

Complaint

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exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies.

Nothing in this order shall be construed to imply that any past or future conduct of respondents is subject to and complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

*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

TAYLOR & KIMBROUGH REALTY COMPANY, ET AL.

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

*Docket C-2750. Complaint, Oct. 28, 1975—Decision, Oct. 28, 1975*

Consent order requiring a Memphis, Tenn., realty company, 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: *Truett M. Honeycutt.*

For the respondents: *William Bartholomew, Memphis, Tenn.*

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 Taylor & Kimbrough Realty Company, a corporation, and Lloyd R. Taylor, individually and as an officer of said corporation, 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 Taylor & Kimbrough Realty Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 3255 White Brook Plaza, Bldg. C, Suite 100, Memphis, Tenn.

Respondent Lloyd R. Taylor is President of the corporate respondent. He formulates, directs and controls the policies, acts and practices of said corporation. 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 as brokers and agents selling real estate to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents have caused, and are now causing advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, to be placed in various media for the purpose of aiding, promoting, or assisting, directly or indirectly, extensions or arrangements of consumer credit in conjunction with the sale of residential real estate, as "consumer credit" is defined in Section 226.2(k) of Regulation Z.

PAR. 4. Subsequent to July 1, 1969, respondents have caused advertisements referred to in Paragraph Three to be published. Certain of said advertisements:

1. Stated the rate of finance charge without expressing that rate as an "annual percentage rate," using that term, in violation of Section 226.10(d)(1) of Regulation Z.

2. Stated the amount of the downpayment (either in dollars or as a percentage), and the number of installments, without also stating, as required by Section 226.10(d)(2) of Regulation Z, in terminology prescribed under Section 226.8 of Regulation Z, all of the following:

- a. the amount of the loan;
- b. the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and
- c. the amount of the finance charge expressed as an annual percentage rate.

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 promulgat-

ed 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 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, 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 Taylor & Kimbrough Realty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 3255 Whitebrook Plaza, Bldg. C, Suite 100, Memphis, Tenn.

2. Respondent Lloyd R. Taylor is 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.

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 Taylor & Kimbrough Realty Company, a corporation, its successors and assigns, and its officers, and Lloyd R. Taylor, 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:

1. Stating the rate of a finance charge unless such rate is expressed

as an annual percentage rate, using the term "annual percentage rate," as "finance charge" and "annual percentage rate" are defined in Section 226.2 of Regulation Z, as prescribed by Section 226.10(d)(1) of Regulation Z.

2. 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:

- a. the amount of the loan;
- b. the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and
- c. the amount of the finance charge expressed as an annual percentage rate.

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

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

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

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

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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

BAZA'R, INC.

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

*Docket C-2751. Complaint, Oct. 28, 1975—Decision, Oct. 28, 1975*

Consent order requiring a Portland, Oreg., supermarket chain, among other things to cease not having advertised items readily available for sale at or below the advertised price. Further, respondent is required to use shelf signs to indicate the location of items advertised below regular shelf price; to mark customarily price-marked items with the advertised prices; to post at store entrances and check-out counters notices (1) containing a copy of the ad, (2) listing any advertised items unavailable, and (3) announcing that rainchecks will be issued for them; and to maintain a program of continuing surveillance to insure that their stores comply with the order.

*Appearances*

For the Commission: *W. Lee Buck.*

For the respondents: *Pro se.*

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 Baza'r, 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:

COUNT I

Alleging violation of Sections 5 and 12 of the Federal Trade Commission Act.

PARAGRAPH 1. Respondent Baza'r, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon with its office and principal place of business located at 1845 S.E. Third Ave., Portland, Oreg.

PAR. 2. Respondent is engaged in the operation of a chain of retail

food stores. Respondent operates retail food stores and food departments in Oregon, Washington and other States in the United States. Its volume of business is substantial. In the operation of its retail food stores, respondent offers and presents for sale to its customers, and sells to its customers, an extensive line of products, including food, as that term is defined in the Federal Trade Commission Act, groceries and other merchandise, all of which are sometimes referred to hereafter as "items." Many of said items are purchased from numerous suppliers located throughout the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, directly or indirectly, the aforesaid items to be shipped and distributed from manufacturing and processing plants or from other sources of supply to its warehouses, distribution centers, or retail food stores located in various States other than the State of origination, distribution or storage of said items. Respondent maintains, and at all times mentioned herein has maintained a substantial course of trade in the distribution, advertising, offering for sale and sale of the aforesaid items in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, as aforesaid, and for some time last past respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the aforesaid items by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation and other advertising media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said items from respondent; and respondent has been and is now disseminating, and causing the dissemination of, advertisements concerning said items by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase from respondent of the said items in commerce, as "commerce" is defined in the Federal Trade Commission Act. Many of the said advertisements list or depict the aforesaid items and also contain statements and representations concerning the price or terms at which said items would be offered for sale. Many of the aforesaid advertisements contain further direct and express statements and representations concerning the time periods during which the offers would be in effect and the locations of respondent's food stores at which the offers would be made.

PAR. 5. Through the use of such advertisements disseminated and now being disseminated in various areas of the United States served by

respondent's retail food stores, respondent has represented and is now representing directly or by implication that in those stores covered by such advertisements, throughout the effective periods of the advertised offers, the items listed or depicted in such advertisements would be or are:

- A. Readily available for sale to customers;
- B. Readily available for sale at or below the advertised prices; and
- C. Sold to consumers at or below the advertised price.

PAR. 6. In truth and in fact, in a number of respondent's retail food stores located in the Portland, Oreg. metropolitan area in which the aforesaid advertisements were disseminated, in stores covered by such advertisements, during the effective periods of the advertised offers, a substantial number of items listed or depicted in the said advertisements were or are:

- A. Not readily available for sale;
- B. Not readily available for sale at or below the advertised prices;

or

- C. Sold to customers at a price higher than the advertised price.

Therefore, the statements and representations as referred to herein, were and are false, misleading and deceptive, and each of such advertisements was and is misleading in material respects and constituted, and now constitutes a "false advertisement," as that term is defined in the Federal Trade Commission Act.

PAR. 7. By disseminating or causing the dissemination of advertisements which offer or present for sale items as aforesaid, and by failing to have in each of its stores covered by such advertisements, throughout the effective periods of the advertised offers, in quantities sufficient to meet reasonably anticipated demands, the advertised items:

- A. Readily available for sale to customers; or
  - B. Readily available for sale at or below the advertised prices;
- respondent has been and now is engaged in unfair acts and practices.

PAR. 8. By disseminating or causing the dissemination of advertisements which offer or present for sale items at specific prices, as aforesaid, and during the effective periods of such advertised offers at certain stores covered by said advertisements, by selling said items or other merchandise to customers at prices higher than the advertised prices, respondent has been and now is engaged in unfair acts and practices.

PAR. 9. In the course and conduct of its business, and at all times referred to herein, respondent has been and now is in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail food and grocery business.

PAR. 10. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices, including the dissemination of the aforesaid "false advertisements," has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were and are true, and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices and substantial quantities of items other than the advertised items.

PAR. 11. The acts and practices as aforesaid, and the dissemination by respondent of the 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 Sections 5 and 12 of the Federal Trade Commission Act.

#### COUNT II

Alleging violation of the Federal Trade Commission trade regulation rule concerning retail food store advertising and marketing practices (16 CFR 424), the allegations of Paragraphs One, Two, Three, Four and Nine, respectively, of Count I hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended 15 U.S.C. §41, *et seq.*, and the provisions of Subpart B, Part 1, of the Commission's Procedures and Rules of Practice, 16 CFR §1.11, *et seq.*, conducted a proceeding for the promulgation of a trade regulation rule regarding retail food store advertising and marketing practices. Notice of this proceeding, including a proposed rule was published in the Federal Register on Nov. 14, 1969 (34 F.R. 18252). Thereafter on May 31, 1971 the Commission duly promulgated a trade regulation rule concerning retail food store advertising and marketing practices effective July 12, 1971, 16 C.F.R. §424.1 (1973).

PAR. 13. Respondent is a member of the retail food store industry, and its acts and practices in connection with the sale and offering for sale of food and grocery products or other merchandise are subject to the jurisdiction of Sections 5 and 12 of the Federal Trade Commission Act and are within the intent and meaning of, and are subject to, the provisions of the aforesaid trade regulation rule.

PAR. 14. In connection with its aforesaid advertisements, respondent, in a substantial number of instances, has failed to comply with the



aforesaid trade regulation rule by offering food and grocery products or other merchandise for sale at a stated price by means of advertisements disseminated in areas served by certain of its stores which were covered by the advertisement but which did not have such products in stock and readily available for sale to customers during the effective period of the advertisement.

PAR. 15. In connection with its advertisements disseminated as aforesaid, respondent, in a substantial number of instances, has failed to comply with the aforesaid trade regulation rule by failing to make certain of the advertised items conspicuously and readily available for sale at or below the advertised prices.

PAR. 16. Respondent's aforesaid violations of the trade regulation rule concerning retail food store advertising and marketing practices constitute violations 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 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 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:

A. Baza'r, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon with its

office and principal place of business located at 1845 S.E. Third Ave., Portland, Oreg.

B. 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

##### I

*It is ordered,* That respondent Baza'r, Inc., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of food or grocery products or other merchandise, hereafter sometimes referred to as items, offered or sold in its retail stores, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing the dissemination of any advertisement by any means which offers any items for sale at a stated price, unless throughout the effective period of the advertised offer at each retail store covered by the advertisement:

1. Each advertised item is readily available for sale to customers in the public area of the store, or if not readily available there, a clear and conspicuous notice is posted where the item is regularly displayed which states that the item is in stock and may be obtained upon request, and said item is furnished on request;

2. There is a sign or other conspicuous marking at the place where an item advertised below regular shelf price is displayed for sale clearly disclosing that the item is "as advertised" or "on sale" or words of similar import as appropriate, and disclosing on such sign or marking, the advertised price;

3. Each advertised item, which is usually and customarily individually marked with a price, is individually, clearly, and conspicuously marked with the advertised price;

4. Each advertised item is sold to customers at or below the advertised price;

*Provided,* That it shall not be deemed a violation of the above subparagraphs A.1., A.2., A.3., or A.4., if respondent is complying with a specific exemption, limitation or restriction with respect to store, item or price which is clearly and conspicuously disclosed in all advertisements.

