benefits to franchisees which are dependent upon the actions of members, unless the benefits represented are those received by a substantial number of franchise holders.

9. (A) Representing that persons risk losing little or nothing in investing in a franchise; or that respondents will repurchase any franchise.

(B) Representing that respondents will aid or assist in the resale of franchises without contemporaneously, clearly and conspicuously disclosing the nature of such assistance and the amount of the resale purchase price which respondents will retain.

(C) Representing that respondents' franchises are vested property rights which may be sold, assigned, transferred or testated, without contemporaneously, clearly and conspicuously disclosing that franchises are subject to termination by respondents if a franchise holder does not produce a prescribed sales quota.

10. Representing, in any manner, that respondents' program has received national acceptance, or that respondents' program can be sold with ease; or misrepresenting in any manner, the salability or degree of acceptance or approval of respondents' program.

11. (A) Representing that credit charges submitted under respondents' program are guaranteed payable or are payable without recourse; or that respondents assume the risk of nonpayment by members' customers in any manner including, but not limited to, using the terms "we honor all approved major credit cards," "honor all credit cards," "non-recourse," "without recourse" or any other terms or words of similar import or meaning.

(B) Representing that all members can expect to be successful or satisfied with the performance of respondents' program; or that members usually continue using respondents' program for two years and renew their contracts thereafter.

12. Using or disseminating any article written or prepared by

respondents and published substantially verbatim in any newspaper, magazine, or other publication.

13. Using any letter, payment check, or other materials which purport to represent the satisfaction or success of any franchisee or member unless,

(A) Such franchisee or member is actively selling or using respondents' program or service at the time such letter, payment check, or other materials are used;

(B) the full name and current address of the franchisee or member and the existence of any remuneration are disclosed clearly and conspicuously in conjunction with the use of such letter, payment check or other materials;

Provided, however, That respondents shall not obtain or use any such letter, payment check or other material relating to any franchisee or member who has not sold or participated in respondents' program or service for at least six (6) months.

14. Representing that respondents' program costs members little or nothing at all; or that the program costs members half as much as trading stamps; or misrepresenting, in any manner, the cost of respondents' program to members.

15. Representing that members complete just one simple form for all credit charges; or misrepresenting, in any manner, the procedures necessary to process credit charges and receive payment therefor; or failing to disclose contemporaneously, clearly and conspicuously any and all reasons which will preclude receipt of full payment of credit charges submitted by members.

16. Representing that members receive payment for each credit charge submitted to respondents in 30 days; or misrepresenting, in any manner, the period of time in which members will receive payment for credit charges submitted to respondents.

17. Failing to disclose clearly and conspicuously that respondents' program or service is not approved or endorsed by the individual issuers of the credit cards approved by respondents.

18. Representing that members are assured or can achieve a minimum 10 percent or any other percentage or amount of increase in business using respondents' program, without disclosing the number of members who have actually received said increase and offering to identify such members on request, and without maintaining verified statements from said members that they have received said increases.

19. (A) Using the name Fair Trade Bureau or any other name which represents that respondents' operations and activities have been endorsed by any independent or governmental organization.

(B) Writing, preparing, or disseminating any Better Business Bureau reports concerning respondents' business.

20. (A) Representing that every credit charge submitted by members is subject to the most intensive collection procedure in the credit industry; or misrepresenting, in any manner, the intensity or nature of respondents' collection activities.

(B) Using the name North American Collections or any other trade name or collection agency similarly related to respondents without disclosing contemporaneously, clearly and conspicuously that such name or agency is owned, operated or controlled by respondents.

21. Representing that respondents will institute legal action against inactive members whose accounts respondents claim are in arrears, unless respondents do intend to pursue such remedies and have in practice pursued such remedies against substantial number of members.

22. Furnishing, or otherwise placing in the hands of others, the means or instrumentalities by or through which the public may be misled or deceived in the manner or as to the things prohibited by this order.

It is further ordered, That respondents incident to selling their franchises and credit card services:

a. Inform orally all persons to whom solicitations are made and provide in writing in all applications and contracts in at least ten-point bold type that the application or contract may be cancelled for any reason by notification to respondents in writing within seven days from the date of execution.

b. Refund immediately all monies to (1) all persons who have requested cancellation of the application or contract within seven days from the execution thereof, and (2) all persons who paid any monies for franchise fees, deposits or downpayments on franchises, air fare or other expenses for a home office interview, and for membership fees, membership dues and discount fees, who show that any of respondents' solicitations, applications, contracts or performance were attended by or involved any violation of any of the provisions of this order.

It is further ordered, That the respondents shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen and franchisees or other persons engaged in the sale of respondents' franchises and services, and secure from each such salesman, franchisee or person a signed statement acknowledging receipt of said order.

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

It is further ordered, That the respondents notify the Commission at

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least thirty (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 each of 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 all of the provisions of this order.

IN THE MATTER OF

UNI-SERVICE CREDIT CORP., ET AL.

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

Docket C-2647. Complaint, Mar. 11, 1975 - Decision, Mar. 11, 1975

Consent order requiring a New Hartford, N.Y., moneylender in connection with financing of insurance premiums, 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: *Marc A. Comras.*

For the respondents: *John P. Sullivan, New Hartford, N.Y.*

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 Uni-Service Credit Corp., a corporation, Insurance Pay Plan, Inc., a corporation, and John J. O'Brien, individually and as an officer of said corporations, hereinafter 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 Uni-Service Credit Corp. is a corporation

organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 180 Genesee St., New Hartford, N.Y.

Respondent Insurance Pay Plan, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 569 Warwick Ave., Warwick, R.I. Respondent Insurance Pay Plan, Inc. is a wholly-owned corporate subsidiary of respondent Uni-Service Credit Corp. The aforesaid respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

Respondent John J. O'Brien is an officer of each of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporations, including the acts and practices hereinafter set forth. His address is the same as that of Uni-Service Credit Corp.

PAR. 2. Respondents are now, and for some time last past have been engaged in the business of offering to lend and lending money to the public in connection with the financing of insurance premiums.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly offer to extend consumer credit 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. 4. Subsequent to July 1, 1969, respondents in the ordinary course of their business as aforesaid, and in connection with their financing of insurance premiums, which are credit sales as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute a binding premium finance agreement, hereinafter referred to as the "agreement." Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the agreement, respondents:

1. 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.
2. Failed in some instances 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.
3. Failed in some instances 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.

4. 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.

5. Provided additional information which misleads or confuses the customer or obscures or detracts attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

PAR. 5. 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 Boston 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 Truth in Lending Act and the implementing regulation promulgated thereunder and 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; 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 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of the rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Uni-Service Credit Corp. is a corporation organized,

existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 180 Genesee St., New Hartford, N.Y.

Respondent Insurance Pay Plan, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 569 Warwick Ave., Warwick, R.I. Respondent Insurance Pay Plan, Inc., is a wholly-owned corporate subsidiary of respondent Uni-Service Credit Corp. The aforesaid respondents cooperate and work together in carrying out the acts and practices hereinafter set forth.

Respondent John J. O'Brien is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his principal office and place of business is located at 180 Genesee St., New Hartford, N.Y.

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 Uni-Service Credit Corp., a corporation, its successors and assigns, and its officers, and Insurance Pay Plan, Inc., a corporation, its successors and assigns, and its officers, and John J. O'Brien, individually and as an officer of said corporations, and respondents' 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 "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.

2. 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.

3. 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.

4. 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.

5. Stating, utilizing or placing any additional information in conjunction with the disclosures required by Regulation Z to be made, which information misleads or confuses the customer, or contradicts, obscures or detracts attention from the information required by Regulation Z to be disclosed, as prohibited by Section 226.6(c) of Regulation Z.

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

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

It is further ordered, That respondents notify the Commission at least thirty (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 or corporations, the creation or dissolution of subsidiaries or any other change in the corporations 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. 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 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.

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IN THE MATTER OF

MIRIAM MASCHEK, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2648. Complaint, Mar. 11, 1975 - Decision, Mar. 11, 1975*

Consent order requiring a North Miami, Fla., promoter of a chemical skin-peeling process called the "Maschek treatment," among other things to cease misrepresenting that its inherently dangerous treatment to remove facial wrinkles and blemishes is safe. Further, the order requires respondent to devote at least 15 percent of its future advertising or oral presentations to disclosure of the inherent dangers and other material facts.

Appearances

For the Commission: *Robert L. Osteen, Jr.*, and *Ronald C. Cougill*.
For the respondents: *George Gilbert*, Miami, Fla.

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 Miriam Maschek, Inc., a corporation, and Miriam Maschek and Francis Maschek, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Miriam Mascheck, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 13550 Memorial Hwy., N. Miami, Fla.

Respondents Miriam Maschek and Francis Maschek 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 business addresses are the same as that of the corporate respondent.

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

PAR. 2. Respondents advertise, offer for sale and sell to the general public a medical process called the Maschek treatment (hereinafter sometimes referred to as respondents' treatment) which involves the application of a certain caustic chemical solution to the face, or various

other parts of the bodies of their clients for the purported purpose of removing or diminishing manifestations of aging such as wrinkles, lines, folds and spots and undesirable features such as blemishes, large pores, and acne marks by peeling the upper layers of skin from the treated areas. After the solution is applied to the patient's skin, bandages are then applied to the treated areas and are allowed to remain for several days; after which time, the bandages are removed and the upper layers of skin, destroyed by the process, are peeled away.

PAR. 3. Respondents' medical treatment constitutes either a drug or a cosmetic, or both, as defined in Sections 15(c) and (e) of the Federal Trade Commission Act, 15 U.S.C. Sections 55(c) and (e).

PAR. 4. In the course and conduct of their business as aforesaid, respondents have sent and received promotional materials, agreements, business correspondence, monies and other documents by and through the United States mail between respondents' place of business in Florida and prospective patients in other States of the United States. By virtue of these activities, respondents have maintained a substantial business in commerce, as "commerce" is used in Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45. Also, respondents have disseminated and caused to be disseminated advertisements and promotional literature by and through the United States mail, and in commerce by other means, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act, 15 U.S.C. Section 52(a)(1). Further, respondents' advertisements have the purpose of inducing, or are likely to induce, directly or indirectly, the purchase in commerce of the Maschek treatment, within the meaning of Section 12(a)(2) of said Act, 15 U.S.C. Section 52(a)(2).

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their medical process, respondents have made and are now making numerous statements and representations in advertisements and other promotional materials and during oral sales presentations. Typical and illustrative of such written or oral statements and representations, but not all inclusive thereof, are the following:

A Miami housewife, * * *, is permitting a Tribune reporter to be an eyewitness to the day-by-day miracle of taking a tuck in time-without surgery or scars.

Most of them (clients) claim she turns back the clock at least 10 years and keeps it there for the next 10, which means that at 50 you can look 30; * * *

Lena's new face should last for 8 to 10 years * * *

In her de-aging process. * * *, the wrinkled old skin dissolves gently under the grotesque mask, and when the mask is rolled off the years roll away, leaving skin as new and pink and firm as a newborn baby's.

Mrs. Maschek says her treatment has no injurious effect on beards and mustaches; the hair continues to grow while the years roll away.

The droopy folds in her eyelids, and the bags under the eyes were gone. The wrinkles,

the brown spots, the laugh lines from nose to chin, the deep lines under her chin - all had vanished in the chunks of mask that came off.

"I've made women of 58 look like 35."

"It feels a little tight - just like a sunburn."

Question: Why can't her work be done on a hospital basis so more people could avail themselves of the morale lift a younger face gives? Answer: Because it is not yet approved by the medical profession.

Gray haired women come out of beauty shops every day as redheads and blondes. Why should we be so timid about changing our faces?

PAR. 6. Through the use of the above statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented directly or by implication that:

1. Respondents' treatment is not medical or surgical in nature.
2. Respondents' treatment is generally painless and involves no abrasives or caustic chemicals.
3. The potential discomfort possibly resulting from respondents' treatment is no more severe than that normally associated with a sunburn.
4. The application of respondents' treatment is a safe procedure free from possible serious side effects or complications.
5. Respondents' treatment will eliminate or significantly diminish acne marks, big pores, deep lines, deep wrinkles and sagging or redundant folds of skin.
6. Respondents' treatment will produce or result in new, soft, fresh, clear, healthy, fine-textured skin.
7. Respondents' treatment is clinically recommended or can be beneficial to all kinds of people.
8. Respondents' personnel are competently trained and qualified to:
(a) examine, advise, and mentally prepare patients to undergo the treatment; (b) determine whether each patient is a proper subject for treatment; (c) administer or perform treatment without the direction and supervision of a licensed medical practitioner; and (d) provide post-operative advice and care for patients.
9. Respondents' treatment is complete in three (3) weeks.
10. As a result of respondents' treatment, patients will appear 10, 15, or 20 years younger than their chronological age.
11. The treatment is unique, that the process is special, that it involves a secret formula, that it is available only through the respondents, and that these factors justify the high price of the treatment.

PAR. 7. In truth and in fact:

1. The treatment involves application of a caustic chemical solution (containing phenol, also known as carboic acid) to the skin, causing a second-degree burn which peels off the outer layers of the skin and

produces a change in skin appearance solely by the body's own wound-healing processes. This treatment is known as chemosurgery and is a serious medical procedure.

2. The treatment involves caustic chemicals and creams which burn the upper layers of skin to create peeling and is in fact painful in many cases.

3. The pain associated with the said treatment can be so severe that respondents' patients are always sedated or anesthetized during the application of acid and may require medication for days, weeks, or months afterward to reduce pain and other discomforts, such as itching and burning. During the treatment, many patients experience such discomforts as the eyes swelling shut and difficulties breathing and swallowing.

4. The treatment has a number of inherent dangers to the human body:

a. *Systemic Toxic Reaction (Poisoning)*. The chemical used in the Maschek treatment, phenol, is toxic to kidneys, liver, and other organs of the body when present in sufficient quantities. Phenol can be absorbed through the skin during the treatment in quantities sufficient to cause serious and even fatal illness in some people. Persons with kidney infections are particularly susceptible to adverse phenol reaction.

b. *Infection*. Like any other serious burn covering a large surface of the body, the danger of infection through the burned area is ever present during the process and for some time afterward. The "powder mask," worn for a week after the initial treatment is in reality a medical step to attempt to prevent infection.

c. *The Eyes*. If the acid gets in a patient's eyes, serious permanent damage can result, including blindness; therefore, a great deal of medical skill is required and adequate precautions must be taken to prevent such an occurrence and minimize the harm if this does happen.

d. *Other Systemic Complications*. Since phenol skin peeling is a serious, traumatic medical procedure and involves use of sedatives and other medications, clients are exposed to numerous other dangers, including heart disease and allergic reactions, which accompany procedures of this type. If patients are not properly prepared, physically, mentally and emotionally, with special emphasis on full disclosure of all that the process entails, these dangers are heightened and the prospects for improvement diminished.

5. Only certain limited conditions, such as fine lines and some skin blemishes, can be affected by the process, and only in carefully selected persons. Acne scars, big pores, deep lines, deep wrinkles, and sagging

or redundant folds of skin are not eliminated or significantly diminished by the treatment.

6. As a result of the treatment, a number of undesirable changes in the skin may occur, necessitating the continual use of cosmetics or medical techniques to protect the skin, or treat or camouflage its condition, including but not limited to:

a. *Scarring*. Various types of visible scars may appear after the treatment and remain indefinitely.

b. *Pigmentation Changes*. The treatment almost always produces changes in the color of the treated area, which may persist indefinitely, such as a lighter overall color, mottling (dark areas alternating with light areas), and lines of demarcation between treated and untreated areas.

c. *Redness*. The extreme redness of the skin, which occurs mainly during the healing process, may persist for a long time. Also, there may be a tendency, persisting indefinitely, for the treated skin to flush (suddenly appear red) during times of overheating, overexertion or emotional stress.

d. *Sensitivity To Sunlight*. During the healing process and for an indefinite period afterward, the treated skin may react abnormally to exposure to sunlight, including severe sunburn, mottling, and other pigmentation changes.

e. *Other Skin Reactions*. The treated skin may be affected by other problems associated with the traumatic impact of chemical skin peeling, such as increased or coarsened hair growth requiring further medical attention.

7. Favorable results cannot be achieved unless rigorous criteria for patient selection are followed, including but not limited to:

a. *Sex*. Most men should not undergo the treatment because of difficulties associated with beard growth and the necessity for wearing cosmetics to protect the skin and camouflage its condition. Yet respondents do perform the treatment on men.

b. *Age*. A young person whose skin has not matured should not go through the treatment nor should an elderly person who cannot stand the physical strain.

c. *Type Of Skin*. The treatment should only be performed on certain limited types of skin, and definitely not on dark-skinned persons because of the probability of drastic pigmentation changes.

d. *Other Factors*. People who are not in the proper physical, mental, and emotional health should not undergo this treatment.

8. Because of its serious medical nature, respondents who are not and do not employ professionally trained or licensed personnel are not

qualified to deal with the complex physical, mental, and emotional factors involved in the treatment.

9. A period lasting weeks or months, the duration of which cannot be accurately predicted, is required before the skin is healed. During this time, a treated person has an extremely red face, may suffer various discomforts, and must restrict public activities, avoid direct or reflected sunlight and use heavy cosmetics to shield and camouflage the skin.

10. Treated persons cannot reasonably expect that their appearance will be altered by more than a year or two from their actual chronological age, even with the best results obtained by a professional plastic surgeon.

11. There is nothing unique about the respondents' treatment. The process is not new or secret, but is performed by qualified plastic surgeons under more closely controlled hospital conditions in metropolitan areas across the country for a fraction of the respondents' price.

Therefore, representations referred to in Paragraph Five are false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, respondents, directly or through agents, have represented in advertisements, during oral sales presentations, and at other times and places, the asserted advantages of their treatment, as hereinbefore described. The respondents, in promotional literature, have attempted to describe and depict all aspects of their treatment, but by the process of diffusion, the respondents have not effectively disclosed:

1. The treatment is chemical skin peeling, a serious medical procedure known as chemosurgery.

2. The treatment involves the application of an acid called phenol to the skin, causing a second-degree burn which peels off the outer layers of the skin and produces a change in skin appearance solely by the body's own wound-healing reactions.

3. The pain associated with the treatment can be very severe; thus patients are sedated or anesthetized during the application of acid. This pain, as well as other discomforts, such as burning, itching, and swollen shut eyes, may persist for days or weeks afterward, requiring medication to control.

4. The treatment has a number of known inherent dangers, including: (1) poisoning of a person's entire system by the acid absorbed through the skin, which can be a serious, even fatal illness; (b) infection; (c) blindness, if the acid gets into a patient's eyes; (d) permanent scarring; and (e) other complications resulting from the traumatic nature of the procedure or the medications used.

5. A number of undesirable changes in the skin result from chemical

skin-peeling, necessitating the continual use of cosmetics or medical techniques to protect, treat, or camouflage the skin. These may include: (a) permanent scarring; (b) changes in overall color of the treated area; (c) mottling; (d) a line of demarcation at the edge of the treated area; (e) extreme redness; (f) abnormal sensitivity to sunlight; (g) and other traumatic skin reactions.

6. The most common sign of aging in the neck area, which is a stringy or "turkey-neck" condition of the skin and underlying tissues, is not improved by chemical skin-peeling.

7. Almost all plastic surgeons refuse to perform chemical skin-peeling on the neck because the neck is not likely to be improved by the process and is more likely to be worsened since the risks of undesirable side effects and skin changes described above are greater.

8. Only minor aspects of skin appearance, such as fine wrinkles and some skin blemishes, can be treated by the process.

9. Acne scars, big pores, deep lines, deep wrinkles, and sagging or redundant folds of skin are not removed or significantly reduced by the process, yet some of these conditions may be improved by other techniques of plastic surgery, such as dermabrasion or surgical face-lift.

10. Most men are not advised to undergo the process because of difficulties associated with beard growth and the necessity for continual use of cosmetics.

11. A young person whose skin has not matured should not undergo the process, because of the risk of permanent skin damage.

12. Dark-skinned persons should not undergo the process because of the probability of drastic pigmentation changes.

13. Only certain kinds of people with certain types of skin have a reasonable chance of receiving favorable results and avoiding adverse effects from chemical skin-peeling, and only a licensed medical practitioner familiar with such techniques of plastic surgery and able to evaluate complex physical, mental and emotional factors is qualified to examine, diagnose, advise, select, or mentally prepare patients for chemical skin peeling, and only such a professional person can provide post-operative advice and care for patients.

14. Although a treatment of this serious nature is usually performed in a hospital, respondents apply and administer the treatment at a clinic, which they own or operate.

15. It may be weeks or months after the treatment before the skin is healed, during which time a treated person has an extremely red face, may suffer various discomforts, and must restrict public activities, avoid direct or reflected sunlight and use heavy cosmetics and sun screens.

16. If a more youthful appearance is achieved through the

treatment, the result may not last more than a year or two, since part of the benefit is due to temporary swelling and since the natural aging processes begin all over again after the treatment.

17. Chemical skin peeling is available from qualified plastic surgeons under closely controlled hospital conditions in metropolitan areas across the country at substantially lower cost.

The disadvantages, consequences and dangers described in the above Paragraph have occurred or existed, or to a reasonable medical certainty can be expected to occur or exist, and respondents knew, or had reason to know, that they could be expected to occur or exist.

Therefore, the failure to disclose the material facts referred to in Paragraph Eight is false and misleading and the acts and practices referred to in said paragraph are unfair and deceptive.

PAR. 9. In the course and conduct of their business, the respondents have been, and are now, using persons other than a licensed medical practitioner who is familiar with techniques of plastic surgery, who is operating within the limits of his or her profession and who is qualified to evaluate complex physical, mental and emotional factors, to examine, diagnose, advise, select, or mentally prepare prospective patients for the Maschek treatment, to administer or apply the treatment without supervision or direction, or to provide post-operative advice or care for them.

The use by the respondents of the aforesaid practices is an unfair act or practice and an act of unfair competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 10. Therefore the advertisements, representations, acts and practices referred to hereinabove are false, misleading, unfair and deceptive.

PAR. 11. The use by respondents of the aforesaid false, misleading, unfair and deceptive representations, acts and practices has the capacity and tendency to mislead consumers into the mistaken belief that said representations are true and to unfairly influence consumers, with the result that consumers are induced to undergo the Maschek treatment and be subjected to severe pain, discomfort, inconvenience of traveling, exorbitant charges, and risks of disease or disfigurement, without being afforded reasonable opportunity to comprehend and consider the seriousness of the treatment or to compare facial improvement treatments available from other sources under more closely controlled medical conditions, at lower prices.

PAR. 12. The respondents' acts and practices alleged herein, including the dissemination of false advertisements, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and

practices in commerce in violation of Sections 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 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 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 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 sixty (60) 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 Miriam Maschek, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 13550 Memorial Hwy., N. Miami, Fla.

2. Respondents Miriam Maschek and Francis Maschek are officers of the said corporation. 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 address.

3. 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 Miriam Maschek, Inc., a corporation,

its successors and assigns, and Miriam Maschek, and Francis Maschek, individually and as officers of said corporation (hereinafter sometimes referred to as "respondents"), and respondents' 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 dispensing of the Miriam Maschek treatment (hereinafter sometimes referred to as respondents' treatment) or any similar cosmetic chemosurgical process of face lifting of skin peeling, which involves the topical application of a caustic chemical solution containing carbolic acid (also known as phenol) or other substances on the face, neck, arms, hands or other parts of the human body for the purpose of inducing superficial skin burns, the result of which is the peeling or removal of the outer layers of skin, in commerce, as "commerce" is defined in the Federal Trade Commission Act, or by the United States mails within the meaning of Section 12(a)(1) of the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing directly or by implication that:

1. Respondents' treatment or process is solely a cosmetic process, not a medical process, or does not involve chemical surgery.
2. Respondents' treatment or process is painless or involves no abrasives or caustic chemicals.
3. Potential discomfort is virtually nonexistent as one can relax without emotional or physical distress during the treatment.
4. Respondents' treatment is safe or free from possible serious side effects or complications.
5. Respondents' treatment or process will remove or significantly reduce acne scars, big pores, deep lines, deep wrinkles, or sagging, redundant folds of skin.
6. Respondents' treatment will produce or result in new soft, fresh, clear, healthy, fine textured skin.
7. Respondents' process can be clinically recommended to or safely or successfully performed on men, young people, elderly people, or dark-skinned people.
8. Respondents' personnel are competently trained and qualified to (a) examine, advise, and mentally prepare patients to undergo the treatment; (b) determine whether each patient is a proper subject for treatment; (c) administer or perform treatment without direction and supervision of a licensed medical practitioner; and (d) provide post-operative advice and care for patients.
9. Respondents' treatment is complete within any specified period of time.
10. Respondents' treatment will cause clients to appear any specified number of years younger than their actual chronological age.

11. Respondents' process is unique, new or special in the following or other ways:

- a. That it involves a secret formula or secret solution;
- b. That it or similar processes are only available through respondents; and
- c. That it is not available through qualified plastic surgeons under more closely controlled hospital conditions in metropolitan areas across the country at a substantially lower cost.

B. Failing or refusing to make clear and conspicuous disclosures in all advertising and in all oral sales presentations, that:

1. The treatment is chemical skin-peeling, a serious medical procedure known as chemosurgery.

2. The treatment involves the application of an acid called phenol to the skin, causing a second-degree burn which peels off the outer layers of the skin and produces a change in skin appearance solely by the body's own wound-healing reactions.

3. The pain associated with the treatment can be very severe; thus patients are sedated or anesthetized during the application of acid. This pain, as well as other discomforts, such as burning itching, and swollen shut eyes, may persist for days or weeks afterward, requiring medication to control.

4. The treatment has a number of known inherent dangers, including: (a) poisoning of a person's entire system by the acid absorbed through the skin, which can be a serious, even fatal illness; (b) infection; (c) blindness, if the acid gets into a patient's eyes; (d) permanent scarring; and (e) other complications resulting from the traumatic nature of the procedure or the medications used.

5. A number of undesirable changes in the skin result from chemical skin-peeling, necessitating the continual use of cosmetics or medical techniques to protect, treat, or camouflage the skin. These may include: (a) permanent scarring; (b) changes in overall color of the treated area; (c) mottling; (d) a line of demarcation at the edge of the treated area; (e) extreme redness; (f) abnormal sensitivity to sunlight; and (g) other traumatic skin reactions.

6. The most common sign of aging in the neck area, which is a stringy or "turkey-neck" condition of the skin and underlying tissues, is not improved by chemical skin-peeling.

7. Almost all plastic surgeons refuse to perform chemical skin-peeling on the neck because the neck is not likely to be improved by the process and is more likely to be worsened since the risks of undesirable side effects and skin changes described above are greater.

8. Only minor aspects of skin appearance, such as fine wrinkles and some skin blemishes, can be treated by the process.

9. Acne scars, big pores, deep lines, deep wrinkles, and sagging or redundant folds of skin are not removed or significantly reduced by the process, yet some of these conditions may be improved by other techniques of plastic surgery, such as dermabrasion or surgical face lift.

10. Most men are not advised to undergo the process because of difficulties associated with beard growth and the necessity for continual use of cosmetics.

11. A young person whose skin has not matured should not undergo the process, because of the risk of permanent skin damage.