*Provided, further,* It shall constitute a defense to a charge of

unavailability under subparagraph I.A.1. if respondent maintains and furnishes or makes available for inspection and copying upon the request of the Federal Trade Commission, such records and affidavits as will show that (a) the advertised items were delivered to its stores in quantities sufficient to meet reasonably anticipated demand, or (b) the advertised items were ordered but not delivered due to circumstances beyond respondent's control, and that respondent, upon notice or knowledge of such nondelivery acted immediately to contact the media to correct the advertisement or proposed advertisement to reflect the limited availability or unavailability of each advertised item, and (c) respondent immediately offered to customers on inquiry a "rain check" for each unavailable item which entitled the holder to purchase the item in the near future at or below the advertised price.

In determining compliance with section I of this order, the Commission will consider the circumstances surrounding failure to make advertised items conspicuously and readily available for sale at or below the advertised prices due to circumstances beyond respondent's control.

## II

*It is further ordered,* That respondent Baza'r, Inc., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of food or drugs, as those terms are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated, by United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product, any advertisement which contains any of the offers prohibited by section I of this order;

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the offers prohibited by Section I of this order.

## III

*It is further ordered,* That throughout each advertised sale period in each of its retail stores covered by an advertisement, respondent shall

post conspicuously (1) at or near each doorway affording entrance to the public, and (2) at or near the place where customers pay for merchandise, notices which contain the following:

- A. A copy of the advertisement.
- B. A statement that:

All items advertised are readily available for sale at or below advertised price except the following items:

Rain checks will be gladly issued for these items, that will enable you to purchase these items at or below the advertised price in the near future. If you have any questions, the store director will be glad to assist you.

IV

*It is further ordered,* That respondent shall cause the following statement to be clearly and conspicuously set forth in each advertisement which represents that items are available for sale at a stated price at any of its stores: "Each of these advertised items is required to be readily available for sale at or below the advertised price in each \_\_\_\_\_ (*store name*) \_\_\_\_\_ store, except as specifically noted in this ad."

V

*It is further ordered,* That:

A. Respondent shall forthwith deliver a copy of this order to each of its operating divisions and to each of its present and future officers and other personnel in its organization down to the level of and including assistant store directors who, directly or indirectly, have any supervisory responsibilities as to individual retail stores of respondent, or who are engaged in any aspect of preparation, creation, or placing of advertising, and that respondent shall secure a signed statement acknowledging receipt of said order from each such person;

B. Respondent shall institute and maintain a program of continuing surveillance adequate to reveal whether the business practices of each of its retail stores conform to this order, and shall confer with any duly authorized representative of the Commission pertaining to such program when requested to do so by a duly authorized representative of the Commission;

C. Respondent shall, for a period of three (3) years subsequent to the date of this order:

1. Maintain business records which show the efforts taken to insure continuing compliance with the terms and provisions of this order;
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.

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IN THE MATTER OF

PACIFIC GAMBLE ROBINSON CO.

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

*Docket C-2756. Complaint, Oct. 29, 1975—Decision, Oct. 29, 1975*

Consent order requiring a Seattle, Wash., grocery store chain, among other things to cease not having advertised items readily available for sale at or below the advertised price. Further, respondent is required to use shelf signs to indicate the location of items advertised below regular shelf price; to mark customarily price-marked items with the advertised prices; to post at store entrances and check-out counters notices (1) containing a copy of the ad, (2) listing any advertised items unavailable, and (3) announcing that rainchecks will be issued for them; and to maintain a program of continuing surveillance to insure that their stores comply with the order.

*Appearances*

For the Commission: *W. Lee Buck.*

For the respondent: *John E. Ryan, Jr., Ryan, Bush, Swanson & Hendel, Seattle, Wash.*

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 Pacific Gamble

Robinson Co., 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:

## COUNT I

Alleging violation of Sections 5 and 12 of the Federal Trade Commission Act.

PARAGRAPH 1. Respondent Pacific Gamble Robinson Co. 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 4103 Second Ave. S., Seattle, Wash.

PAR. 2. Respondent is engaged in the wholesale and retail grocery business, buying and selling a wide variety of food and grocery products. Respondent operates retail food stores in Oregon, Washington, and other States in the United States. Its volume of business is substantial. In the operation of its retail food stores, respondent offers and presents for sale to its customers, and sells to its customers, an extensive line of products, including food, as that term is defined in the Federal Trade Commission Act, groceries and other merchandise, all of which are sometimes referred to hereafter as "items." Many of said items are purchased from numerous suppliers located throughout the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, directly or indirectly, the aforesaid items to be shipped and distributed from manufacturing and processing plants or from other sources of supply to its warehouses, distribution centers, or retail food stores located in various States other than the State of origination, distribution or storage of said items. Respondent maintains, and at all times mentioned herein has maintained a substantial course of trade in the distribution, advertising, offering for sale and sale of the aforesaid items in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, as aforesaid, and for some time last past respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the aforesaid items by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation and other advertising media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said

items from respondent; and respondent has been and is now disseminating, and causing the dissemination of, advertisements concerning said items by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase from respondent of the said items in commerce, as "commerce" is defined in the Federal Trade Commission Act. Many of the said advertisements list or depict the aforesaid items and also contain statements and representations concerning the price or terms at which said items would be offered for sale. Many of the aforesaid advertisements contain further direct and express statements and representations concerning the time periods during which the offers would be in effect and the locations of respondent's food stores at which the offers would be made.

PAR. 5. Through the use of such advertisements disseminated and now being disseminated in various areas of the United States served by respondent's retail food stores, respondent has represented and is now representing directly or by implication that in those stores covered by such advertisements, throughout the effective periods of the advertised offers, the items listed or depicted in such advertisements would be or are:

- A. Readily available for sale to customers;
- B. Readily available for sale at or below the advertised prices; and
- C. Sold to consumers at or below the advertised price.

PAR. 6. In truth and in fact, in a number of respondent's retail food stores located in the Seattle, Wash., and Portland, Oreg., metropolitan areas in which the aforesaid advertisements were disseminated, in stores covered by such advertisements, during the effective periods of the advertised offers, a substantial number of items listed or depicted in the said advertisements were or are:

- A. Not readily available for sale;
- B. Not readily available for sale at or below the advertised prices;

or

- C. Sold to customers at a price higher than the advertised price.

Therefore, the statements and representations as referred to herein, were and are false, misleading and deceptive, and each of such advertisements was and is misleading in material respects and constituted, and now constitutes a "false advertisement," as that term is defined in the Federal Trade Commission Act.

PAR. 7. By disseminating or causing the dissemination of advertisements which offer or present for sale items as aforesaid, and by failing to have in each of its stores covered by such advertisements, throughout the effective periods of the advertised offers, in quantities

sufficient to meet reasonably anticipated demands, the advertised items:

A. Readily available for sale to customers; or

B. Readily available for sale at or below the advertised prices; respondent has been and now is engaged in unfair acts and practices.

PAR. 8. By disseminating or causing the dissemination of advertisements which offer or present for sale items at specific prices, as aforesaid, and during the effective periods of such advertised offers at certain stores covered by said advertisements, by selling said items or other merchandise to customers at prices higher than the advertised prices, respondent has been and now is engaged in unfair acts and practices.

PAR. 9. In the course and conduct of its business, and at all times referred to herein, respondent has been and now is in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail food and grocery business.

PAR. 10. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices, including the dissemination of the aforesaid "false advertisements," has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were and are true, and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices and substantial quantities of items other than the advertised items.

PAR. 11. The acts and practices as aforesaid, and the dissemination by respondent of the 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 Sections 5 and 12 of the Federal Trade Commission Act.

#### COUNT II

Alleging violation of the Federal Trade Commission trade regulation rule concerning retail food store advertising and marketing practices (16 CFR 424), the allegations of Paragraphs One, Two, Three, Four and Nine, respectively, of Count I hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended 15 U.S.C. §41, *et seq.*, and the provisions of Subpart B, Part 1, of the Commission's Procedures and



Rules of Practice, 16 CFR §1.11, *et seq.*, conducted a proceeding for the promulgation of a trade regulation rule regarding retail food store advertising and marketing practices. Notice of this proceeding, including a proposed rule was published in the Federal Register on Nov. 14, 1969 (34 F.R. 18252). Thereafter on May 31, 1971 the Commission duly promulgated a trade regulation rule concerning retail food store advertising and marketing practices effective July 12, 1971, 16 C.F.R. §424.1 (1973).

PAR. 13. Respondent is a member of the retail food store industry, and its acts and practices in connection with the sale and offering for sale of food and grocery products or other merchandise are subject to the jurisdiction of Sections 5 and 12 of the Federal Trade Commission Act and are within the intent and meaning of, and are subject to, the provisions of the aforesaid trade regulation rule.

PAR. 14. In connection with its aforesaid advertisements, respondent, in a substantial number of instances, has failed to comply with the aforesaid trade regulation rule by offering food and grocery products or other merchandise for sale at a stated price by means of advertisements disseminated in areas served by certain of its stores which were covered by the advertisement but which did not have such products in stock and readily available for sale to customers during the effective period of the advertisement.

PAR. 15. In connection with its advertisements disseminated as aforesaid, respondent, in a substantial number of instances, has failed to comply with the aforesaid trade regulation rule by failing to make certain of the advertised items conspicuously and readily available for sale at or below the advertised prices.