12. Dark-skinned persons should not undergo the process because of the probability of drastic pigmentation changes.

13. Only certain kinds of people with certain types of skin have a reasonable chance of receiving favorable results and avoiding adverse effects from chemical skin-peeling, and only a licensed medical practitioner familiar with such techniques of plastic surgery and able to evaluate complex physical, mental and emotional factors is qualified to examine, diagnose, advise, select, or mentally prepare patients for chemical skin-peeling, and only such a professional person can provide post-operative advice and care for patients.

14. Although a treatment of this serious nature is usually performed in a hospital, respondents' treatment is given at a clinic, which they own or operate.

15. It may be weeks or months after the treatment before the skin is healed, during which time a treated person has an extremely red face, may suffer various discomforts, and must restrict public activities, avoid direct or reflected sunlight and use heavy cosmetics and sun screens.

16. If a more youthful appearance is achieved through the treatment, the results may not last more than a year or two, since part of the benefit is due to temporary swelling and since the natural aging processes begin all over again after the treatment.

17. Chemical skin-peeling is available from qualified plastic surgeons under closely controlled hospital conditions in metropolitan areas across the country at substantially lower cost.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement and each presentation used in connection with the advertising, offering for sale, sale, or dispensing of respondents' cosmetic process, and shall devote no less than fifteen percent of each advertisement or presentation to such disclosures. *Provided, however,* That in advertisements which consist of less than forty-eight column inches in newspapers or periodicals, and in radio or television advertisements with a running time of two minutes

or less, respondents may substitute the following statement, in lieu of the above requirements:

WARNING: This is a medical procedure—basically a chemical burn which peels skin away. It is extremely painful, takes a long time to heal, and exposes a person to risks of poisoning, infection, permanent scarring, and other medical complications. If performed on the neck, the process may make it look worse. Many signs of aging are not improved by this process, and the benefit, if any, is mainly temporary. Only certain kinds of people can benefit from this process, and they should be diagnosed, selected, treated, and continually cared for by a qualified doctor under closely controlled medical conditions (statement required by order of the Federal Trade Commission).

Respondents shall set forth the above disclosure separately and conspicuously from the balance of each advertisement, stating nothing to the contrary or in mitigation thereof, and shall devote no less than fifteen percent of each advertisement to such disclosure, and if such disclosure is made in print, it shall be in at least eleven-point type.

It is further ordered, That respondents:

1. Recall and retrieve, from each and every licensee and sales representative, all advertisements and materials upon which advertisements or oral sales presentations are based, which contain any of the representations prohibited by Paragraph A of this order or which fail to make the disclosures required by Paragraph B.

2. Deliver a copy of this order to each present and future franchisee, licensee, and sales representative, and to each licensed medical practitioner associated with respondents or their licensees; and obtain a written acknowledgement from each of the receipt thereof.

3. Obtain from each present and future franchisee, licensee, or sales representative an agreement in writing (a) to abide by the terms of this order, and (b) to the cancellation of their license or franchise for failure to do so; and that respondents cancel the license or franchise of any licensee or franchisee that fails to abide by the terms of this order.

It is further ordered, That respondents:

1. Provide prospective and present patients, as soon as possible after initial sales contact is made with such person and before such person signs any document relating to respondents' process, an information sheet which shall be furnished to the prospective patient and which contains nothing but the disclosures, numbered 1 to 17, set forth in Paragraph B. Respondents shall allow these persons ample, uninterrupted opportunity to read and consider the contents of this information sheet. Respondents shall retain a copy of this information sheet, after it is signed and dated by the person, for a period of two (2) years.

2. Require that each such prospective patient, after receipt of the information sheet described above and before he or she signs any contract for respondents' treatment, consult with a licensed physician,

who is not in any way associated with or recommended by the respondents, regarding the nature of chemical skin-peeling, its dangers, discomforts, limitations, and alternatives. Respondents shall obtain from each prospective patient a certificate, signed by the physician who was thus consulted, specifying that the physician:

- a. Understands what respondents' treatment is and the conditions under which it will be performed.
- b. Has explained to the prospective patient the nature of the treatment, its dangers, discomforts, limitations, and alternatives;
- c. Has conducted or has examined the results of tests appropriate to determine prospective patient's physical fitness to undergo respondents' treatment and has discussed these results with the prospective patient; and
- d. Has reviewed appropriate aspects of the prospective patient's medical history and has discussed these aspects with the prospective patient.

This certificate shall specify the date and approximate time of the consultation, and respondents shall retain all such certificates for three (3) years.

It is further ordered, That no contract for respondents' process shall become binding on the patient prior to forty-eight hours after the patient has consulted with the physician who will direct and supervise the performing of the treatment and inspected and approved the treatment and recuperation facilities, and that:

1. Respondents shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument signed by the patient, that the purchaser may rescind or cancel any obligation incurred, with return of all monies paid, by mailing or delivering a notice of cancellation to the respondents' place of business prior to the end of this period.
2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.
3. Respondents shall return to such patient, within forty-eight hours after receipt of notice of cancellation, all monies paid.
4. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to the time the patient is treated.

It is further ordered, That respondents cease and desist from the following unfair practice:

1. Failing or refusing to use a licensed medical practitioner, who is familiar with such techniques of plastic surgery, who is operating within the limits of his or her profession, and who is qualified to evaluate complex physical, mental and emotional factors, to examine,

diagnose, advise, select, or mentally prepare all prospective patients for chemical skin-peeling, to supervise and direct all administrations or applications of the treatment, and to provide post-operative advice or care for all such patients.

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 the corporate respondent notify the Commission at least thirty (30) days prior to any proposed change in said respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, licensees, or franchisees, or any other change in the corporation which may affect compliance obligations arising out of this 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 affiliation with a new business or employment, in the event of such discontinuance or affiliation. Such notice shall include individual'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 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

DELTOWN FOODS, INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON
ACT

Docket 8951. Complaint, Jan. 18, 1974 - Decision, Mar. 14, 1975

Consent order requiring a Yonkers, N.Y., producer of packaged fluid milk, among other things to divest itself of the milk processing plant in New York City that it purchased from Kraftco Corp., in Nov., 1973, and also to divest one-half of the acquired customer volume. Further, the order places a ten-year ban on future acquisitions by respondent of fluid milk processing facilities without prior Commission approval.

Appearances

For the Commission: *John J. Mathias, Peter Brickfield and Alan I. Leibowitz.*

For the respondents: *Bruce L. Montgomery, Arnold & Porter, Wash., D. C., Howard T. Milman, Sullivan & Cromwell, New York City, Sydney C. Winton, Botein, Hays, Sklar & Herzberg, New York City and J. M. Costigan, Glenview, Ill.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Deltown Foods, Inc., (hereinafter "Deltown") and Kraftco Corp. (hereinafter "Kraftco") have violated the provisions of Section 7 of the Clayton Act (15 U.S.C. §18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) through the acquisition by Deltown of certain Kraftco assets and intangible rights, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I

Definitions

1. For the purposes of this complaint, the following definitions are applicable:

(a) "Packaged fluid milk" consists of milk and other packaged milk and related products, such as whole milk, skim milk, cream, half & half and other products referred to as Class I milk products in the Federal Milk Marketing Order applicable to the New York City Metropolitan District.

(b) The "New York City Metropolitan District" consists of the five boroughs of New York City and Nassau, Suffolk, Westchester and Rockland Counties of the State of New York, or portions thereof.

II

Respondents

2. Respondent Deltown is a corporation organized and existing under the laws of the State of New York with its office and principal place of business at 170 Saw Mill River Rd., Yonkers, N.Y.

3. Deltown, directly and through various wholly-owned subsidiaries, is a large producer of packaged fluid milk in the New York City area. The company operates two dairy products plants and distributes its milk throughout the New York City Metropolitan District. Prior to the

acquisition described hereinbelow, Deltown was approximately the fourth largest dairy in the New York City Metropolitan District with about 11 percent of the market.

4. Respondent Kraftco is a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business at Kraftco Court, Glenview, Ill.

5. Kraftco, directly and through various wholly-owned subsidiaries or divisions, is a large national producer of packaged fluid milk and other dairy products and nondairy food products. Kraftco owns dairy plants throughout the eastern half of the country and distributes packaged fluid milk in various parts of the country, including until recently the New York City Metropolitan District. Kraftco has trademarked and heavily promoted the "Sealtest" and "Light 'n Lively" labels, the latter applicable to products of low fat content. Kraftco was approximately the sixth largest dairy in the New York City Metropolitan District with about 8 percent of the market.

6. Respondents Kraftco and Deltown are and for many years have been engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

III

Trade and Commerce

7. The packaged fluid milk industry consists of dairies primarily engaged in the processing and distribution of fresh whole milk and packaged fluid milk.

8. Packaged fluid milk is sold by dairies (1) to retail food stores for resale, (2) to institutions, (3) direct to homes, (4) to jobbers. Sales by dairies to retail stores and institutions represent "wholesale" sales. Sales by dairies directly to homes represent retail sales.

9. The New York City Metropolitan District is one of the largest markets in the United States for the consumption of packaged fluid milk.

10. Prior to the acquisition described hereinbelow, the four largest dairy companies in the New York City Metropolitan District accounted for 45.9 percent of the sales of packaged fluid milk. The top eight companies accounted for 71.5 percent of sales of packaged fluid milk.

11. In 1972, Kraftco, including its Muller Dairy division, was one of the largest distributors of packaged fluid milk in the New York City Metropolitan District with approximately 8-10 percent of the market. Sealtest sold packaged fluid milk in high volume to several food chains and, in addition, served almost every chainstore in the New York area with its low fat Light 'n Lively trademarked milk.

12. In 1972, Deltown was also one of the largest distributors of packaged fluid milk in the New York City Metropolitan District with 10-11 percent of the market. It was a supplier to the A&P stores in Manhattan and the Bronx, to part of the Food Fair retail chain in the New York City Metropolitan District and supplied numerous small retail food chains.

13. Wholesale packaged fluid milk sales, especially sales to supermarkets, are highly sought after by the large dairy companies in the New York City Metropolitan District. Because such business produces a high volume of sales, supermarket chains are regarded as choice outlets and essential for successful operation of the larger dairies. In the New York City Metropolitan District, competition for retail food store chains has been vigorous and the business of the various chains has been awarded to eight or nine dairy companies. These dairies are relatively closely bunched in terms of size and share of market, no single dairy being dominant.

14. Over the past several years, the number of fluid milk processors active in the New York City Metropolitan District has decreased from 35 in 1966 to 23 in 1973.

IV

Violations Charged

15. On or about Nov. 11, 1973, Deltown and Kraftco entered into an agreement, whereby Kraftco would sell to Deltown its plants, equipment, and other assets located in New York City, including its Muller Dairy division. In addition, a separate agreement provides that Deltown will be able to use the "Sealtest" and "Light 'n Lively" trademark and trade names in the sale of packaged fluid milk.

16. The effect of Deltown's acquisition of the Kraftco assets in New York City may be to lessen competition substantially or tend to create a monopoly in violation of Section 7 of the Clayton Act, and the contract and combination by which Kraftco and Deltown undertook to eliminate the independent competition of Kraftco and entrench Deltown as dominant in the market is in unreasonable restraint of trade, and may hinder or have a dangerous tendency to hinder competition unduly, thereby constituting an unfair act and practice in commerce, in violation of Section 5 of the Federal Trade Commission Act, in that:

(a) Actual or potential competition in sale and distribution of packaged fluid milk in the New York City Metropolitan District will be eliminated or prevented;

(b) Deltown will become the dominant competitive factor in a market

now noted for competitors of relatively equal size, none of whom has a commanding market share in the New York City Metropolitan District;

(c) Concentration in the sale and distribution of packaged fluid milk in the New York City Metropolitan District will be increased and deconcentration will be prevented;

(d) Deltown, now possessing the "Sealtest" and "Light 'n Lively," trademarks for which there is high consumer demand, will be in a position to force competing dairies out of retail chains by convincing store managers that the stores, already being served with "Light 'n Lively," do not need a different dairy supplier for other packaged fluid milk products;

(e) The New York City Metropolitan District, which has witnessed vigorous competition between dairies, will become dominated by the Deltown-Kraftco combination, thereby reducing the competitive atmosphere in the market area and threatening the elimination of competitors who are not able to maintain their present sales contracts with retail store chains.

(f) The members of the consuming public in the New York City Metropolitan District will be denied the benefits of free and open competition in the sale and distribution of packaged fluid milk.

Notice of Contemplated Relief

Should the Commission conclude from the record developed in any adjudicative proceeding in this matter that the respondents Deltown and Kraftco are in violation of Section 5 of the Federal Trade Commission Act and/or Section 7 of the Clayton Act as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate including, but not limited to:

1. Divestiture of ownership of all former Kraftco stock, assets and other property in the New York City Metropolitan District owned or under the control of Deltown or total rescission of the agreement or contract of purchase and sale entered into between Deltown and Kraftco.

2. Revocation of Kraftco's license to Deltown to use Kraftco's trademarks "Sealtest" and "Light 'n Lively" to Deltown, such licenses must be granted on a nonexclusive basis and made available to all dairies in the New York City Metropolitan District on the same reasonable terms.

3. Any other provisions appropriate to correct or remedy the effects of anticompetitive practices engaged in by respondent.

4. Requirement that appropriate persons be notified of the terms of the order and that periodic compliance reports be filed with the Commission.

DECISION AND ORDER

The Federal Trade Commission, having initiated a complaint charging that the respondents named in the caption hereof have violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. §45; and

Upon joint motion of the parties and certification of such motion to the Commission by the administrative law judge, the Commission, by order of Dec. 5, 1974, having withdrawn the matter from adjudication pursuant to Section 2.34(d) of the rules of practice; and

Respondents and complaint counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all jurisdictional facts set forth in 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, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted it by unanimous vote on Dec. 17, 1974, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and no comments having been filed pursuant to Section 2.34(b) of the rules;

Now, in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Deltown Foods, Incorporated (Deltown) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive offices and principal place of business located at 170 Saw Mill River Road, Yonkers, N.Y.

2. Respondent Kraftco Corporation 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 Kraftco Court, Glenview, Ill.

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

ORDER

I

For the purposes of this order, the following definitions shall apply:

A. The "Base Period" is the six day period Nov. 12 to Nov. 17, 1973, both dates inclusive.

B. The "Plant" is the milk processing plant located at 132-05 Atlantic Ave., Richmond Hill, Queens, N.Y.

C. An "Acquired Customer" is any customer who "bought or obtained" "Class I Packaged Fluid Milk Products" from the "Plant" on Nov. 12, 1973. An "Acquired Customer" is a particular store, delivery stop or plant pick up rather than the purchasing entity as a whole; "bought or obtained" shall include milk of customers in quarts or quart equivalents processed or packaged for their account.

D. "Acquired Volume" is the total volume of "Class I Packaged Fluid Milk Products" in quarts or quart equivalents "bought or obtained" from the "Plant" by an "Acquired Customer" during the "Base Period."

E. "Class I Packaged Fluid Milk Products" consist of whole milk, skim milk, 1 percent low-fat milk and all other products defined as Class I milk products for the purposes of Federal Milk Marketing Order No. 2.

F. "Volume Discontinued" is the total volume of "Class I Packaged Fluid Milk Products," in quarts or quart equivalents, "bought or obtained" by a discontinued "Acquired Customer" during the "Base Period" from the "Plant" or from Deltown's processing facilities in Yonkers, N.Y. or Copiague, N.Y. A discontinued "Acquired Customer" shall be any "Acquired Customer" with respect to whom service has been discontinued for any reason on or after Nov. 13, 1973.

II

It is ordered, That the Trademark License Agreement dated Nov. 20, 1973, between Sealtest Foods Division of Kraftco Corporation and Deltown Foods, Incorporated, (License Agreement) and all rights and interests thereunder, (except for the obligations of Deltown set forth in paragraphs 5(d), 8, 9, 10, 15(b), including the last sentence of 15, 16 and 17 of the license agreement, the obligation of Deltown pursuant to paragraph 6 of the License Agreement to pay royalties on sales made prior to the date of termination, and the obligations of Kraftco set forth in paragraph 13 of the license agreement), shall terminate on Mar. 31, 1976, unless Deltown shall, on or before Mar. 31, 1976, the exact date to be as determined by Deltown, assign its right and interest as licensee of the trademarks "Sealtest" and "Light 'n Lively," to a purchaser previously approved by Kraftco pursuant to the license agreement and approved by the Federal Trade Commission (the "Commission").

III

It is further ordered, That Deltown, on or before Mar. 31, 1976, the

exact date or dates to be determined by Deltown, shall have ceased service to "Acquired Customers" in sufficient number such that the total "Volume Discontinued" is not less than one-half (1/2) of the "Acquired Volume." Discontinuance or cessation of service may have been effected for any reason including, without limitation, sale (for monetary consideration) of the patronage of such "Acquired Customers" to a purchaser or purchasers other than Dairylea Cooperative Inc., Pearl River, N.Y., hereinafter "Dairylea," Elmhurst Milk and Cream Co./Honeywell Farms Inc., 155-25 Styler Rd., Jamaica, N.Y., hereinafter "Elmhurst/Honeywell," Queens Farms Inc./Liberty Farms Inc., 103-45 98th Street, Ozone Park, N.Y., hereinafter "Queens Farms/Liberty Farms" or their parents, divisions, affiliates or related companies; *Provided*, That any discontinuance of service as part of a swap or exchange of customers' patronage shall not be considered to be a discontinuance within the meaning of this order. Deltown shall maintain, until Jan. 1, 1979, and make available upon request by the Commission staff, sufficient records to reflect the identity of "Acquired Customer" and sufficient records from which "Volume Discontinued" can be calculated.

IV

It is further ordered, That Deltown shall file an Initial Report as hereinafter provided and thereafter shall file successive reports for each calendar quarter to and including the quarter ending Mar. 31, 1976, identifying "Acquired Customers" whose patronage has been discontinued during the reporting quarter and identifying any wholesale customers acquired in the reporting quarter and such customer's previous supplier and, in the case of customers whose patronage was sold, stating to whom such customer's patronage was sold and the consideration therefor. Sixty days after this order shall become effective, Deltown shall file its Initial Report covering all calendar quarters since Nov. 12, 1973, to and including the calendar quarter ending on or before the date of the Initial Report. For a period of one year after the filing of the quarterly report identifying a discontinued "Acquired Customer," or in the case of the Initial Report, one year after the end of the quarter during which the "Acquired Customer" was reported as discontinued, Deltown shall not solicit, canvass, sell to or in any other way attempt to obtain the patronage or business of the "Acquired Customer" listed as discontinued on such quarterly or Initial Report. Deltown shall, if requested, file such additional reports as may be required by the Commission's staff on reasonable notice.

V

It is further ordered, That Deltown shall divest itself of the "Plant" no later than Mar. 31, 1975, *Provided*, That it shall be deemed sufficient divestiture hereunder if Deltown takes such actions, including but not limited to a sale or lease, the effect of which shall be that Deltown no longer operates that "Plant" as a milk processing facility; *Provided*, That any sale or lease to a firm engaged in processing and/or distribution of "Class I Packaged Fluid Milk Products" shall have prior Commission approval.

Nothing in this order shall be deemed to prohibit Deltown from retaining, accepting and enforcing in good faith any security interest in the "Plant" or equipment contained therein for the sole purpose of securing to Deltown full payment, with interest, of the price at which the "Plant" or equipment is sold.

VI

It is further ordered, That for a period of ten years from the effective date of this order, Deltown shall be prohibited from acquiring, directly or indirectly, without the prior approval of the Commission, (1) the whole or any part of the stock or share capital of any corporation or other business entity engaged in the processing and/or distribution of "Class I Packaged Fluid Milk Products" within the five boroughs of New York City and Nassau, Suffolk and Westchester Counties, in the State of New York, (the "New York City Metropolitan District"), or (2) a fluid milk processing plant or fluid milk distribution route of any corporation or other business entity if such plant or route is involved in the processing and/or distribution of "Class I Packaged Fluid Milk Products" in the "New York City Metropolitan District"; *Provided, however*, That subject to the provisions in subdivision IV, *supra*, as to discontinued "Acquired Customers," nothing contained herein shall prohibit Deltown from competing for the sale or processing of "Class I Packaged Fluid Milk Products" to or for dealers or jobbers whether or not served by Deltown on the date this order becomes final; *And provided further*, that Deltown may, without prior approval of the Commission, acquire the whole or any part of the stock, share capital or assets of any concern to which it may be selling or for which it may be processing "Class I Packaged Fluid Milk Products" to prevent loss of accounts receivable owing from such concern; *Provided*, That Deltown shall, within ten (10) days after such acquisition, report the transaction to the Commission, thereafter provide such information concerning the acquisition as may be required by the Commission's staff, and shall, if so required by the Commission, divest such acquired tangible and/or

intangible property within six months of the Commission's decision. Deltown shall be further prohibited for a period of ten years from acquiring, directly or indirectly, without the prior approval of the Commission, any fluid milk processing plant within 150 miles of New York City which processed 26 million pounds of milk in the twelve (12) months prior to the proposed acquisition.

VII

It is further ordered, That prior to Jan. 1, 1979, Kraftco shall not:

A. enter into any agreement which has the effect of:

(i) licensing anyone to process and distribute; or

(ii) authorizing "Dairylea," Deltown Foods, Inc., "Elmhurst/Honeywell," "Queens Farms/Liberty Farms" or their parents, divisions, affiliates or related companies to process; or

(iii) authorizing any one person or company or its parents, divisions, affiliates or related companies to distribute; or

(iv) authorizing less than five persons or companies or their parents, divisions, affiliates or related companies if any of them are "Dairylea," Deltown Foods, Inc., "Elmhurst/Honeywell" or "Queens Farms/Liberty Farms" to distribute;

"Light 'n Lively" or "Sealtest" "Class I Packaged Fluid Milk Products" in the "New York City Metropolitan District" until thirty (30) days after the Commission receives either a copy of the proposed agreement (in the case of a written agreement) or has been notified in writing of the substance of the agreement (in the case of an oral agreement).

B. enter into any agreement not covered by paragraph A above which results in the sale of "Light 'n Lively" or "Sealtest" "Class I Packaged Fluid Milk Products" in the "New York City Metropolitan District" unless the Commission receives either a copy of the agreement (in the case of a written agreement) or has been notified in writing of the substance of the agreement (in the case of an oral agreement) within ten (10) days of said agreement.

C. *Provided, however*, That in the event that a then existing processor is unable to process "Light 'n Lively" or "Sealtest" "Class I Packaged Fluid Milk Products" in the "New York City Metropolitan District" Kraftco may enter into an agreement for emergency processing for a period not to exceed sixty (60) days; *Provided*, That the Commission is notified within forty-eight (48) hours of the entering into of such agreement.

Complaint

85 F.T.C.

IN THE MATTER OF
CAMBRIDGE CAMERA EXCHANGE, INC., ET AL.

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

Docket 8971. Complaint, June 10, 1974 - Decision, Mar. 17, 1975

Consent order requiring a New York City mail-order distributor of photographic equipment and supplies, among other things to cease using unfair and deceptive practices in connection with the delivery of prepaid mail order merchandise.

Appearances

For the Commission: *Larry B. Feinstein and Herbert S. Forsmith.*
For the respondents: *Harvey M. Greene, Lotwin, Goldman, Rosen & Greene, 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 Cambridge Camera Exchange, Inc., a corporation, Andrew Elbogen, individually, and as an officer of said corporation, and Robert Lindenblatt, individually, and as an officer of said 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. Cambridge Camera Exchange, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal place of business and executive offices located at 47 Seventh Ave., N.Y., N.Y.

PAR. 2. Andrew Elbogen is an individual and is president of the corporate respondent, and formulates, directs and controls its acts and practices, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 3. Robert Lindenblatt is an individual and is the vice president of the corporate respondent, and formulates, directs and controls its acts and practices, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 4. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution by mail order of photographic equipment and supplies.

PAR. 5. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their photographic equipment and supplies, when sold, to be shipped from their place of business in the State of New York to purchasers located in the various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, and for the purpose of inducing sale of said merchandise, respondents have made, and are now making, certain statements and representations in various newspaper and magazine advertisements, direct mail circulars and by other means in commerce, as "commerce" is defined by the Federal Trade Commission Act, with respect to the time in which delivery of said merchandise may be expected.

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

(a) "RUSH ORDER FORM," (printed above a clip-coupon order form).

(b) "Fast Shipment."

(c) "Prompt Shipment."

PAR. 7. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly and by implication that all orders are promptly shipped upon receipt of an order, or within a reasonable time thereof.

PAR. 8. In truth and in fact, respondents on numerous occasions and in a substantial number of instances, either have failed to deliver merchandise or have delivered merchandise only after a long lapse of time and/or after several demands thereof have been made to respondents and pleas for assistance have been made to Better Business Bureaus, United States Postal Inspectors' Offices, the magazines respondents advertise in, and to government agencies. Such practices have resulted in substantial expense and inconvenience, hardship, outrage and irritation to purchasers.

Therefore, said practices, statements and representations were and are unfair, misleading and deceptive.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, have had, and now 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 order

and purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. In the 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 engaged in the advertising, offering for sale, and the sale of merchandise of the same general kind and nature as that advertised, offered, and sold by the respondent.

PAR. 11. The acts and practices of the respondents as set forth above 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 Commission having issued its complaint on June 10, 1974, charging respondents named in the caption hereof with violation of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of negotiating a settlement by entry of a consent order; and

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

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having thereupon placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter, now, in further conformity with the procedure prescribed in its rules, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered;

1. Respondent Cambridge Camera Exchange, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal place of business and executive offices located at 47 Seventh Ave., N.Y., N.Y.

2. Respondent Andrew Elbogen is an individual and is president of the corporate respondent, and formulates, directs and controls its acts and practices. His address is the same as that of the corporate respondent.

3. Respondent Robert Lindenblatt is an individual and is the vice president of the corporate respondent, and formulates, directs and controls its acts and practices. His address is the same as that of the corporate respondent.

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

It is ordered, That respondents, Cambridge Camera Exchange, Inc., a corporation, its successors and assigns and its officers, and Andrew Elbogen and Robert Lindenblatt, individually and as officers of said corporation, 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 photographic equipment and supplies or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

(1) Soliciting orders for sales of merchandise to be ordered by the buyer through the mail on a prepaid basis unless such merchandise will be shipped within that time clearly and conspicuously stated in such solicitation or if no time is stated, within thirty (30) days after receipt of payment and a properly completed order from the buyer.

(2) Failing to offer in writing, if shipment is not made within the said period, to promptly refund the full purchase price therefor to the purchaser. Upon request for said refund, the return of the purchase price shall be made within ten (10) business days from the date of the receipt of said written request.

That where the respondents, due to circumstances beyond their control, are unable to make shipment as required by paragraph (1), paragraph (2) may be complied with by the respondents furnishing a definite shipping date for the merchandise and by the respondents sending to the buyer a notice of delayed shipment providing the buyer with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. The notice shall be sent by first class mail and accompanied by a self-addressed, postage paid device upon which the buyer may indicate his choice, and mailed by the expiration of the thirty (30) day period, or that time stated in the solicitation as the time within which shipment

would have been made. If, at any time prior to shipment, the respondents receive a response from the buyer requesting refund, such refund shall be made within ten (10) business days from receipt of said request.