PAR. 16. Respondent's aforesaid violations of the trade regulation rule concerning retail food store advertising and marketing practices constitute violations 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 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 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:

A. Pacific Gamble Robinson Co. 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 4103 Second Ave. S., Seattle, Wash.

B. 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

##### I

*It is ordered,* That respondent Pacific Gamble Robinson Co., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of food or grocery products or other merchandise, hereafter sometimes referred to as items, offered or sold in its retail stores, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing the dissemination of any advertisement by any means which offers any items for sale at a stated price, unless throughout the effective period of the advertised offer at each retail store covered by the advertisement:

1. Each advertised item is readily available for sale to customers in the public area of the store, or if not readily available there, a clear and conspicuous notice is posted where the item is regularly displayed which states that the item is in stock and may be obtained upon request, and said item is furnished on request;

2. There is a sign or other conspicuous marking at the place where an item advertised below regular shelf price is displayed for sale clearly disclosing that the item is "as advertised" or "on sale" or words of similar import as appropriate, and disclosing on such sign or marking, the advertised price;

3. Each advertised item, which is usually and customarily individually marked with a price, is individually, clearly, and conspicuously marked with the advertised price;

4. Each advertised item is sold to customers at or below the advertised price;

*Provided*, That it shall not be deemed a violation of the above subparagraphs A.1., A.2., A.3., or A.4., if respondent is complying with a specific exemption, limitation or restriction with respect to store, item or price which is clearly and conspicuously disclosed in all advertisements.

*Provided, further*, It shall constitute a defense to a charge of unavailability under subparagraph I.A.1. if respondent maintains and furnishes or makes available for inspection and copying upon the request of the Federal Trade Commission, such records and affidavits as will show that (a) the advertised items were delivered to its stores in quantities sufficient to meet reasonably anticipated demand, or (b) the advertised items were ordered but not delivered due to circumstances beyond respondent's control, and that respondent, upon notice or knowledge of such nondelivery acted immediately to contact the media to correct the advertisement or proposed advertisement to reflect the limited availability or unavailability of each advertised item, and (c) respondent immediately offered to customers on inquiry a "rain check" for each unavailable item which entitled the holder to purchase the item in the near future at or below the advertised price.

In determining compliance with Section I of this order, the Commission will consider the circumstances surrounding failure to make advertised items conspicuously and readily available for sale at or below the advertised prices due to circumstances beyond respondent's control.

## II

*It is further ordered*, That respondent Pacific Gamble Robinson Co., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of food or drugs, as those terms are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated, by United States

mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product, any advertisement which contains any of the offers prohibited by Section I of this order;

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the offers prohibited by Section I of this order.

### III

*It is further ordered,* That throughout each advertised sale period in each of its retail stores covered by an advertisement, respondent shall post conspicuously (1) at or near each doorway affording entrance to the public, and (2) at or near the place where customers pay for merchandise, notices which contain the following:

A. A copy of the advertisement.

B. A statement that:

All items advertised are readily available for sale at or below advertised price except the following items:

Rain checks will be gladly issued for these items, that will enable you to purchase these items at or below the advertised price in the near future. If you have any questions, the store director will be glad to assist you.

### IV

*It is further ordered,* That respondent shall cause the following statement to be clearly and conspicuously set forth in each printed advertisement which represents that items are available for sale at a stated price at any of its stores: "Each of these advertised items is required to be readily available for sale at or below the advertised price in each Tradewell store, except as specifically noted in this ad."

### V

*It is further ordered,* That:

A. Respondent shall forthwith deliver a copy of this order to each of its operating divisions and to each of its present and future officers and other personnel in its organization down to the level of and including assistant store directors who, directly or indirectly, have any supervisory responsibilities as to individual retail stores of respondent, or who are engaged in any aspect of preparation, creation, or placing of

advertising, and that respondent shall secure a signed statement acknowledging receipt of said order from each such person;

B. Respondent shall institute and maintain a program of continuing surveillance adequate to reveal whether the business practices of each of its retail stores conform to this order, and shall confer with any duly authorized representative of the Commission pertaining to such program when requested to do so by a duly authorized representative of the Commission;

C. Respondent shall, for a period of three (3) years subsequent to the date of this order:

1. Maintain business records which show the efforts taken to insure continuing compliance with the terms and provisions of this order;

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.

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IN THE MATTER OF

D'ARCY-MacMANUS & MASIUS, INC.

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

*Docket C-2757. Complaint, Oct. 31, 1975-Decision, Oct. 31, 1975*

Consent order requiring a New York City advertising agency, among other things to cease making deceptive fuel economy claims for automobiles.

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## Complaint

*Appearances*

For the Commission: *H. Robert Field* and *Richard A. Bloomfield*.  
For the respondent: *Lewis E. Striebeck, Jr.*, St. Louis, Mo.

## 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 D'Arcy-MacManus & Masius, Inc. 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:

For the purposes of this complaint the following definition shall apply:

1. "EPA test" shall mean the test of air pollution control, containing fuel economy data, conducted by the Environmental Protection Agency, the results of which were published in the Federal Register of Monday, Nov. 5, 1973.
2. "In Commerce" shall mean commerce as commerce is defined in the Federal Trade Commission Act.
3. "Advertisements" shall mean advertisements actually disseminated to the public as well as proposed advertisements or promotional material.
4. "Data cars" shall mean the actual automobiles tested by the Environmental Protection Agency in the EPA test.

PARAGRAPH 1. Respondent D'Arcy-MacManus & Masius, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 437 Madison Ave., New York, N.Y.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising and promotion of certain motor vehicles, including but not limited to that model of automobile designated by the Cadillac Division of the General Motors Corporation as the Cadillac Eldorado.

PAR. 3. In the course and conduct of its aforesaid business, respondent causes the advertising and promotional materials it prepares to be transported from its places of business located in various States of the United States to various media and clients located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in said advertising and

promotional materials in commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business, respondent has disseminated, has caused the dissemination of, or has prepared for dissemination advertisements for the aforementioned Cadillac Eldorado, said dissemination having been by means of magazines and newspapers and by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcast across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said Cadillac Eldorado automobiles.

PAR. 5. In the course and conduct of its said business, respondent has prepared to be furnished to Cadillac Eldorado dealers located in various States certain advertisements with the knowledge and expectation that these advertisements and/or advertisements based thereon and substantially similar thereto would be disseminated directly or indirectly by at least some of the said dealers to the general public.

PAR. 6. Among the advertisements so disseminated, prepared, or furnished to dealers as aforesaid in Paragraphs Four and Five above is the advertisement attached as Exhibit A.

PAR. 7. At least some of said dealers did in fact disseminate in commerce an advertisement, substantially identical to the advertisement attached as Exhibit A.

PAR. 8. Exhibit B is an example of the advertisement disseminated by one of said dealers, and is substantially similar to Exhibit A.

PAR. 9. Said Exhibit A and B and other substantially similar thereto contain one or more false, deceptive and misleading representations and fail to disclose facts which are material in light of the representations contained therein. Therefore, the representations contained in said advertisements were, and are, deceptive or unfair.

PAR. 10. Said Exhibits A and B and others substantially similar thereto (hereinafter referred to as said advertisements) represent *inter alia* that the Environmental Protection Agency (hereinafter EPA) had conducted a test of gasoline economy (hereinafter EPA test) and in that test had found the Eldorado model of Cadillac to be superior in terms of gasoline mileage to the other automobile models listed in said advertisements.

PAR. 11. In truth and in fact the Eldorado model of the Cadillac automobile was not shown in the EPA test to be superior in terms of gasoline mileage to all of the other models of automobiles listed in those advertisements. Therefore, the representations contained in the said advertisements were, and are, deceptive or unfair.

PAR. 12. Respondent failed to disclose in said advertisements that many of the other models of automobiles listed in said advertisements were represented by more than one data car in the EPA test and that in several cases one or more or even a majority of the data cars representing the models of automobiles listed were found to be superior in terms of gasoline mileage in the EPA tests to both data cars of the Cadillac Eldorado. For example, the American Motors Wagoneer, listed sixth on Exhibit A, was represented by three data cars, two of which were superior in terms of gasoline mileage to both data cars of the Cadillac Eldorado.

PAR. 13. Respondent failed to disclose in said advertisement that there were two Cadillac Eldorado data cars tested in the EPA test, and that in many cases, one of these two Eldorado data cars was inferior in terms of gasoline mileage to some or even to all of the data cars representing the other models of automobiles listed in those advertisements. For example, one of the two Eldorado data cars was inferior in terms of gasoline mileage to both of the data cars representing the Mercedes MB-116, listed third on Exhibit A.

PAR. 14. The facts set forth in Paragraphs Twelve through Thirteen are each material in light of the representation contained in said advertisements and their omission makes these advertisements misleading in a material respect. Therefore, the said advertisements were, and are, deceptive or unfair.

PAR. 15. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent D'Arcy-MacManus & Masius, Inc. has been and now is in substantial competition in commerce with corporations, firms and individuals engaged in the advertising of automobiles of the same general kind and nature as the Cadillac Eldorado.

PAR. 16. The use by respondent of the aforesaid unfair or deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of automobiles manufactured by clients of respondent including General Motors. As a result thereof, substantial trade is being unfairly diverted to respondent and to clients of respondent from their competitors.

PAR. 17. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair or deceptive acts or practices in commerce unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.