(3) Failing:

(a) to maintain a record of each complaint alleging failure to ship merchandise solicited and ordered on a prepaid basis, or of failure to make a refund within the applicable period of time specified in paragraph (2) above, and the disposition of each such complaint. Such record shall be kept for a period of at least twelve (12) months following the disposition of such complaint.

(b) to maintain records showing the employment of systems and procedures designed to comply with paragraphs (1) and (2).

Wherever in this order the term "receipt of payment" is used, it shall be deemed to be (1) at the time the respondents receive the mail-order with payment enclosed either in cash or by money order, (2) at the time the respondents charge a buyer's account for a credit order, or (3) if payment is made by check, at the time the said check clears the buyer's bank.

It is further ordered, That nothing contained in this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt from complying with agreements, orders or directives of any kind obtained by other agencies or act as a defense to actions instituted by municipal or State regulatory agencies.

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 each individual respondent named herein promptly notify the Commission in the event that he discontinues his present business or employment, and becomes affiliated 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 herein shall forthwith distribute a copy of this order to each of their operating officers, agents and representatives.

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

C.E.B. PRODUCTS, INC., ET AL.

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

Docket C-2650. Complaint, Mar. 17, 1975 - Decision, Mar. 17, 1975

Consent order requiring a Chicago, Ill., cosmetic manufacturer, among other things to cease advertising and packaging "Dark-Eyes Lash and Brow Tint" without a warning to consumers that the product can cause severe pain to the eye for a substantial period of time. Further, the order requires that all existing packages of the product not yet sold to the public and all point-of-purchase displays either be corrected so as to prominently display the required warning or be recalled by respondent.

Appearances

For the Commission: *Marvin R. Lange* and *Stewart A. Block*.

For the respondents: *R. Quincy White* and *Jack Bierig*, *Sidley & Austin*, Chicago, Ill.

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 C.E.B. Products, Inc., a corporation, and Charlotte E. Barth and Herman Goldenberg, individually and as officers of said 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. For purposes of this complaint, the following definitions shall apply:

1. "Commerce" means commerce as defined in the Federal Trade Commission Act;
2. "False advertisement" means false advertisement as defined in the Federal Trade Commission Act;
3. "Dark-Eyes" means the product "Dark-Eyes Lash and Brow Tint" in each formulation in which it is packaged and sold to the public.

4. "Product package" means the package in which "Dark-Eyes Lash and Brow Tint" is contained and sold.

PAR. 2. Respondent C.E.B. Products, 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 7115 Ridge Blvd., Chicago, Ill.

Respondent Charlotte E. Barth is an officer of C.E.B. Products, Inc. She formulates, directs, and controls the acts and practices of the corporate respondent C.E.B. Products, Inc., including the acts and practices hereinafter set forth. Her address is the same as that of C.E.B. Products, Inc.

Respondent Herman Goldenberg is an officer of C.E.B. Products, Inc. He participates in the formulation, direction, and control of the acts and practices of the corporate respondent C.E.B. Products, Inc., including the acts and practices hereinafter set forth. His address is the same as that of C.E.B. Products, Inc.

PAR. 3. Respondent C.E.B. Products, Inc., is now, and for all times relevant to this complaint has been, engaged in the manufacturing, advertising, offering for sale, sale, and distribution of a liquid eyelash and eyebrow darkener designated as "Dark-Eyes Lash and Brow Tint." Said product is a "cosmetic" as that term is defined in Section 15 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, respondent C.E.B. Products, Inc., causes "Dark-Eyes" contained in its product package to be transported from its place of business to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent C.E.B. Products, Inc., maintains and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce. The volume of business in commerce has been and is substantial.

PAR. 5. In the course and conduct of their aforesaid business, respondents have disseminated, or have caused to be disseminated, in commerce, advertisements for the purpose of inducing, or which are likely to induce, the purchase of "Dark-Eyes," and have disseminated or have caused to be disseminated advertisements for the purpose of inducing, or which are likely to induce, the purchase, in commerce, of "Dark-Eyes."

PAR. 6. Among the advertisements disseminated by means of television, but not all inclusive thereof, are the following:

A. EICOFF & COMPANY

advertising · marketing · 520 N. MICHIGAN AVE. · CHICAGO, ILLINOIS 60611
PHONE (312) 944 2300

1. *Open on MLS of two women in bedroom. Daughter opens box with wedding dress and holds up for mother to see.*
2. *Cut to CU of mother crying.*
3. *Cut MS of girl, who also starts crying.*
4. *Zoom to CU of girl's face to show how tears have made mascara run down her face.*
5. *Cut to MLS as Mother hands tissue to girl who dabs away tears.*
6. *Diss. to CU of Dark Eyes Pkg. chroma-keyed over a calendar. SUPER: The Once-A-Month Eye Make-Up.*
7. *Diss. to MCU of girl lightly dabbing vaseline on eyes and above brows.*
8. *Diss. to display of pkg. and bottles. Hand enters and dips brush into cap filled with liquid.*
9. *Cut to CU as girl applies Dark Eyes to lashes.*
10. *Diss. to CU of girl's eyes as she applies Dark Eyes # 2...then wipes with cotton ball.*
11. *Diss. to girl applying Dark Eyes to brows.*
12. *Diss. to same girl in shower. Zoom into CU of eyes.*
13. *Diss. to CU of same girl using cream on face.*
14. *Diss. to same girl in bed, just awakening.*
15. *Diss. to CU display of product. SUPER: The Once-A-Month Eye Make-Up. also SUPER: \$2.00*
16. *Diss. to wedding scene in church. CU of bride and groom. Groom lifts veil, camera zooms to CU of girls face to show tears on cheek.*
1. *When a woman cries...You never really know....*
2. *She could be happy...or sad.*
3. *But then, that's what makes her a woman...and that makes her all the more beautiful.*
4. *Except if those tears make her mascara run. She can't stop those tears.*
5. *but she should have used the unique eye make-up that won't run, smear, wash off, or even cry off for weeks and weeks.*
6. *It's called DARK EYES. DARK EYES is not a mascara...It's a once-a-month eye cosmetic tint that could save you lots of tedious make-up time each week.*
7. *Here's what you do. First, apply a little vaseline around your eyes.*
8. *Then simply brush your lashes gently with DARK EYES # 1.*
9. *and let dry for a few minutes.*
10. *Now, brush them again with DARK EYES # 2 and wipe with a moist cotton ball. That's all there is to it.*
11. *For eyebrows, apply DARK EYES the same way.*
12. *Now, go ahead and shower...even go swimming as often as you like...DARK EYES won't wash off.*
13. *And, don't hesitate to cream your face...DARK EYES won't cream off.*
14. *But best yet, when you use DARK EYES you'll wake up pretty every single morning.*
15. *This complete DARK EYES kit will keep your eyes beautiful month after month...and it costs only \$2.00.*
16. *So get DARK EYES today--the once-a-month eye make-up that won't run, smear, wash off, cream off or even cry off.*

A. EICOFF & COMPANY

advertising · marketing · 520 N. MICHIGAN AVE. · CHICAGO, ILLINOIS 60611
PHONE (312) 944 2300

- | | |
|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. <i>MS of man and woman in romantic dinner table setting with candlelight. Man hands woman engagement ring.</i> | 1. <i>It's the moment you've waited for... and you wanted to look your loveliest. A romantic candlelight dinner...and now, you're engaged.</i> |
| 2. <i>Cut to CU of girl's face. She's weeping tears of joy and mascara is streaking.</i> | 2. <i>But just look at you...with your mascara running down your face.</i> |
| 3. <i>Cut back to MS as man hands woman his handkerchief and she dabs at her eyes.</i> | 3. <i>You can't stop those happy tears, but you should have used the amazing eye make-up that won't run, smear, wash off, or even cry off for weeks and weeks.</i> |
| 4. <i>Diss to CU of Dark Eyes pkg chroma-keyed over calendar page. Super: The Once-a-month eye make-up.</i> | 4. <i>It's called DARK EYES. DARK EYES is not a mascare..it's a Once-A-Month eye make-up that will save you hours of tense make-up time each week.</i> |
| 5. <i>Diss to display of pkg and bottles. Hand enters scene and dips brush into cap filled with liquid.</i> | 5. <i>Just a few minutes ONCE A MONTH with DARK EYES and your eyes will stay beautiful, no matter what you do.</i> |
| 6. <i>Cut to CU of girl's eyes as she applies Dark Eyes to her eyelashes.</i> | 6. <i>Here's how it works. Simply brush your lashes gently with DARK EYES # 1 and let dry for a few minutes.</i> |
| 7. <i>Diss to CU of girl's eyes as she applies Dark Eyes # 2...then wipes with cotton ball.</i> | 7. <i>Then brush them again with DARK EYES # 2 and wipe with a moist cotton ball. It's that easy.</i> |
| 8. <i>Girl applies Dark Eyes to her eyebrows.</i> | 8. <i>For eyebrows, apply DARK EYES the same way.</i> |
| 9. <i>Diss to same girl in shower. Zoom to CU of eyes.</i> | 9. <i>Now, go ahead and shower...even go swimming...as often as you like... DARK EYES won't wash off.</i> |
| 10. <i>Diss to CU of same girl using cream on face.</i> | 10. <i>And don't hesitate to cream your face...DARK EYES won't even cream off.</i> |
| 11. <i>Diss to same girl in bed just awakening.</i> | 11. <i>But best yet, with DARK EYES you can wake up pretty every single morning.</i> |
| 12. <i>Diss to CU display of product. Super: The Once-A-Month eye make-up.</i> | 12. <i>This complete DARK EYES kit will keep your eyes beautiful month after month...and it costs only \$2.00.</i> |
| 13. <i>ECU of beautifully made-up eyes. One clear tear forms and trickles down cheek.</i> | 13. <i>So get carefree DARK EYES today--the once-a-month eye make-up that won't run, smear, wash off, cream off or even cry off.</i> |

PAR. 7. Among the statements and representations made on the product package are the following:

Package Front: "Darkens lashes and brows with a tender tint* * *."

Package Back: "Stars and models recommend 'Dark-Eyes' tender tint* * *."

PAR. 8. Respondents market and advertise "Dark-Eyes" without disclosing in advertising or on the product package that application of the product can cause severe pain and irritation to the eye for a substantial period of time. This fact is a material fact, which if known to certain consumers would be likely to affect their decisions whether or not to purchase such product.

PAR. 9. Therefore, due to the failure to disclose the aforesaid material fact, all advertisements for "Dark-Eyes" which fail to disclose said fact (including those set forth in Paragraph Six) and all product packages which fail to disclose said fact constitute false advertisements and/or unfair or deceptive acts or practices in commerce.

PAR. 10. Through the use of the statements and representations set forth in Paragraph Seven, respondents have represented that "Dark-Eyes" is a "tender tint."

PAR. 11. In truth and in fact, "Dark-Eyes" is not tender. It can cause severe pain and irritation to the eye for a substantial period of time, requiring medical attention in some cases.

PAR. 12. Therefore, the statements and representations set forth in Paragraph Seven are misleading in a material respect, and constitute false advertisements and/or unfair or deceptive acts or practices in commerce.

PAR. 13. In the course and conduct of their aforesaid business, respondents have disseminated, and have authorized others to disseminate, through the United States mails and in commerce, the following statement or statements similar thereto in response to inquiries about the safety of "Dark-Eyes":

One of the basic ingredients in "Dark-Eyes" is Silver Nitrate. It is common knowledge that the law in our 50 states require hospitals to use between 1 percent and 2 percent Silver Nitrate in every newborn baby's eyes to prevent infection and blindness. We use 1 percent Silver Nitrate in "Dark-Eyes." However, we do not use "Dark-Eyes" in the eyes—only used for on the eyelashes and eyebrows.

PAR. 14. Through use of the statement set forth in Paragraph Thirteen or other statements similar thereto, respondents have represented, directly or by implication:

a. That no formulation for "Dark-Eyes" then marketed contained in excess of 1 percent silver nitrate.

b. That no formulation for "Dark-Eyes" then marketed contained other ingredients which substantially contribute to the capacity of "Dark-Eyes" to cause severe pain and irritation.

c. That each formulation for "Dark-Eyes" then marketed does not cause severe pain and irritation because it contains no more than 1 percent silver nitrate.

PAR. 15. In truth and in fact, at the times the aforementioned statements were disseminated:

a. Each formulation of "Dark-Eyes" then marketed contained a concentration of silver nitrate in excess of 1 percent.

b. Each formulation for "Dark-Eyes" then marketed also contained substantial amounts of silver sulfate which acts similarly to silver nitrate in the "Dark-Eyes" formulae and which substantially contributes to the capacity of "Dark-Eyes" to cause severe pain and irritation.

c. Each formulation for "Dark-Eyes" can cause severe pain and irritation to the eye for a substantial period of time because it contains silver nitrate and silver sulfate, which produce an amount of silver ions in excess of the equivalent of a solution containing 2 percent silver nitrate.

PAR. 16. Therefore, the statements and representations set forth in Paragraph Thirteen were and are misleading in a material respect and constitute unfair or deceptive acts or practices in commerce.

PAR. 17. Through use of the advertisements set forth in Paragraph Six, and other advertisements not specifically set forth herein, respondents have represented directly or by implication that the application process depicted and described in the aforementioned advertisements is the complete process for the application of "Dark-Eyes."

PAR. 18. In truth and in fact the application process depicted and described in the advertisements set forth in Paragraph Six and in other advertisements not specifically set forth herein is not the complete process for application of "Dark-Eyes." The instructions for application contained inside the product package include additional procedures including covering all working surfaces with newspapers to protect against spills and stains, and application of Vaseline Petroleum Jelly to all areas of the skin around the eyes other than the eyelashes and eyebrows to prevent the unwanted staining of those areas. Said additional procedures are precautions required for prevention of unwanted results.

PAR. 19. Therefore, the statements and representations set forth in Paragraph Seventeen are false and misleading in a material respect and constitute false advertisements and unfair or deceptive acts or practices in commerce.

PAR. 20. By use of the advertisements set forth in Paragraph Six, and other advertisements not specifically set forth, respondents have presented demonstrations of the process of application of "Dark-Eyes."

For the reasons set forth in Paragraph Eighteen, said demonstrations substantially vary from and disregard the precautions set forth in the instructions for application of "Dark-Eyes" which are contained within the product package.

PAR. 21. Therefore, the advertisements set forth in Paragraph Six, and other advertisements not specifically set forth herein, negate the importance of closely following said instructions for application of "Dark-Eyes" and detract from the effectiveness of said precautions and constitute false advertisements and unfair or deceptive acts or practices in commerce.

PAR. 22. Respondents enclose instructions for application of "Dark-Eyes" within the product package. Said instructions state: "If fingers should become stained, moisten cotton with household bleach to remove." The said instructions do not warn against the use of household bleach to remove stains on the skin in the area around the eyes.

PAR. 23. The aforementioned instructions have the tendency or capacity to lead consumers to believe that unwanted stains should be removed from the area around the eyes by the use of household bleach.

PAR. 24. In truth and in fact, household bleach should not be used to remove stains from the area around the eyes. If consumers cleanse the area around their eyes with household bleach, there is a risk that household bleach may come in contact with the surface of the eye or surrounding eye tissue. Household bleach can cause severe and extensive pain and irritation to the eye if it comes into contact with the eye.

PAR. 25. Therefore, the failure of the aforementioned instructions to warn consumers that household bleach should not be used in the area around the eye constitutes an unfair or deceptive act or practice in commerce.

PAR. 26. In the course and conduct of its aforesaid business, and at all times mentioned herein respondents have been, and now are, in substantial competition in commerce, with other corporations engaged in the manufacture and sale of cosmetic products.

PAR. 27. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of false advertisements, as aforesaid, 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 or deceptive acts or practices in commerce, in violation of Sections 12 and/or 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 Bureau of Consumer Protection 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; 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 sixty (60) 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent C.E.B. Products, 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 7115 Ridge Blvd., Chicago, Ill.

Respondent Charlotte E. Barth is an officer of C.E.B. Products, Inc. She formulates, directs, and controls the acts and practices of the corporate respondent C.E.B. Products, Inc., including the acts and practices hereinafter set forth. Her address is the same as that of C.E.B. Products, Inc.

Respondent Herman Goldenberg is an officer of C.E.B. Products, Inc. He participates in the formulation, direction, and control of the acts and practices of the corporate respondent C.E.B. Products, Inc., including the acts and practices hereinafter set forth. His address is the same as that of C.E.B. Products, Inc.

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 C.E.B. Products, Inc., a corporation, its successors and assigns, and Charlotte E. Barth and Herman Goldenberg, individually and as officers of said corporation, and said respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, sale, offering for sale, or distribution of Dark-Eyes Lash and Brow Tint, or any other cosmetic product for use on the eyebrows, eyelashes, or otherwise in the area around the eyes, containing the same or substantially the same ingredients, including, but not limited to, silver nitrate, silver sulfate, or any other ingredients which produce silver ions when dissolved, forthwith cease and desist from directly or indirectly:

A. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement, or any statement made on the package in which such product is contained and sold (hereinafter referred to as the "product package"), which represents, directly or by implication, that such product is harmless, safe for use, noninjurious, nonirritating, tender, or gentle.

B. Disseminating, or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement or any product package which fails to contain, clearly and conspicuously, the following specific disclosure:

WARNING: "Dark-Eyes" [or such other name for such product] can cause severe pain to the eye for a substantial period of time.

Provided however, That Paragraph I(B) herein shall not apply to any such product for which a petition for listing as a "color additive" under Section 706 of the Food, Drug and Cosmetic Act, as amended, and regulations thereto, has been approved by the Secretary of the Department of Health, Education and Welfare where:

(1) respondents promptly notify the Commission that such a petition for listing has been filed with the Secretary of the Department of Health, Education and Welfare and make available to the Commission a copy of such petition and supporting documents;

(2) respondents promptly notify the Commission when the Secretary

has (pursuant to Section 701(e)(1) of the Food, Drug and Cosmetic Act, as amended) published his order acting on such petition; and

(3) respondents promptly notify the Commission of the effective date of such order;

Provided, further, however, That notwithstanding the foregoing proviso, the Commission may determine, upon its own initiative, that the above required disclosure, or some other disclosure of material fact(s) is required in the public interest.

C. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any statement or representation, including, but not limited to, statements or representations in advertising or contained on or within the product package which directly or by implication recommends or suggests for removing stains caused by such product from any part of the human body:

1. The use of chlorine bleach, or any substance of like composition, unless accompanied by a clear and conspicuous statement that said substance is hazardous to the eye and must not be used to remove stains from the face, eyelashes, or eyebrows.

2. The use of any substance which can cause pain or injury to any part of the human body; *Provided, however,* If such substance does not cause pain or injury when used on certain parts of the human body, then its use may be recommended or suggested on those particular parts if such recommendation or suggestion is accompanied by a clear and conspicuous statement that such substance is hazardous and must not be used on any other part of the body.

D. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any statement or representation, including but not limited to statements or representations in advertising or contained on or within the product package, which, directly or by implication, contradicts, negates, or is inconsistent with the disclosures required by Paragraph I(B) or I(C) above, or in any way obscures the meaning of such disclosure.

E. Disseminating, or causing to be disseminated, by any means, any advertisement or any product package, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to contain the specific disclosure required by Paragraph I(B), above, or, when appropriate, the disclosures required by Paragraph I(C), above, or which contains any representation prohibited by Paragraphs I(A), I(C), or I(D), above.

II

It is ordered, That respondents C.E.B. Products, Inc., a corporation, its successors and assigns, and Charlotte Barth and Herman Goldenberg, individually and as officers of said corporation, and said respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, sale, offering for sale, or distribution of any cosmetic, drug, or device, as those terms are defined by the Federal Trade Commission Act, forthwith cease and desist from directly or indirectly:

A. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement or any statement made on the product package which affirmatively represents, directly or by implication, that the use of such product is safe, noninjurious, harmless, tender, or gentle, or that such product will not cause pain or irritation or other side effects, unless prior to the time such statement or representation is made, it has been demonstrated that such is the case by competent and reliable scientific tests; *Provided, however,* That it shall not be a violation of this provision to make such claims when qualified by setting forth, in immediate conjunction and equal conspicuousness, all of the circumstances under which, or the type of persons to whom, such claims are inapplicable, if such is the case.

B. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act,

(1) any advertisement or any statement or representation contained on or within the product package for such product which directly or by implication misrepresents the presence or quantity of any ingredient in such product;

(2) any statement or representation other than statements or representations made in advertising or contained on or within the product package for such product which purports to give the qualitative or quantitative formula for such product, or any portion thereof, or to describe the composition of such product, and which does not actually give the complete qualitative or quantitative formula.

C. Disseminating, or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement or any product package which relates or depicts any portion of the application process or method of use of such product without relating

or depicting, in conjunction therewith and equally conspicuously, each "Type A" precaution which is set forth in the directions for use of such product (as those terms are defined in Part IV of this order); *Provided, however,* That it shall not be a violation of this provision to present no more than a single still depiction of an action in the application process or method of use of such product, so long as (a) nothing in said still depiction in any way negates, is inconsistent with, or detracts from the effectiveness of any of the "Type A" or "Type B" precautions set forth in the directions for use of such product, and (b) there is no representation, directly or by implication, that the entire application process or method of use of such product has been depicted.

D. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any statement or representation, including but not limited to statements or representations in advertising or contained on or within the product package, which directly or by implication contradicts, negates, or is inconsistent with the disclosures required by Paragraph II(A), II(B)(2) or II(C), above, or in any way obscures the meaning of such disclosure.

E. Disseminating, or causing to be disseminated, by any means, any advertisement or any product package, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to contain, when appropriate, the disclosures required by Paragraph II(A), II(B)(2) or II(C), above, or which contains any representation prohibited by Paragraph II(A), II(B)(1), II(C) or II(D), above.

III

It is further ordered, That Paragraphs I(A), II(A), and II(B) of this order also apply to all oral or written statements or representations, whether or not such statements or representations are made in advertising, on or in a product package, or elsewhere, when made or authorized by the aforesaid respondents, to any of the following individuals, partnerships or corporations, whether or not doing business with respondents:

- a. advertising agencies;
- b. radio and television stations and print media;
- c. representatives of Better Business Bureaus, the National Association of Broadcasters, the National Advertising Review Board, or other similar nongovernmental regulatory bodies;
- d. purchasers, distributors, wholesalers, and retailers, except in

connection with routine indemnifications or warranties specifically requested by the aforesaid;

e. members of the public, including correspondence with ultimate purchasers after purchase of such product.

IV

For the purposes of Parts II and IV of this order, the following definitions apply:

1. "Directions for use" means the directions or instructions for the application, use, or storage of a product or its packaging which are contained in the "labeling" (as defined in Section 201(m) of the Food, Drug and Cosmetic Act, as amended) of such product.

2. "Type A precaution" means an affirmative action relating to application or use (but not storage) of a product, prescribed by the directions for use of the product (whether stated affirmatively or negatively) for the purpose of avoiding or reducing a risk to person or property, and applicable to all or substantially all users of the product. By way of illustration and not limitation, the following are examples of "Type A" precautions: "Apply petroleum jelly to skin before use." "Do not use until petroleum jelly is applied to skin." "Shake well before using" [if this is prescribed for the purpose of avoiding or reducing a risk to person or property].

3. "Type B precaution" means all actions, except "Type A" precautions, proscribed or prescribed by the directions for use of a product for the purpose of avoiding or reducing a risk to person or property, including but not limited to the following categories of actions: (By way of illustration and not limitation, examples of "Type B" precautions are given after each category.)

(a) Actions relating to storage of a product. ("Refrigerate after opening." "Store in a cool dry place." "Keep out of reach of children.")

(b) Actions proscribed or proscribed for fewer than all or substantially all users of a product. ("If you have sensitive skin, wear gloves." "Do not use if you have kidney disease.")

(c) Actions to remedy problems which may arise in less than every instance of application or use. ("If product gets into eye, rinse out with water." "If a rash develops, see a doctor." "If product drips onto painted surface, wash off immediately.")

(d) Actions proscribed, whether stated affirmatively or negatively, in the directions for use. ("Do not use near open flame." "Use only in well ventilated areas." "For external use only." "Do not puncture or incinerate container.")

It is ordered, That respondents C.E.B. Products, Inc., a corporation, its successors and assigns, and Charlotte E. Barth and Herman

Goldenberg, individually and as officers of said corporation, and said respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, sale, offering for sale or distribution of any product, forthwith cease and desist from directly or indirectly:

A. Disseminating, or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement or any product package which relates or depicts the application process or method of use of such product which, in any way negates, is inconsistent with or detracts from the effectiveness of any of the "Type A" or "Type B" precautions set forth in the directions for use of such product.

B. Disseminating, or causing to be disseminated, by any means, any advertisement or any statement made on the product package, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any representation prohibited by Paragraph IV(A), above.

V

It is further ordered, That respondent C.E.B. Products, Inc., a corporation, its successors and assigns, and said respondent's officers, agents, representatives, and employees (but not Charlotte E. Barth or Herman Goldenberg in their individual capacities, nor A. Eicoff & Co., a corporation) directly or through any corporation, subsidiary, division, or other device, within 30 days from the entry of this order:

A. Correct (1) each and every previously disseminated point-of-purchase advertisement and cooperative print advertising copy for Dark-Eyes Lash and Brow Tint in the possession of any wholesaler, distributor or retail store (hereinafter referred to as "retailer") at the time of the entry of this order, and (2) each and every product package for said product which has been sold or otherwise distributed by respondent or its agents, distributors, wholesalers or chain headquarters, to wholesalers, distributors and retailers, which has not been sold to the ultimate consumer at the time of entry of this order, which contains the statements or representations prohibited in Paragraph I(A) of this order or which fails to contain the specific disclosure required in Paragraph I(B) of this order. The provisions of this Paragraph shall be fulfilled as follows:

i. With respect to cooperative print advertising copy, respondent shall (a) recall and retrieve such copy, or (b) instruct directly (or in the case of chain retailers, through chain headquarters) each and every

such wholesaler, distributor or retailer to destroy such copy, and obtain from each such wholesaler, distributor and retailer a signed statement acknowledging the fact of said destruction.

ii. With respect to point-of-purchase advertising and product packages, respondent shall:

(a) Recall and retrieve said packages and advertising; or

(b) Distribute directly (or in the case of chain retailers, through chain headquarters) to each and every such wholesaler, distributor and retailer corrected product packages and advertising, instruct them that the packages and advertising which fail to comply with Paragraphs I(A) or (B) of this order are to be destroyed, and obtain from each such wholesaler, distributor and retailer, a signed statement acknowledging the fact of said destruction; or

(c) Distribute directly (or in the case of chain retailers, through chain headquarters) to each and every such wholesaler, distributor and retailer gummed strips to be placed on advertising and product packages, to obscure any representations prohibited by Paragraph I(A) of this order, and to include the disclosure required by Paragraph I(B) of this order, and obtain from each such wholesaler, distributor and retailer a signed statement acknowledging the fact of the placement of said gummed strips; or

(d) Distribute directly (or in the case of chain retailers, through chain headquarters) to each and every retailer to which respondent or its agents, distributors, wholesalers, or chain headquarters, sold or otherwise distributed Dark-Eyes Lash and Brow Tint, the point-of-purchase display attached hereto as Appendix A, (printed on any pastel colored paper), instruct each and every such retailer that such display is required to be prominently displayed adjacent to the packages of the product offered for sale by such retailer for such period of time as any package of Dark-Eyes Lash and Brow Tint which does not contain such disclosure required by Paragraph I(B) of this order is offered for sale or is on display in the store of such retailer, and obtain from each such retailer a signed statement acknowledging that such display has been placed as hereinbefore described;

Provided, however, That if respondent is unable to secure from any such wholesaler, distributor or retailer such a signed statement, it shall forthwith provide to the Commission an affidavit setting forth (a) the name of such wholesaler, distributor or retailer, (b) a description of respondent's attempts to secure such a signed statement and (c) the reasons for respondent's inability to secure such a signed statement; *Provided further, however,* That if respondent is unaware of the identity of any such retailer, it shall forthwith provide to the Commission an affidavit setting forth (a) a description of respondent's

attempts to ascertain the identity of such retailer, and (b) the reasons for respondent's inability to ascertain the identity of such retailer.