EXHIBIT A

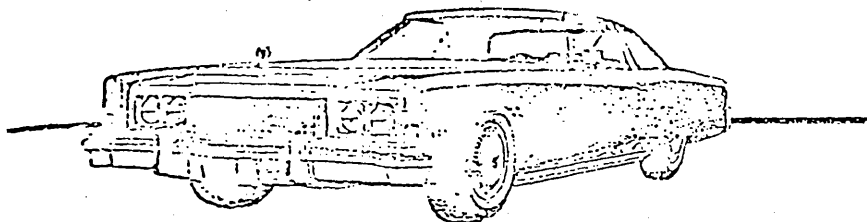
IV (1)

# A Cadillac Eldorado beat these other cars in the EPA's official mileage test!

- |                                       |                                       |
|---------------------------------------|---------------------------------------|
| 1. Toyo Kogyo Mazda RX4 Coupe         | 38. Chrysler                          |
| 2. Oldsmobile Cutlass Salon           | 39. Ford Ranchero                     |
| 3. Mercedes Benz MB-116               | 40. Oldsmobile Delta 88 Royal         |
| 4. Ford Torino Station Wagon          | 41. Pontiac GTG                       |
| 5. Plymouth Intermediate              | 42. Buick Regal                       |
| 6. American Motors Wagoneer           | 43. Buick Century 350                 |
| 7. Buick Century                      | 44. Pontiac Grand Am                  |
| 8. Chevrolet Impala Custom            | 45. Chevrolet C-10 Suburban           |
| 9. Ferrari Dino 246 GT                | 46. Chevrolet Caprice Station Wagon   |
| 10. American Motors Matador           | 47. Oldsmobile Vista Cruiser          |
| 11. Ford F-100                        | 48. Pontiac Trans Am                  |
| 12. Ford Galaxie                      | 49. Pontiac LeMans Safari             |
| 13. Buick LeSabre                     | 50. Chevrolet G-10 Beauville          |
| 14. Chevrolet Impala Station Wagon    | 51. Pontiac Stageway Coach            |
| 15. Pontiac Ventura                   | 52. Pontiac Grand Prix SJ             |
| 16. Ford Torino                       | 53. Pontiac Grand Safari              |
| 17. Chevrolet Malibu Classic          | 54. Ford Torino Station Wagon         |
| 18. Pontiac LeMans                    | 55. Buick Electra 225                 |
| 19. Plymouth Full Size                | 56. Oldsmobile Toronado               |
| 20. Mercury Montego                   | 57. Pontiac Catalina Safari           |
| 21. American Motors Universal         | 58. Dodge Full Size                   |
| 22. Jaguar E Type Series III          | 59. Dodge GE Full Size Station Wagon  |
| 23. Toyota Land Cruiser Station Wagon | 60. Pontiac Grand Ville               |
| 24. Buick Century Station Wagon       | 61. Buick Estate Station Wagon        |
| 25. Ford E-200                        | 62. Mercury                           |
| 26. Dodge Station Wagon               | 63. Plymouth Full Size Station Wagon  |
| 27. Buick Estate Station Wagon        | 64. Mercury Station Wagon             |
| 28. Chevrolet Caprice                 | 65. Lincoln                           |
| 29. Oldsmobile Cutlass                | 66. Pontiac Bonneville                |
| 30. Ford Station Wagon                | 67. Chevrolet Laguna                  |
| 31. Oldsmobile Cutlass Supreme        | 68. Oldsmobile Delta 88               |
| 32. Mercury Cougar                    | 69. Lamborghini Jarama 400 GT         |
| 33. Buick Estate                      | 70. Lamborghini Espada 411 GT         |
| 34. Plymouth Intermediate             | 71. Chevrolet C-20 Suburban           |
| 35. Pontiac LeMans Sport              | 72. Oldsmobile Delta 88 Station Wagon |
| 36. Pontiac Catalina                  | 73. Ferrari 365 GTB-4                 |
| 37. Buick Gran Sport                  |                                       |

Hometown Cadillac, inc.





# A Cadillac Eldorado

(With Cadillac's Largest Engine)

beat these other cars in the  
 Environmental Protection Agency  
 official mileage test!

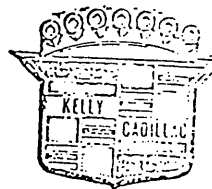
- |                                    |                                     |
|------------------------------------|-------------------------------------|
| 1. Toyo Kogyo Mazda RX4 Coupe      | 36. Chrysler                        |
| 2. Oldsmobile Cutlass              | 37. Ford Ranchero                   |
| 3. Mercedes Benz MB-116            | 38. Oldsmobile Delta 88 Royal       |
| 4. Ford Torino Station Wagon       | 39. Pontiac GTO                     |
| 5. Plymouth Intermediate           | 40. Buick Regal                     |
| 6. American Motors Wagoner         | 41. Buick Century 350               |
| 7. Buick Century                   | 42. Pontiac Grand Am                |
| 8. Chevrolet Impala Custom         | 43. Chevrolet C-10 Suburban         |
| 9. Ferrari Dino 246 GT             | 44. Chevrolet Caprice Station Wagon |
| 10. American Motors Matador        | 45. Oldsmobile Vista Cruiser        |
| 11. Ford F-100                     | 46. Pontiac LeMans Safari           |
| 12. Ford Galaxie                   | 47. Pontiac Trans AM                |
| 13. Buick LeSabre                  | 48. Chevrolet G-10 Beauville        |
| 14. Chevrolet Impala Station Wagon | 49. Pontiac Stagway Coach           |
| 15. Pontiac Ventura                | 50. Pontiac Grand Prix SJ           |
| 16. Ford Torino                    | 51. Pontiac Grand Safari            |
| 17. Chevrolet Malibu Classic       | 52. Buick Electra 225               |
| 18. Pontiac LeMans                 | 53. Oldsmobile                      |

- |                                       |                                       |
|---------------------------------------|---------------------------------------|
| 13. Buick LeSabre                     | 48. Chevrolet G-10 Beauville          |
| 14. Chevrolet Impala Station Wagon    | 49. Pontiac Stegeway Coach            |
| 15. Pontiac Ventura                   | 50. Pontiac Grand Prix SJ             |
| 16. Ford Torino                       | 51. Pontiac Grand Safari              |
| 17. Chevrolet Malibu Classic          | 52. Buick Electra 225                 |
| 18. Pontiac LeMans                    | 53. Oldsmobile Toronado               |
| 19. Plymouth Full Size                | 54. Pontiac Catalina Safari.          |
| 20. Mercury Montego                   | 55. Dodge Full Size                   |
| 21. American Motors Universal         | 56. Dodge GE Full Size Station Wagon  |
| 22. Jaguar E Type Series III          | 57. Pontiac Grandville                |
| 23. Toyota Land Cruiser Station Wagon | 58. Mercury                           |
| 24. Buick Century Station Wagon       | 59. Plymouth Full Size Station Wagon  |
| 25. Ford E-200                        | 60. Mercury Station Wagon             |
| 26. Dodge Station Wagon               | 61. Lincoln                           |
| 27. Buick Estate Station Wagon        | 62. Pontiac Bonneville                |
| 28. Chevrolet Caprice                 | 63. Chevrolet Laguna                  |
| 29. Ford Station Wagon                | 64. Oldsmobile Delta 88               |
| 30. Oldsmobile Cutlass Supreme        | 65. Lamborghini Jarama 400 GT         |
| 31. Mercury Cougar                    | 66. Lamborghini Espada 411 GT         |
| 32. Buick Estate                      | 67. Chevrolet C-20 Suburban           |
| 33. Pontiac LeMans Sport              | 68. Oldsmobile Delta 88 Station Wagon |
| 34. Pontiac Catalina                  | 69. Ferrari 365 GTB-4                 |
| 35. Buick Gran Sport                  |                                       |

You don't have to sacrifice room,  
ride and safety for economy ...

Kelly  
Cadillac

"Choose the car you've always wanted"



900 Riverfront Parkway  
Phone 267-1104

## 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent D'Arcy-MacManus & Masius, 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 437 Madison Ave., New York, 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 respondent D'Arcy-MacManus & Masius, Inc., its successors and assigns, its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by reference to a test or

tests, that any automobile is superior with regard to fuel economy to any other automobile, unless:

(a) such superiority has been demonstrated, as to the model(s) for which it is claimed, by such test or tests with respect to each sample, or the valid average of all identical samples, of each model represented to have been tested; or

(b) the valid test results for each sample, or the valid average of all identical samples, of each model so compared, including the advertised model as well as such makes and models to which the advertised model is compared, are clearly and conspicuously disclosed.

For the purpose of this order "sample" shall mean an actual automobile tested. It is *Provided, however*, That nothing contained in this paragraph is intended to conflict with any guidelines, rules or regulations with respect to fuel economy testing or advertising that may hereafter from time to time be promulgated by any agency of the United States Government, and, if such conflict does occur, the guidelines, rules or regulations shall govern.

2. Misrepresenting in any manner the fuel economy of any automobiles or the superiority of any automobile over competing products in terms of fuel economy.

3. Representing, directly or by implication, by reference to a test or tests, that the performance of any consumer automotive product has been tested either alone or in comparison with other consumer automotive products unless such representation(s) accurately reflect the test results and unless the tests themselves are so devised and conducted as to substantiate each such representation concerning the featured tests.

4. Misrepresenting in any manner the purpose, contents or conclusion of any test, report or study relating to the performance of any consumer automotive product.

For purposes of Paragraphs 3 and 4 of this order "test" shall include demonstrations which are claimed to be proof of the representations made.

5. It shall be a defense under Paragraphs 1-4 of this order that respondent neither knew nor should have known of the facts concerning the test, fuel economy or performance which make the advertising false or misleading.

*It is further ordered*, That the respondent 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.

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

*It is further ordered,* That respondent notify the Commission at least 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.

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IN THE MATTER OF

TRI-WEST CONSTRUCTION COMPANY, INC., ET AL.

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

*Docket C-2758. Complaint, Oct. 31, 1975—Decision, Oct. 31, 1975*

Consent order requiring a Boise, Idaho, home construction, repair and rehabilitation firm, among other things to cease using false pricing claims and other misrepresentations to sell its home improvement products or services; using coercive tactics to increase the contract price; and obtaining certificates of completion before actually completing the work. Further, respondent is required to complete the work agreed to in the original contract at the original price, to obtain a supplemental contract for any additional work desired by a customer, and to comply with requirements of the Truth in Lending Act that credit cost disclosures be made and that credit customers whose homes have been taken as security be allowed a three-day right of rescission period.