B. Mail to each and every individual, partnership, corporation, or other entity to which said respondent or any of its officers, employees, or agents, including but not limited to A. Eicoff & Co., has, since Jan. 1, 1972, represented by letter that Dark-Eyes Lash and Brow Tint contains 1 percent silver nitrate, or has otherwise inaccurately or incompletely stated the formulation for Dark-Eyes Lash and Brow Tint, a letter correctly stating the complete formulation for each color of said product and include in said letter, a statement that the Federal Trade Commission had determined that Dark-Eyes Lash and Brow Tint can cause severe pain and irritation for a substantial period of time to the eyes of users of Dark-Eyes Lash and Brow Tint.

VI

It is further ordered, That notwithstanding the foregoing, Parts II, III, and IV, hereof shall not apply to the individual respondents Charlotte E. Barth and Herman Goldenberg, as an individual or as an agent of any corporation other than respondent C.E.B. Products, Inc., its successors or assigns, in her or his capacity as sales representative, jobber or in other similar capacities in which she or he sells, distributes, or disseminates packages or advertising, the claims or representations over which she or he has no control; *Provided, however*, That this exemption shall not apply to oral or written statements or representations originated by said individual respondents or those which she or he knew, at the time made to be false.

It is further ordered, That, notwithstanding the foregoing, Parts I, II, III, IV, and V, hereof, shall not apply to statements or representations, including but not limited to, statements or representations made in advertising or contained on or within the product package, which are or were disseminated or caused to be disseminated solely outside of the United States or its territories; *Provided, however*, That all "labeling" (as that term is defined in Section 201(m) of the Food, Drug and Cosmetic Act) shall comply with Section 801(d) of the Food, Drug and Cosmetic Act, as amended, and regulations thereto.

VII

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

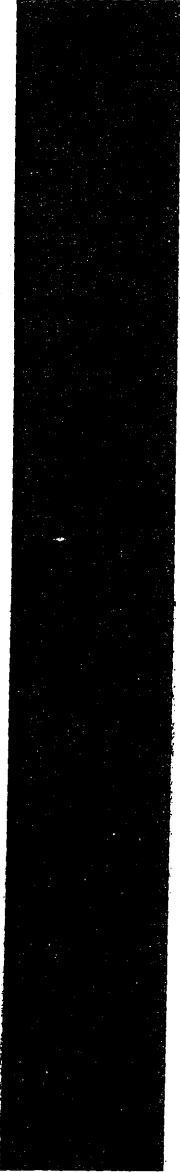
It is further ordered, That the corporate respondent notify the Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a

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 each respective individual respondent named herein promptly notify the Commission of the discontinuance of his or her present business or employment and/or his or her affiliation with a new business or employment in which he or she is involved in a management, policymaking or ownership capacity. Such notice shall include his or her current business address and a statement as to the nature of the business or employment in which he or she is engaged, as well as a description of his or her 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.

APPENDIX A



WARNING: 'Dark - Eyes'
can cause severe pain to
the eye for a substantial
period of time.



Complaint

IN THE MATTER OF

A. EICOFF & CO.

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

Docket C-2651. Complaint, Mar. 17, 1975 - Decision, Mar. 17, 1975

Consent order requiring a Chicago, Ill., advertising agency, among other things to cease disseminating advertising material or product packaging which fails to provide consumers with warning information regarding use of the product when necessary.

Appearances

For the Commission: *Stewart A. Block* and *Marvin R. Lange*.

For the respondent: *P. W. O'Brien* and *W. T. Braithwaite*.

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 A. Eicoff & Co., a corporation, hereinafter 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. For purposes of this complaint, the following definitions shall apply:

1. "Commerce" means commerce as defined in the Federal Trade Commission Act;
2. "False advertisement" means false advertisement as defined in the Federal Trade Commission Act;
3. "Dark-Eyes" means the product "Dark-Eyes Lash and Brow Tint" in each formulation in which it is packaged and sold to the public.
4. "Product package" means the package in which "Dark-Eyes Lash and Brow Tint" is contained and sold.

PAR. 2. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 520 N. Michigan Ave., Chicago, Ill.

PAR. 3. Respondent is now, and for all times relevant to this complaint has been, an advertising agency of C.E.B. Products, Inc., and now, and for all times relevant to this complaint, has prepared and placed for publication and has caused the dissemination of the

television advertisements referred to herein, to promote the sale of a liquid eyelash and eyebrow darkener, sold and distributed by C.E.B. Products, Inc., and designated as "Dark-Eyes Lash and Brow Tint." Said product is a "cosmetic" as that term is defined in Section 15 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, respondent has disseminated, or has caused to be disseminated, in commerce, advertisements for the purpose of inducing, or which are likely to induce, the purchase of "Dark-Eyes," and has disseminated or has caused to be disseminated advertisements for the purpose of inducing, or which are likely to induce, the purchase, in commerce, of "Dark-Eyes."

PAR. 5. Among the advertisements disseminated by means of television, but not all inclusive thereof, are the following:

A. EICOFF & COMPANY

advertising · marketing · 520 N. MICHIGAN AVE. · CHICAGO, ILLINOIS 60611
PHONE (312) 944 2300

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. <i>Open on MLS of two women in bedroom. Daughter opens box with wedding dress and holds up for mother to see.</i> | 1. <i>When a woman cries... You never really know...</i> |
| 2. <i>Cut to CU of mother crying.</i> | 2. <i>She could be happy...or sad.</i> |
| 3. <i>Cut MS of girl, who also starts crying.</i> | 3. <i>But then, that's what makes her a woman...and that makes her all the more beautiful.</i> |
| 4. <i>Zoom to CU of girl's face to show how tears have made mascara run down her face.</i> | 4. <i>Except if those tears make her mascara run. She can't stop those tears.</i> |
| 5. <i>Cut to MLS as Mother hands tissue to girl who dabs away tears.</i> | 5. <i>but she should have used the unique eye make-up that won't run, smear, wash off, or even cry off for weeks and weeks.</i> |
| 6. <i>Diss. to CU of Dark Eyes Pkg. chroma-keyed over a calendar. SUPER: The Once-A-Month Eye Make-Up.</i> | 6. <i>It's called DARK EYES. DARK EYES is not a mascara...It's a once-a-month eye cosmetic tint that could save you lots of tedious make-up time each week.</i> |
| 7. <i>Diss. to MCU of girl lightly dabbing vaseline on eyes and above brows.</i> | 7. <i>Here's what you do. First, apply a little vaseline around your eyes.</i> |
| 8. <i>Diss. to display of pkg. and bottles. Hand enters and dips brush into cap filled with liquid.</i> | 8. <i>Then simply brush your lashes gently with DARK EYES # 1.</i> |
| 9. <i>Cut to CU as girl applies Dark Eyes to lashes.</i> | 9. <i>and let dry for a few minutes.</i> |
| 10. <i>Diss. to CU of girl's eyes as she applies Dark Eyes # 2...then wipes with cotton ball.</i> | 10. <i>Now, brush them again with DARK EYES # 2 and wipe with a moist cotton ball. That's all there is to it.</i> |
| 11. <i>Diss. to girl applying Dark Eyes to brows.</i> | 11. <i>For eyebrows, apply DARK EYES the same way.</i> |
| 12. <i>Diss. to same girl in shower. Zoom into CU of eyes.</i> | 12. <i>Now, go ahead and shower...even go swimming as often as you like...DARK EYES won't wash off.</i> |
| 13. <i>Diss. to CU of same girl using cream on face.</i> | 13. <i>And, don't hesitate to cream your face...DARK EYES won't cream off.</i> |
| 14. <i>Diss. to same girl in bed, just awakening.</i> | 14. <i>But best yet, when you use DARK EYES you'll wake up pretty every single morning.</i> |
| 15. <i>Diss. to CU display of product. SUPER: The Once-A-Month Eye Make-Up. also SUPER: \$2.00</i> | 15. <i>This complete DARK EYES kit will keep your eyes beautiful month after month...and it costs only \$2.00.</i> |
| 16. <i>Diss. to wedding scene in church. CU of bride and groom. Groom lifts veil, camera zooms to CU of girls face to show tears on cheek.</i> | 16. <i>So get DARK EYES today--the once-a-month eye make-up that won't run, smear, wash off, cream off or even cry off.</i> |

Complaint

85 F.T.C.

A. EICOFF & COMPANY

advertising · marketing · 520 N. MICHIGAN AVE. · CHICAGO, ILLINOIS 60611
PHONE (312) 944 2300

- | | |
|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. <i>MS of man and woman in romantic dinner table setting with candlelight. Man hands woman engagement ring.</i> | 1. <i>It's the moment you've waited for... and you wanted to look your loveliest. A romantic candlelight dinner...and now, you're engaged.</i> |
| 2. <i>Cut to CU of girl's face. She's weeping tears of joy and mascara is streaking.</i> | 2. <i>But just look at you...with your mascara running down your face.</i> |
| 3. <i>Cut back to MS as man hands woman his handkerchief and she dabs at her eyes.</i> | 3. <i>You can't stop those happy tears, but you should have used the amazing eye make-up that won't run, smear, wash off, or even cry off for weeks and weeks.</i> |
| 4. <i>Diss to CU of Dark Eyes pkg chroma-keyed over calendar page. Super: The Once-a-month eye make-up.</i> | 4. <i>It's called DARK EYES. DARK EYES is not a mascare..it's a Once-A-Month eye make-up that will save you hours of tense make-up time each week.</i> |
| 5. <i>Diss to display of pkg and bottles. Hand enters scene and dips brush into cap filled with liquid.</i> | 5. <i>Just a few minutes ONCE A MONTH with DARK EYES and your eyes will stay beautiful, no matter what you do.</i> |
| 6. <i>Cut to CU of girl's eyes as she applies Dark Eyes to her eyelashes.</i> | 6. <i>Here's how it works. Simply brush your lashes gently with DARK EYES # 1 and let dry for a few minutes.</i> |
| 7. <i>Diss to CU of girl's eyes as she applies Dark Eyes # 2...then wipes with cotton ball.</i> | 7. <i>Then brush them again with DARK EYES # 2 and wipe with a moist cotton ball. It's that easy.</i> |
| 8. <i>Girl applies Dark Eyes to her eyebrows.</i> | 8. <i>For eyebrows, apply DARK EYES the same way.</i> |
| 9. <i>Diss to same girl in shower. Zoom to CU of eyes.</i> | 9. <i>Now, go ahead and shower...even go swimming...as often as you like... DARK EYES won't wash off.</i> |
| 10. <i>Diss to CU of same girl using cream on face.</i> | 10. <i>And don't hesitate to cream your face...DARK EYES won't even cream off.</i> |
| 11. <i>Diss to same girl in bed just awakening.</i> | 11. <i>But best yet, with DARK EYES you can wake up pretty every single morning.</i> |
| 12. <i>Diss to CU display of product. Super: The Once-A-Month eye make-up.</i> | 12. <i>This complete DARK EYES kit will keep your eyes beautiful month after month...and it costs only \$2.00.</i> |
| 13. <i>ECU of beautifully made-up eyes. One clear tear forms and trickles down cheek.</i> | 13. <i>So get carefree DARK EYES today--the once-a-month eye make-up that won't run, smear, wash off, cream off or even cry off.</i> |

PAR. 6. Through use of the advertisements set forth in Paragraph Five, and other advertisements not specifically set forth herein, respondent has represented directly or by implication that the application process depicted and described in the aforementioned advertisements is the complete process for the application of "Dark-Eyes."

PAR. 7. In truth and in fact the application process depicted and described in the advertisements set forth in Paragraph Five and in other advertisements not specifically set forth herein is not the complete process for application of "Dark-Eyes." The instructions for application contained inside the product package include additional procedures including covering all working surfaces with newspapers to protect against spills and stains, and application of Vaseline Petroleum Jelly to all areas of the skin around the eyes other than the eyelashes and eyebrows to prevent the unwanted staining of those areas. Said additional procedures are precautions required for prevention of unwanted results.

PAR. 8. Therefore, the statements and representations set forth in Paragraph Six are false and misleading in a material respect and constitute false advertisements and unfair or deceptive acts or practices in commerce.

PAR. 9. By use of the advertisements set forth in Paragraph Five, and other advertisements not specifically set forth herein, respondent has presented demonstrations of the process of application of "Dark-Eyes." For the reasons set forth in Paragraph Seven, said demonstrations substantially vary from and disregard the precautions set forth in the instructions for application of "Dark-Eyes" which are contained within the product package.

PAR. 10. Therefore, the advertisements set forth in Paragraph Five, and other advertisements not specifically set forth herein, negate the importance of closely following said instructions for application of "Dark-Eyes" and detract from the effectiveness of said precautions and constitute false advertisements and unfair or deceptive acts or practices in commerce.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been and now is, in substantial competition in commerce with other advertising agencies.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of false advertisements, as aforesaid, 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 or deceptive acts or

practices in commerce, in violation of Section 12 and/or 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 Bureau of Consumer Protection 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 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 had 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 sixty (60) 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent A. Eicoff & Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 520 N. Michigan Ave., Chicago, Ill.