*Appearances*

For the Commission: *Sharon Armstrong.*

For the respondents: *Richard M. Clinton, Bogle, Gates, Dobrin, Wakefield & Long, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Tri-West Construction Company, Inc., a corporation, and William B. Cafarelli, individually and as an officer of Tri-West Construction Company, Inc. (hereinafter respondents), have violated Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) and various provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint:

PARAGRAPH 1. Respondent Tri-West Construction Company, Inc.

(hereinafter Tri-West) is an Idaho corporation with its principal office and place of business located at 3826 W. State St., Boise, Idaho.

Respondent William B. Cafarelli is president and sole owner of Tri-West. He controls the policies, acts and practices of Tri-West, including those hereinafter set forth. His address is the same as that of Tri-West.

PAR. 2. Respondents operate a home improvement and renovation business in which they offer for sale, sell, distribute and install residential siding materials and other home improvement products, and services related thereto.

#### COUNT I

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

PAR. 3. In the course and conduct of their business, respondents cause their products, when sold, to be shipped from their place of business in the State of Idaho to purchasers thereof located in various other States of the United States including Washington, Oregon and Nevada, and cause work orders, contracts and other business papers and documents to be transmitted across State lines by and between respondents' representatives, in implementation and facilitation of their said sales of products and services. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in these products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their home improvement products and services, respondents through their salesmen and representatives make numerous statements in oral sales presentations with respect to the nature and time limitations of their offer, their prices, their business affiliations, and savings available to purchasers.

By and through their use of such statements, respondents represent directly or by implication that:

A. Tri-West is a subsidiary or division of United States Steel Corporation.

B. Tri-West has an exclusive arrangement with United States Steel Corporation whereby Tri-West is the only distributor of such company's residential siding materials in the particular trade area.

C. Tri-West and United States Steel Corporation advertise their siding materials and/or services by means of Tri-West's work on customers' homes.

D. After the installation of respondents' siding is completed, the

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## Complaint

homes of their customers will be used for demonstration and advertising purposes; and, as a result of allowing or agreeing to allow their homes to be used as models, demonstrators, or before-and-after examples, such customers will be granted discounts or reduced prices.

E. The prices offered by respondents to customers are discount or special prices available for only a limited period of time, and which afford savings to customers because of reductions from respondents' regular selling prices.

PAR. 5. In truth and in fact:

A. Tri-West is not a subsidiary or division of United States Steel Corporation.

B. Tri-West does not have an exclusive or any other arrangement with United States Steel Corporation whereby Tri-West is the only distributor of such siding materials in any particular area.

C. Neither Tri-West nor United States Steel Corporation advertise their siding materials and/or services by means of Tri-West's work on customers' homes.

D. After the installation of respondents' siding is completed, the homes of respondents' customers are not and will not, in most instances, be used for demonstration or advertising purposes; and customers are not granted discounts or reduced prices as a result of allowing or agreeing to allow their homes to be used as models, demonstrators, or before-and-after examples.

E. The prices offered by respondents to customers are not special or reduced prices available for only a limited period of time, and do not afford savings to customers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices; the prices at which their home improvement products and services are sold vary from purchaser to purchaser.

Therefore, the statements and representations set forth in Paragraph Four are false, misleading, and deceptive.

PAR. 6. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their home improvement products and services, respondents and their salesmen or representatives in many instances engage in the following additional unfair, misleading and deceptive acts or practices:

A. After a binding purchase order has been signed between respondents and the customer, specifying the work to be done and the agreed price therefor, respondents attempt by various means, either before or after starting the work, to coerce or induce an increase in the price of such work. Among such means are statements and declarations by respondents that the contract price was a mistake, that the work cannot be done at the contract price, that Tri-West will stop work if a



higher price is not agreed on, and other statements of similar import. Respondents thereby deprive customers of the opportunity to choose freely the products and services that they desire, and place at a severe bargaining disadvantage those customers for whom work has already started before respondents demand the higher price.

B. Prior to actual completion of the work, respondents obtain and attempt to obtain the customer's signature on a "Certificate of Completion" or other document attesting to respondents' completion of the work contracted for. In order to obtain this signed certificate respondents make oral statements and representations that it is only a technical requirement, and otherwise disparage the importance of the certificate. By obtaining such signed certificate prematurely, respondents deprive customers of bargaining leverage in instances where respondents fail to complete the work promptly or to the satisfaction of the customer.

C. Respondents fail to disclose to the customer that their furnishing of home improvement products and services gives respondents and others the right, under State law, to file a lien for materials and/or labor on the customer's home. Such fact, if known to respondents' customers, would be likely to affect their consideration of whether or not to purchase such products and services from respondents. Thus, respondents have failed to disclose a material fact.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents are and have been in substantial competition in or affecting commerce with corporations, firms and individuals in the sale of home improvement products and services of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and the aforesaid unfair and deceptive acts and practices, and respondents' failures to disclose material facts, as alleged above, have the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said statements and representations are true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

## COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two above are incorporated by reference in Count II as if fully set forth verbatim. All allegations stated in the present tense include the past tense.

PAR. 10. In the ordinary course and conduct of their business, respondents regularly extend and arrange for the extension of consumer credit, as "arrange for the extension of credit," and "consumer credit" are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, promulgated by the Board of Governors of the Federal Reserve System.

PAR. 11. Subsequent to July 1, 1969, in the ordinary course of business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing their customers to execute a binding purchase order, hereinafter referred to as the "Order Contract." Respondents do not provide customers with any other consumer credit cost disclosures before the transaction is consummated.

PAR. 12. By and through their use of the order contract, respondents:

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

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

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

D. Fail to use the term "deferred payment price" to describe 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 fail in some instances to disclose that sum, all as required by Section 226.8(c)(8)(ii) of Regulation Z.

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

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

G. Fail in some instances to disclose the due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

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

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

J. Fail to include in the finance charge certain charges or premiums for credit life insurance when respondents did not disclose to the customer in writing that such insurance is not required and did not obtain a specific dated and separately signed affirmative written indication of the customer's desire for such insurance as prescribed by Section 226.4(a)(5) of Regulation Z, and thereby fail to state the finance charge accurately as required by Section 226.8(c)(8)(i) of Regulation Z.

K. Fail 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. 13. By and through the use and acceptance of the Order Contract and by virtue of the work performed by respondents on the customer's residence, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the customer. The retention or acquisition of such security interest in said real property confers upon respondents' credit customers the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later, as prescribed by Section 226.9 of Regulation Z.

By and through their use of the order contract respondents fail to furnish such customers with any copy whatever of the notice of opportunity to rescind required by Sections 226.9(a) and (b) of Regulation Z, and to set forth on such notice the "Effect of rescission," Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

Further, in some instances respondents make physical changes in such customers' property and performed work or services on such property before expiration of the rescission period provided in Section 226.9(a) of Regulation Z. Respondents' failure to refrain from commencing work pursuant to rescindable contracts, before the rescission period has expired, is in violation of Section 226.9(c) of Regulation Z.

PAR. 14. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of

Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and of the Truth in Lending Act and the implementing regulation promulgated thereunder; 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 days, and having duly considered the comment filed thereafter pursuant to Section 2.34 of its rules, 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:

A. Respondent Tri-West Construction Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its office and principal place of business located at 3826 W. State St., Boise, Idaho.

Respondent William B. Cafarelli is 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

## I

*It is ordered,* That respondents Tri-West Construction Company, Inc., a corporation, and William B. Cafarelli, individually and as an officer of said corporation, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, distribution or installation of home improvement products or services, or other products, in or affecting 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. Respondents' organization is a subsidiary or division of United States Steel Corporation or is otherwise affiliated with such company or any other manufacturer of construction materials.

2. Respondents have an exclusive arrangement of any kind with United States Steel Corporation or are the only distributor of such company's products in any area.

3. Respondents have an exclusive arrangement with or are the only area distributor of products of any manufacturer of construction materials.

4. Respondents, United States Steel Corporation, or any other supplier of construction materials advertises its products and/or services by means of work done on individuals' homes.

5. The homes of any of respondents' customers are or will be used for demonstration or advertising purposes or as model homes; or that as a result of allowing or agreeing to allow their homes to be used as models, demonstrators, or before-and-after examples, customers are or will be granted reduced prices, discounts, or other special prices.

6. Any price for respondents' products and/or services is a discount price, reduced price, or otherwise special price, unless respondents can affirmatively show by documentary evidence that such price constitutes a significant reduction from an established selling price at which such products and/or services have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, respondents' prices or the savings available to customers.

7. The price or terms offered by respondents are limited as to time or limited in any other manner, unless respondents can affirmatively show by documentary evidence that the represented limitations are actually in force and are in good faith adhered to.

B. Refusing or failing to perform work at the contract price after

entering into an agreement therefor with a customer. In each instance where respondents and the customer determine upon additional goods or services to be provided by or through respondents, beyond those originally agreed upon, the complete terms of such supplementary agreement shall be set forth in a separate contract which shall clearly and conspicuously disclose in bold print:

This is a contract for additional goods and/or services. You are *not required* to purchase these goods and/or services. If you do not wish these additional goods and/or services, Tri-West will perform all the requirements of the original contract for the original contract price.

C. Obtaining from any customer a signed certificate of completion or other document attesting to the completion of contracted work unless the customer has in fact received all products and services contracted for, and a copy of each applicable guarantee.

D. Representing directly or by implication that a certificate of completion is only a technical requirement, or disparaging in any manner the importance of the customer's waiting until completion of all contracted work before signing such a document.

E. Failing to disclose to the customer that respondents' furnishing of home improvement products and services gives respondents and others the right, under State law, to file a lien for materials and/or labor on the customer's home.

## II

*It is further ordered,* That respondents Tri-West Construction Company, Inc., a corporation, and William B. Cafarelli, individually and as an officer of said corporation, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or 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:

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

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

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

D. 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.

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

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

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

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

I. Failing to itemize and include in the finance charge, for purposes of disclosure of the finance charge and computation of the annual percentage rate, any and all charges or premiums for credit life and/or disability insurance unless respondents have clearly and conspicuously disclosed to the customer in writing that such insurance is not required and have obtained a specific dated and separately signed affirmative written indication of the customer's desire for such insurance as prescribed by Section 226.4(a)(5) of Regulation Z.

J. Failing to furnish to the customer, before the transaction is consummated, 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.

K. Failing, in any transaction in which a security interest is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the customer, to comply with all requirements regarding the right of rescission set forth in Section 226.9 of Regulation Z.

L. Making any physical changes in a customer's property or performing any work or services on such property before expiration of the rescission period provided for in Section 226.9(a) of Regulation Z, in any transaction in which a security interest is or will be retained or acquired in real property which is used or expected to be used as the

principal residence of the customer, as provided in Section 226.9(c) of Regulation Z.

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

*It is further ordered,* That respondents hereafter maintain complete business records relative to the manner and form of their compliance with the provisions of this order. Each such record shall be retained for not less than three years, and shall be furnished to representatives of the Federal Trade Commission upon request.

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

*It is further ordered,* That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include 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 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 respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.



Complaint

86 F.T.C.

IN THE MATTER OF

DIESEL TRUCK DRIVERS TRAINING SCHOOL, INC., ET  
AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-2759. Complaint, Nov. 3, 1975—Decision, Nov. 3, 1975*

Consent order requiring a Sun Prairie, Wis., seller and distributor of courses of instruction in truck driving, among other things to cease misrepresenting business affiliations, earnings, nature of business and opportunities in their services. Respondents are further required to make certain affirmative disclosures to prospective students and to give students a three-day cooling-off period during which they may cancel their contract with full refund of all monies paid.

*Appearances*For the Commission: *William M. Rice, Jr.*For the respondents: *Robert L. Klabacka, Klabacka & Kirkhuff, Sun Prairie, Wis.*

## 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 Diesel Truck Drivers Training School, Inc., a corporation, and Robert L. Klabacka, 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. Respondent Diesel Truck Drivers Training School, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at rural route #1, Sun Prairie, Wis.

Respondent Robert L. Klabacka is an individual and officer of respondent corporation. His business address is the same as that of said corporate respondent.

The said individual respondent formulates, directs and controls that acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the advertising, offering for sale, sale or distribution of

courses of study and instruction purporting to prepare graduates thereof for employment as truck drivers and related occupations. Said courses when pursued to completion include a three-week period of in-residence training at a training facility located at Sun Prairie, Wis.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the publication of advertisements concerning the said courses in newspapers of general circulation and have utilized the services of salesmen and franchisees who induce prospective purchasers of said courses, located in States other than the State of Wisconsin, to contact said salesmen and franchisees at respondents' and franchisees' offices. Said salesmen and franchisees transmit to and receive from respondents contracts, checks and other instruments of a commercial nature relating to the sale of said courses to said purchasers. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have published or caused to be published in the "Help-Wanted" and other columns of newspapers advertisements containing statements regarding job opportunities, training and wages for persons interested in becoming truck drivers. Typical and illustrative, but not all inclusive, of such advertisements are the following:

#### ACTIVE MEN

The Growing Truck Industry Needs Trained  
Semi-drivers. These Men Earn up to \$350  
Per Week.

Train Now - Pay Later

. 3 Weeks Training

. Free Job Placement

Over 300 Firms have hired our graduates

#### DIESEL DRIVING SCHOOL

400 Brooks Lane, Hazelwood, Mo.

#### DIESEL SEMI-DRIVERS

##### 75 Men Wanted

Men \* \* \* 21 to 44 years who want to train to become professional (over the road) diesel semi-truck drivers, we will train you in just three weeks at our training grounds at Sun Prairie, Wis. You too can earn that "Big Pay Check" that professional drivers earn. Free placement service. Tuition can be financed. School is approved for veterans. For information, phone or mail this ad to:

DIESEL TRUCK DRIVER TRAINING 3701 East State St., Room 103, Rockford, Ill.  
61108 - Phone 397-0430

PAR. 5. By and through the use of the statements contained in the advertisements set forth in Paragraph Four, and others of similar import and meaning but not expressly set out herein, respondents represent, directly or by implication, that:

1. The corporate respondent operates, or is affiliated with, or represents a trucking company.

2. Respondents are offering employment to qualified applicants who will be trained as truck drivers.

3. Persons receiving training from respondents will earn \$350 per week as truck drivers or in related occupations upon completion of training.

4. There is a reasonable basis from which to conclude that there is now or will be a need or demand for truck drivers which respondents' training is designed to meet.

PAR. 6. In truth and in fact:

1. The corporate respondent does not operate or represent and is not affiliated with any trucking company but, to the contrary, is engaged in the sale of courses of instruction to prospective purchasers.

2. Respondents do not offer employment to persons who have been trained as truck drivers but attempt to and do sell courses of instruction to said purchasers.

3. Few persons who received training from respondents pursuant to said offer have earned amounts such as \$350 per week as truck drivers or in related occupations as a result of such training.

4. Respondents had no reasonable basis from which to conclude that there is now or will be a need or demand for truck drivers which respondents' training is designed to meet.

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

PAR. 7. In the further course and conduct of their business as aforesaid, respondents cause persons who respond to the aforesaid or similar advertisements to contact respondents' salesmen and franchisees. For the purpose of inducing the sale of said courses, such salesmen and franchisees make to prospective purchasers many statements and representations, directly or by implication, regarding opportunities for employment as truck drivers available to purchasers of said courses, the assistance furnished to graduates of courses offered by respondents in obtaining employment and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets and other printed material furnished to said salesmen and franchisees by respondents and in other statements and representations made orally by said salesmen and franchisees. Among and typical,

but not all inclusive, of such statements and representations are the following:

1. Respondents have been requested by trucking companies to train drivers for jobs as truck drivers with their companies upon completion of said training.

2. Respondents provide a placement service which will secure jobs as truck drivers for graduates of said courses and who want to work in such capacities.

3. Graduates of said courses who want to work are assured jobs as truck drivers as a consequence of graduating from said courses.

4. Respondents have a free placement service and free job assistance for their graduates.

PAR. 8. In truth and in fact:

1. Respondents have not been requested by trucking companies to train people for jobs as truck drivers, which jobs shall be offered by such companies to graduates of said training.

2. The placement service provided by respondents will not secure a job as a truck driver for graduates of said courses who want to work in such capacity.

3. Graduates of said courses who want to work are not assured jobs as truck drivers as a consequence of graduating from said courses.

4. Such placement assistance as is furnished by respondents is not free, but rather is included in the tuition cost of courses offered by respondents.

Therefore, the statements and representations as set forth in Paragraph Seven hereof were, and are, false, misleading and deceptive.

PAR. 9. Respondents offered for sale courses of instruction to prepare graduates thereof for jobs as truck drivers without disclosing in advertising or through their sales representatives or franchisees: (1) the recent percentage of graduates of each school that were able to obtain the employment for which they were trained; (2) the employers that hired any such graduates; (3) the initial salary any such graduates received; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would indicate the possibility of securing future employment upon graduation and the nature of such employment. Thus, respondents have failed to disclose a material fact, which, if known to certain prospective enrollees, would be likely to affect their consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair.

PAR. 10. Respondents have entered into contracts with purchasers of said courses of instruction which contain provisions for the cancellation

of said contracts and the refund of tuition monies paid by said purchasers. In many instances, respondents have failed to offer to refund and refused to refund to purchasers who have cancelled their contracts such monies as may be due and owing according to the terms of said contracts.

The use by respondents of the aforesaid practice and their continued retention of said sums, as aforesaid, 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. 11. (a) Respondents have been using the aforesaid unfair, false, misleading or deceptive acts and practices, which a reasonably prudent person should have known, under all of the facts and circumstances, were unfair, false, misleading or deceptive, to induce persons to pay or to contract to pay over to them substantial sums of money to purchasers in connection with their future employment and careers was of little value compared to the sums of money paid by said purchasers. Respondents have received the said sums and have failed to offer refunds and have failed to refund such sums to rescind such contractual obligations of substantial numbers of enrollees and participants in such courses who were unable to secure employment in the positions and fields for which they have been purportedly trained by respondents.

The use by respondents of the aforesaid acts and practices, their continued retention of said sums and their continued failure to rescind such contractual obligations of their customers, as aforesaid, are unfair acts or practices.

(b) In the alternative and separate from Paragraph Eleven (a) herein, respondents, who are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of vocational instruction, have been and are now using, as aforesaid, false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase courses of instruction.

The effect of using the aforesaid acts and practices to secure substantial sums of money is or may be to substantially hinder, lessen, restrain, or prevent competition between respondents and the aforesaid competitors.

Therefore, the said acts and practices constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

PAR. 12. By and through the use of the aforesaid acts, practices, statements and representations, respondents place in the hands of others the means and instrumentalities by and through which they

mislead and deceive the public in the manner and as to the things hereinbefore alleged.

PAR. 13. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals engaged in the sale and distribution of similar courses of study and instruction.

PAR. 14. The use of respondents to the false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts, as aforesaid, has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and to induce a substantial number thereof to purchase said courses of study and instruction offered by respondents by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in or affecting 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, 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 Diesel Truck Drivers Training School, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at rural route #1, in the City of Sun Prairie, State of Wisconsin.

Respondent Robert L. Klabacka is 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.