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

For the purposes of the order the following definitions apply:

1. "Directions for use" means the directions or instructions for the application, use, or storage of a product or its packaging which are

contained in the "labeling" (as defined in Section 201(m) of the Food, Drug and Cosmetic Act, as amended) of such product.

2. "Type A precaution" means an affirmative action relating to application or use (but not storage) of a product, prescribed by the directions for use of the product (whether stated affirmatively or negatively) for the purpose of avoiding or reducing a risk to person or property, and applicable to all or substantially all users of the product. By way of illustration and not limitation, the following are examples of "Type A" precautions: "Apply petroleum jelly to skin before use." "Do not use until petroleum jelly is applied to skin." "Shake well before using" [if this is prescribed for the purpose of avoiding or reducing a risk to person or property].

3. "Type B precaution" means all actions, except "Type A" precautions, proscribed or prescribed by the directions for use of a product for the purpose of avoiding or reducing a risk to person or property, including but not limited to the following categories of actions: (By way of illustration and not limitation, examples of "Type B" precautions are given after each category.)

(a) Actions relation to storage of a product. ("Refrigerate after opening." "Store in a cool dry place." "Keep out of reach of children.")

(b) Actions proscribed or proscribed for fewer than all or substantially all users of a product. ("If you have sensitive skin, wear gloves." "Do not use if you have kidney disease.")

(c) Actions to remedy problems which may arise in less than every instance of application or use. ("If product gets into eye, rinse out with water." "If a rash develops, see a doctor." "If product drips onto painted surface, wash off immediately.")

(d) Actions proscribed, whether stated affirmatively or negatively, in the directions for use. ("Do not use near open flame." "Use only in well ventilated areas." "For external use only." "Do not puncture or incinerate container.")

I

It is ordered, That respondent A. Eicoff & Co., a corporation, its successors and assigns and said respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, sale, offering for sale or distribution of any drug, cosmetic or device, as those terms are defined by the Federal Trade Commission Act, forthwith cease and desist from directly or indirectly:

A. Disseminating, or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement, or

any product package, which relates or depicts any portion of the application process or method of use of such product without relating or depicting, in conjunction therewith and equally conspicuously, each "Type A" precaution which is set forth in the directions for use of such product; *Provided, however,* That it shall not be a violation of this provision to present no more than a single still depiction of any action in the application process or method of use of such product, so long as (a) nothing in said still depiction in any way negates, is inconsistent with, or detracts from the effectiveness of any of the "Type A" or "Type B" precautions set forth in the directions for use of such product, and (b) there is no representation, directly or by implication, that the entire application process or method of use of such product has been depicted.

B. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any statement or representation, including but not limited to statements or representations in advertising or contained on or within the product package, or visual depiction, which, directly or by implication, contradicts, negates, or is inconsistent with the disclosure required by Paragraph I(A), above, or in any way obscures the meaning of such disclosure.

C. Disseminating, or causing to be disseminated, by any means, any advertisement or any statement made on the product package, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to contain the disclosures required by Paragraph I(A), above, or which contains any representation prohibited by Paragraphs I(A) or I(B) above.

II

It is ordered, That respondent A. Eicoff & Co., a corporation, its successors and assigns and said respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, sale, offering for sale or distribution of any product, forthwith cease and desist from directly or indirectly:

A. Disseminating, or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement, or any product package, which relates or depicts the application process or method of use of such product which in any way negates, is inconsistent with or detracts from the effectiveness of any of the "Type A" or "Type B" precautions set forth in the directions for use of such product.

B. Disseminating, or causing to be disseminated, by any means, any advertisement or any statement made on the product package, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any representation prohibited by Paragraph II(A), above.

III

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

It is further ordered, That the respondent notify the Commission at least thirty (30) days prior to any proposed change 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 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

ANDREW A. SILANI, T/A ANDY SILANI, REALTOR

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

Docket C-2652. Complaint, Mar. 17, 1975 - Decision, Mar. 17, 1975

Consent order requiring a Klamath Falls, Oreg., real estate broker, 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: *Thornton Percival.*

For the respondent: *Theodore B. Jensen, Davis, Jensen, DeFranco & Holmes, Portland, 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 Andrew A. Silani, an individual trading and doing business as Andy Silani, Realtor, hereinafter sometimes referred to as respondent, has 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 Andrew A. Silani is an individual trading and doing business as Andy Silani, Realtor, with his principal office and place of business located at 314 S. Seventh St., Klamath Falls, Oreg.

PAR. 2. Respondent is now and for some time last past has been engaged in the business of a real estate broker. In such capacity, he offers for sale and arranges sales of real property to the general public, and provides various other services to persons who engage him directly or indirectly to sell such property. Fees for respondent's services are payable by such persons, hereinafter referred to as "clients."

PAR. 3. In the ordinary course of 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 business as aforesaid, has extended and is extending consumer credit to purchasers of real property by causing such purchasers to execute promissory notes, hereinafter referred to as the "purchaser note," in the amount of the purchaser's downpayment or a portion thereof. Respondent does not provide these purchasers with any consumer credit cost disclosures other than those in the promissory note.

PAR. 5. Subsequent to July 1, 1969, respondent, in the ordinary course of business as aforesaid, has extended and is extending consumer credit to clients by causing them to execute promissory notes, hereinafter referred to as the "client note," in the amount of respondent's fee or a portion thereof. These extensions of credit to clients are credit sales, as "credit sale" is defined in Regulation Z. Respondent does not provide such clients with any consumer credit cost disclosures other than those in the client note.

PAR. 6. By and through the use of the purchaser note and the client note, respondent:

1. Fails to use the term "annual percentage rate" to describe the annual percentage rate of the finance charge, computed in accordance

with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Fails 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.

3. Fails to use the term "amount financed" to describe the amount of credit extended, as required by Sections 226.8(c)(7) and 226.8(d)(1) of Regulation Z.

4. Fails 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 Sections 226.8(c)(8)(i) and 226.8(d)(3) of Regulation Z.

5. Fails in credit sales to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe respondent's fee or price for the services purchased, as required by Section 226.8(c)(1) of Regulation Z.

6. Fails in credit sales to disclose the downpayment, as required by Section 226.8(c)(2) of Regulation Z.

7. Fails in credit sales 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. Fails to furnish to the customer a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute 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 Seattle 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 Truth in Lending Act and the implementing regulation promulgated thereunder, and 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 sixty 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 Andrew A. Silani is an individual trading and doing business as Andy Silani, Realtor, with his principal office and place of business located at 314 S. Seventh St., Klamath Falls, Oreg.
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 Andrew A. Silani, an individual trading and doing business as Andy Silani, Realtor, or under any other name or names, and respondent's 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 "annual percentage rate" to describe the annual percentage rate of the finance charge, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
2. 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 that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.
3. Failing to use the term "amount financed" to describe the amount

of credit extended, as required by Sections 226.8(c)(7) and 226.8(d)(1) of Regulation Z, as applicable.

4. 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 Sections 226.8(c)(8)(i) and 226.8(d)(3) of Regulation Z, as applicable.

5. Failing in credit sales to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe respondent's fee or price for the services purchased, as required by Section 226.8(c)(1) of Regulation Z.

6. Failing in credit sales to disclose the downpayment, as required by Section 226.8(c)(2) of Regulation Z.

7. Failing in credit sales 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 furnish to the customer, before the transaction is consummated, a duplicate of the instrument or other statement containing the disclosures required by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

9. 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 amounts required by Sections 226.6, 226.7, 226.8, 226.9 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 agents and/or employees of respondent 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 such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondent prominently display the following notice in two or more locations in that portion of respondent's business premises most frequented by prospective customers, and in each location where customers normally sign consumer credit documents or other binding instruments. Such notices shall be considered prominently displayed only if so positioned and of such size as to be easily observed and read by the intended individuals:

NOTICE TO SELLERS AND PURCHASERS

IF THE REALTOR IS FINANCING ANY FEE YOU MAY OWE HIM FOR HIS SERVICES, OR ANY OTHER AMOUNT CONNECTED WITH THE SALE

Complaint

85 F.T.C.

TRANSACTION, YOU ARE ENTITLED TO CONSUMER CREDIT COST DISCLOSURES AS REQUIRED BY THE FEDERAL TRUTH IN LENDING ACT. THESE MUST BE PROVIDED TO YOU IN WRITING BEFORE YOU ARE ASKED TO SIGN A PROMISSORY NOTE OR ANY OTHER DOCUMENT OR PAPERS WHICH WOULD BIND YOU TO SUCH FINANCING.

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

IN THE MATTER OF

HALLBERG HOMES, INC., ET AL.

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

Docket C-2653. Complaint, Mar. 17, 1975 - Decision, Mar. 17, 1975

Consent order requiring a Portland, Oreg., residential real property construction and development firm, 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: *Dean A. Fournier* and *Michael A. Katz*.

For the respondents: *Milton G. Lankton, Black, Kendell, Tremaine, Boothe [Higgins, Portland, 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 Hallberg Homes, Inc., a corporation, and Ray C. Hallberg, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implement-

ing 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 Hallberg Homes 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 1718 Northeast 82nd Ave., Portland, Oreg.

Respondent Ray C. Hallberg is an individual and an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, 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 construction, development and sale of residential real property to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents have caused to be published various advertisements, as "advertisement" is defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. These advertisements have aided, promoted or assisted directly or indirectly the extension of consumer credit (as "consumer credit" is defined in Regulation Z) in connection with respondents' sales of residential real property.

PAR. 4. Subsequent to July 1, 1969, certain of the advertisements referred to in Paragraph Three above have stated the amount of the downpayment required or that no downpayment is required, without also stating, as required by Section 226.10(d)(2) of Regulation Z, in terminology prescribed under Section 226.8 of Regulation Z, and in the manner and form prescribed under Section 226.6(a) of Regulation Z, all of the following:

- A. the cash price;
- B. the amount of the downpayment required or that no downpayment is required, as applicable;
- C. the number, amount, and due dates or period of payments scheduled to repay the indebtedness;
- D. the amount of the finance charge expressed as an annual percentage rate; and
- E. except in the case of the sale of a dwelling or a loan secured by a first lien on a dwelling to purchase that dwelling, the deferred payment price or the sum of the payments, as applicable.

PAR. 5. 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and 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, an admission by the respondents 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 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 sixty 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:

A. Respondent Hallberg Homes, Inc. 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 1718 Northeast 82nd Ave., Portland, Oreg.

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

B. 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 Hallberg Homes, Inc., a corporation, its successors and assigns, and its officers, and Ray C. Hallberg,

individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any extension or arrangement for the extension of consumer credit, or any advertisement to aid, promote or assist, directly or indirectly any extension of consumer credit, as "advertisement" and "consumer credit" 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:

A. Representing in any such advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any installment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

1. the cash price;
2. the amount of the downpayment required or that no downpayment is required, as applicable;
3. the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
4. the amount of the finance charge expressed as an annual percentage rate; and
5. except in the case of the sale of a dwelling or a loan secured by a first lien on a dwelling to purchase that dwelling, the deferred payment price or the sum of the payments, as applicable.

B. Failing, in any consumer credit 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 any aspect of the preparation, creation or placing of advertising, to all persons engaged in reviewing the legal sufficiency of advertising, and to all present and future agencies engaged in preparation, creation or placing of advertising on behalf of respondents, and that respondents secure from each such person and agency a signed statement acknowledging receipt of said 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.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment, and/or of his affiliation with any other business which extends, arranges or advertises consumer credit, in the event of such discontinuance or affiliation within ten (10) years after the effective date of this order. Such notice shall include the 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 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
CROWN CENTRAL PETROLEUM CORPORATION

Docket 8851. Order, March 25, 1975.

Denial of respondent's petition for reconsideration and modification of final order.

Appearances

For the Commission: *Fauster J. Vittone* and *Jean F. Greene.*

For the respondents: *James H. Kelley, Bergson, Borkland, Margolis & Adler,* Wash., D.C.

ORDER DENYING PETITION FOR RECONSIDERATION AND
MODIFICATION OF FINAL ORDER.

Respondent has moved that the Commission modify its final order in this matter by striking the phrase "or any other product" from the preamble of the order and by deleting or modifying Paragraph 1(d) of the order which requires respondent to cease and desist from representing that any gasoline or gasoline additive product has "any other quality, performance ability or other characteristic" unless the representation is true and has been substantiated by competent scientific tests. Counsel supporting the complaint have filed an answer opposing the requested modifications.

Respondent's request that the order be modified is denied. Despite the "or any other product" recitation in the preamble, the remaining

text of the order requires substantiation for only two classes of claims: (1) those that deal with ability of a Crown product to reduce motor vehicle exhaust, and (2) claims regarding a "quality, performance ability or other characteristic" of a gasoline or gasoline additive product. Requiring supporting scientific tests for these two categories of claims is reasonably related to the violation found. Respondent's avowed concern that it will have to conduct scientific tests before mentioning even the "price" or "availability" of its gasoline in advertisements is misplaced. References to price and availability of its products are not quality or performance "characteristics" under the order.

It is ordered, That the aforesaid petition be, and it hereby is, denied.

IN THE MATTER OF

THE GREAT ATLANTIC & PACIFIC TEA COMPANY,
INC.

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

Docket 8916. Complaint, Feb. 16, 1973 - Final Order, Mar. 25, 1975

Order requiring one of the nation's two largest supermarket chains, headquartered in Montvale, N.J., among other things to have advertised items readily available for sale at or below advertised prices.

Appearances

For the Commission: *Michael C. McCarey, Joel P. Bennett and Rosalind A. Lazarus.*

For the respondent: *Donald J. Mulvihill, Cahill, Gordon & Reindel, Wash., D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that The Great Atlantic & Pacific Tea Company, 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Great Atlantic & Pacific Tea