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 Diesel Truck Drivers Training School, Inc., a corporation, its successors and assigns, and officers and Robert L. Klabacka, individually and as an officer of said corporation, and respondents' officers, agents, franchisees, 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 courses of study and instruction in truck driving or in any other subject, trade or vocation, or any other product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

#### I

1. Representing, directly or by implication, orally or in writing, that:

A. They are, or represent, or are affiliated with, trucking companies or any industry for which enrollees of any courses offered by respondents are being trained; or misrepresenting, in any manner, the nature of their business.

B. Persons receiving training will, or may, earn any specified amounts, or misrepresenting in any manner the prospective earnings of such persons.

C. They have been requested by trucking companies or any other business or organization to train persons for specific jobs, or misrepresenting, in any manner, respondents' connection or affiliation with any industry or any member thereof.

D. Graduates of any courses will be qualified thereby for employ-

ment at jobs for which said graduates were purportedly trained, when additional training or experience is required.

E. There is a substantial demand, or a demand of any size or proportion, for persons completing any of the courses offered by the respondents in the field of truck driving or any other field, or otherwise representing, orally or in writing, that opportunities for employment, or opportunities of any type or number, are available to such persons, except as hereinafter provided in Paragraph 4 of this order. *Provided, however,* That respondents shall cease and desist making such representations unless the respondents in each and every instance:

(1) Until the passage of a base period to be determined pursuant to Paragraph 4(b) of Part I of this order, after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where they did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(A) have in good faith conducted a statistically valid survey which establishes the validity of any such representation at all times when the representation is made, and

(B) have disclosed in immediate and conspicuous conjunction with any such representation, that:

All representations for potential employment demand or opportunities for graduates of this school (course) are merely estimates. This school (course) has not been in operation long enough to indicate what, if any, actual employment may result upon graduation.

(2) After the passage of a base period to be determined pursuant to Paragraph 4(b) of Part I of this order, and until two years after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where they did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(A) make any such representations in the form and manner provided in Paragraph 4(b) of Part I of this order, and

(B) disclose in immediate and conspicuous conjunction with any such representation, that:

This school (course) has not been in operation long enough to indicate what, if any, actual employment may result upon graduation.

2. Placing ads in "Help-Wanted" columns or representing by any means that employment is being offered when such offer is not a bona fide offer of employment.

3. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course offered by respondents, the full cost of such course including the fee for any home study lessons and for any residential training.

4. Failing to deliver to each person who shall contract for the



purchase of any course of training or instruction, at the time such person so contracts, a notice, in a form approved by the Commission, which shall disclose the following information and none other:

(a) The title "IMPORTANT INFORMATION" printed in boldface type across the top of the form.

(b) A paragraph reciting the following affirmative disclosures which shall be based upon information compiled not more than one year prior to the delivery of such notice:

(1) The placement data for graduates determined in the following manner:

Respondents shall, following the graduation of each student graduating during each six-month period, commencing with the six-month period ending on the last day of the month in which this order is finally accepted by the Commission, undertake to determine the following information with respect to each such graduate: (a) his employment status; (b) the name of his employer and position, if any; and (c) his salary. The disclosure shall indicate the total number of graduates of the course; the number of those who have indicated to respondents a desire for employment; the number of those desiring employment known by respondents to be employed; the number of those desiring employment known to be unemployed; and the number of those desiring employment whose employment status is not known.

Separate placement data shall be calculated for each course of instruction offered in each school location or facility during such six-month period.

(2) a list of types of employers as indicated in responses to questionnaires sent pursuant to subparagraph (1) above or otherwise within the actual knowledge of respondents which have hired the graduates referred to in subparagraph (1) above in the positions for which such graduates were trained, and the percentage of employed graduates working for each type of employer.

(3) the salary range of the graduates referred to in subparagraph (1) above. The "salary range" shall be the highest and lowest salary for full time employment indicated in responses to questionnaires sent pursuant to subparagraph (1) above or otherwise within the actual knowledge of respondents with respect to such graduates.

*Provided, however,* That this subparagraph (b) shall be inapplicable until the first day of the seventh month following the month in which this order is finally accepted by the Commission.

(c) An explanation of the cancellation procedure provided in this order, namely that any contract or other agreement may be cancelled

for any reason until midnight of the third business day after receipt by the customer, via the U.S. mails, of this notice.

(d) A detachable form which the person may use as notice of cancellation, which indicates the proper address for accomplishing any such cancellation.

This notice shall be sent by respondents no sooner than the next day after the person shall have contracted for the sale of any course of instruction; respondents, during such period provided for in subparagraph (c) above, shall not initiate contact with such person other than that required by this paragraph.

*Provided, however,* That subparagraph (b) above shall be inapplicable to any newly established school that respondents may establish in any metropolitan area or county, whichever is larger, where they did not previously operate a school, or to any course newly introduced by respondents, until such time as the new school or course has been in operation for the base period to be established pursuant to subparagraph (b) above. The following statement shall be included in such notice during such period:

All representations of potential employment or salaries are merely estimates. This school (course) has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

After such time as the new school or course has been in operation for the base period to be established pursuant to subparagraph (b) above, and until two years after the establishment of a new school location in any metropolitan area or county, whichever is larger, where they did not previously operate a school, or the introduction of any new course by respondents, the following statement shall be included in such notice:

This school (course) has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

5. Contracting for any sale of any course of instruction in the form of a sales contract or other agreement which shall become binding prior to midnight of the third business day after the date of receipt by the customer of the form of notice provided for in paragraph 4 above. Upon cancellation of any said sales contract or other agreement as provided in paragraph 4(c) above, respondents are obligated to refund within thirty business days to any person exercising the cancellation right, all monies paid or remitted up until the notice of cancellation.

6. Failing to disclose, clearly and conspicuously, in advertisements, in catalogs, brochures and on letterheads that respondents' business is solely and exclusively that of a private school, not affiliated with any members of the trucking industry or of any member of any other industry.

7. Failing to refund within thirty days to purchasers who have

cancelled their contracts such monies as may be due and owing according to the terms of such contracts.

## II

1. *It is further ordered, That:*

(a) Respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, brokers, independent contractors or to any other person who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this order;

(b) Respondents herein provide each person or entity so described in subparagraph (a) of this paragraph with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(c) Respondents herein inform each person or entity described in subparagraph (a) of this paragraph that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this order;

(d) If such party as described in subparagraph (a) of this paragraph will not agree to file the notice set forth in subparagraph (b) above with the respondents and be bound by the provisions of this order, the respondents shall not use or engage or continue the use or engagement of such party to promote, offer for sale, sell or distribute any course of instruction included within the scope of this order;

(e) Respondents herein inform the persons or entities described in subparagraph (a) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this order;

(f) Respondents herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (a) above conform to the requirements of this order;

(g) Respondents herein discontinue dealing with or terminate the use or engagement of any person described in subparagraph (a) above, who continues on his or her own any act or practice prohibited by this order as revealed by the aforesaid program of surveillance.

(h) Respondents herein maintain files containing all inquiries or

complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

2. *It is further ordered*, That respondents herein present to each interested applicant or prospective student immediately prior to the commencement of any interview or sales presentation conducted at any location other than respondents' offices during which the purchase of or enrollment in any course of instruction offered by respondents herein is discussed or solicited, a 5" x 7" card containing only the following language:

YOU WILL BE TALKING TO A SALESPERSON.

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

4. *It is further ordered*, That the respondent Diesel Truck Drivers Training School, Inc., shall 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 respondent which may affect compliance obligations arising out of this order.

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

6. *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  
ALLIED STORES CORPORATION T/A THE BON  
MARCHE, ET AL.

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

*Docket C-2760. Complaint, Nov. 3, 1975—Decision, Nov. 3, 1975*

Consent order requiring a New York City department store chain and its wholly-owned subsidiary in Boise, Idaho, among other things to cease making unsubstantiated effectiveness claims for cosmetic skin care preparations. Respondents are required to have in their possession a written certification from a reliable source that there is a reasonable scientific basis for claims made and a summary of the reasonable basis.

*Appearances*

For the Commission: *Dennis D. McFeeley.*

For the respondents: *David Rigney, Sullivan & Cromwell, New York City.*

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 Allied Stores Corporation, dba The Bon Marche, and C. C. Anderson Stores Company, 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. Allied Stores Corporation 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 1114 Avenue of the Americas, New York, N.Y.

C. C. Anderson Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 918 Idaho St., Boise, Idaho. C. C. Anderson Stores Company is a wholly-owned subsidiary of Allied Stores Corporation.

PAR. 2. Respondent Allied Stores Corporation is now, and for some time last past has been, a full-line department store chain. It operates 161 retail outlets throughout the United States and its gross sales for 1972 were \$1,311,775,590. Allied Stores Corporation owns and operates

full-line department stores doing business under the name "The Bon Marche" in the States of Washington, Oregon, and Idaho.

Respondent C. C. Anderson Stores Company owns full-line department stores doing business under the name "The Bon Marche" in the States of Idaho and Utah.

Among other products, respondents have advertised for sale, sold, and distributed, drug and cosmetic skin preparations, as "drug" and "cosmetic" are defined in Sections 15(c) and 15(e) of the Federal Trade Commission Act, as amended.

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused to be disseminated certain advertisements and other written statements by United States mails and by other means in, or having an effect upon, commerce, as "commerce" is defined in the Federal Trade Commission Act. These advertisements and written materials have been disseminated for the purpose of inducing or with the likelihood of inducing, directly or indirectly, the purchase of drug and cosmetic skin preparations or for the purpose of inducing or with the likelihood of inducing, directly or indirectly, the purchase of drug and cosmetic skin preparations in, or having an effect upon, commerce.

PAR. 4. Typical and illustrative, but not all inclusive, of the statements and representations made in some of said advertisements and written materials pertaining to various products are the following:

A. Wrinkles are an accumulation of dead skin which can be removed with a gentle new creme product \* \* \*;

B. Smile lines, aging-lines, laugh-lines, thought-lines are minimized and subtracted gently;

C. [The product] was created to help overcome crepey skin on the neck, lines over the lips, pitting and blackheads, blotching and discoloration;

D. \* \* \* Welcome to a demonstration of the process which removes the horny outer layer of skin \* \* \* which is responsible for \* \* \* broken capillaries, dark spots, general flaking, enlarged and clogged pores, certain allergies, etc.;

E. \* \* \* is \* \* \* completely harmless you could use it 500 times a day;

F. [The product is] between a medical and cosmetic treatment;

G. \* \* \* will slow down the aging process by 40 percent;

H. Age is a disease and it has to be combated like any other;

I. Women's faces \* \* \* age 50 percent faster than men's \* \* \*;

J. \* \* \* how smooth, soft and blissfully younger-looking your skin will seem \* \* \* [the product's] power to defeat signs of lines and dryness is nothing short of incredible;

K. It smooths little lines into seeming non-existence. Helps keep new ones from happening;

L. Penetrates 6 layers deep for a lasting smoothness;

M. Actually makes wrinkles, lines and crows feet disappear from sight for up to 6 to 8 hours or longer. Did you ever wonder why models and movie personalities seem to look 10 to 15 years younger than they really are?; and

N. It actually makes wrinkles vanish completely for hours at a time.

PAR. 5. At the time respondents made the representations set forth

in Paragraph Four, and other generally similar representations, respondents had no reasonable basis in their possession which would substantiate the representations or implications of the said representations.

Therefore, the statements and representations of respondents set forth in the above paragraph were, and are, deceptive and unfair acts or practices and are misleading in material respects.

PAR. 6. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and now are in substantial competition in commerce with corporations, firms and individuals engaged in the sale of drug and cosmetic skin preparations.

PAR. 7. The use by respondents of the aforesaid deceptive and unfair statements and representations has the capacity and tendency to induce members of the public to rely thereupon and to purchase from respondents substantial quantities of drug and cosmetic skin preparations.

PAR. 8. Respondents' aforesaid acts and practices are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair, deceptive, and false acts and practices in or affecting commerce and unfair methods of competition in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

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

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

A. Respondent Allied Stores Corporation 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 1114 Avenue of the Americas, New York, N.Y.

Respondent C. C. Anderson Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 918 Idaho St., Boise, Idaho. C. C. Anderson Stores Company is a wholly-owned subsidiary of Allied Stores 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

##### I

*It is ordered*, That respondent Allied Stores Corporation, a corporation, doing business as The Bon Marche or under any name or style successor to The Bon Marche, and C. C. Anderson Stores Company, a corporation (hereinafter "respondents"), their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device engaged in the advertising, offering for sale, sale or distribution of any cosmetic skin care product, or skin care product which is both a drug and cosmetic product (hereinafter "products"), as "drug" and "cosmetic" are defined in Sections 15(c) and 15(e) of the Federal Trade Commission Act, marketed by respondent C. C. Anderson Stores Company or The Bon Marche Division of Allied Stores, or any successor divisions thereof, in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products or for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce in said products, do forthwith cease and desist from:

Disseminating any affirmative representation in any advertising or other written promotional material, including leaflets or other written promotional material prepared by respondents or others (but excluding



labels or labeling, as defined in 21 U.S.C. §§321(k) and (m)) (hereinafter "advertisement") which represent, directly or indirectly, that:

- A. Such products will remove or prevent age wrinkles or age lines on the face, hands or other parts of the body;
- B. Such products will remove or prevent discolorations, broken capillaries or other disorder of the skin;
- C. Unlimited amount of use of such products is safe and beneficial;
- D. Such products are drugs (unless such products are registered or labeled as drugs);
- E. Such products will retard the aging process in humans;
- F. Age is a disease; or
- G. Women's faces age 50 percent faster than men's, or at any other differential rate;

without having in their possession before the time an advertisement containing such representation is first disseminated to the public by respondents, a written certification from the manufacturer, proprietor or licensee of the brand name, or qualified testing laboratory, that there is a reasonable scientific basis, or reasonable scientific bases, for the making of such representation; *Provided*, That such certification shall include a summary of the nature of the reasonable scientific basis (or bases) for such representation; *Provided, further*, That respondents neither know nor have reason to know that such scientific basis does not in fact substantiate such representation.

*Provided, further*, That respondents shall maintain the certification described herein for a period of three years from the date an advertisement containing a representation described herein is first disseminated to the public and shall upon reasonable notice make such certification available to authorized representatives of the Federal Trade Commission at respondents' premises in Seattle, Wash.

## II

*It is further ordered*, That respondents shall distribute a copy of this order to each of their affected operating divisions, subdivisions, and subsidiaries and to each of the affected officers, agents, representatives or employees of said respondents who are engaged in the preparation or placement of advertisements or distribution of advertisements prepared by others.

## III

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

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least thirty 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 any other changes in said respondents which may materially affect compliance obligations arising out of the order.

## IV

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

## IN THE MATTER OF

## CARSON PRODUCTS COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 & 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-2761. Complaint, Nov. 3, 1975-Decision, Nov. 3, 1975*

Consent order requiring a Savannah, Ga., manufacturer of facial depilatory and beard removal products, among other things to cease failing to make material disclosures as to the safety and correct use of its products.

*Appearances*

For the Commission: *Barry E. Barnes.*

For the respondents: *A. Pratt Adams, Jr., Adams, Adams, Brennan & Gardner, Savannah, Ga.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Carson Products Company, a corporation, and Parker A. Reische, Jr., individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Unless otherwise required by context, the following definition shall apply for purposes of this complaint and the accompanying order:

"Material facts" means facts material in light of representations made or material with respect to consequences which may result from

the use of the commodity to which the advertisement or representations relate under such conditions as are customary or usual or under the conditions prescribed in the advertisement or representations.

All allegations in this complaint stated in the present tense include the past tense.

PAR. 2. Respondent Carson Products Company, formerly known as Carson Chemical Company, Inc., is a Georgia corporation with its office and principal place of business located at P.O. Box 3457, Savannah, Ga.

Respondent Parker A. Reische, Jr. is an officer of Carson Products Company. He formulates, directs and controls the policies, acts and practices of Carson Products Company, including those hereinafter set forth. His address is the same as that of said corporation.

PAR. 3. Respondents Carson Products Company and Parker A. Reische, Jr. engage in the manufacturing, advertising, offering for sale, sale and distribution of Magic Shaving Powder and Magic Cream Shave, facial depilatory or beard removal products, which are "drugs" or "cosmetics," or both, as those terms are defined in Section 15 of the Federal Trade Commission Act. When applied to the skin, said products remove facial hair through chemical action. They are used frequently by men who suffer from pseudofolliculitis, or "razor bumps," a painful skin condition caused by shaving with a razor.

PAR. 4. In the course and conduct of its business, respondents cause these depilatory products, when sold, to be shipped and distributed from their place of business to retail stores and other purchasers located in various other States of the United States and in foreign countries. Respondents disseminate or cause to be disseminated certain advertisements concerning Magic Shaving Powder and Magic Cream Shave (1) by United States mails, newspapers and magazines of interstate circulation, radio broadcasts of interstate transmission, and by various other means in or having an effect upon commerce, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of these depilatory products; or (2) by various means, for the purpose of inducing, or which are likely to induce, the purchase of these products in or having an effect upon commerce. Thus, respondents maintain a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

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



**Stop  
Mixing.  
Cream shave  
your beard away  
...without a razor.**

**MAGIC CREAM SHAVE** — Gives a razor smooth shave in 4 to 7 minutes . . . without a razor. Helps stop razor bumps. No offensive odor. No mixing, no waste . . . no powder mess to clean up. Leaves face smooth and clear.

**and soothe with Magic After Shave Skin Conditioner.**

**MAGIC AFTER SHAVE SKIN CONDITIONER** soothes and smooths. Helps relieve skin dryness. Won't sting or burn. Great fragrance too!

Magic Cream Shave and Magic After Shave Skin Conditioner . . . they're made for each other . . . they're made for you!



CARSON CHEMICAL COMPANY, SAVANNAH, GA. 31403



PAR. 6. Through the use of the above statements and representations, and others not specifically set forth herein, respondents represent, directly or by implication, that Magic Shaving Powder and Magic Cream Shave are safe means of removing facial hair without a razor for virtually everyone.

PAR. 7. In truth and in fact these products contain chemicals which can cause burns, rashes, and other skin irritations for a substantial number of users. These products should be used with caution at all times, especially by those whose skin is tender or severely irritated. Label directions should be followed carefully.

Therefore, the advertisements, statements and representations referred to in Paragraphs Five and Six are false, misleading and deceptive, and also constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. Respondents advertise Magic Shaving Powder and Magic Cream Shave without disclosing that (1) these products may cause skin irritations; (2) these products should not be used by persons whose skin is tender or severely irritated; and (3) label directions should be followed carefully.

These are material facts which, if known to consumers, would be likely to affect their decision to purchase Magic Shaving Powder and Magic Cream Shave. Therefore, failure to disclose such facts is misleading, deceptive, and unfair and such advertisements also constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 9. In the further course and conduct of their business, respondents market Magic Shaving Powder and Magic Cream Shave without disclosing on the product labels that:

A. These products should not be used in conjunction with an alcoholic shaving lotion.

B. These products should not be used if perspiring heavily.

C. One should not wash before using these products.

D. To avoid excessive irritation, the amount of time these products are left on the skin is crucial.

E. If hairs remain after the first application, one should not immediately reuse these products, but should wait at least 36 hours before reapplication.

These are material facts which, if known to consumers, would be likely to affect their decision as to whether or not to purchase these products. Therefore, failure to disclose such facts on the product labels is unfair and deceptive.

PAR. 10. Respondents' aforesaid use of false, misleading and deceptive advertisements and unfair and deceptive labeling has the

tendency and capacity to mislead and deceive consumers into erroneous and mistaken beliefs about the safety of Magic Shave Powder and Magic Cream Shave and into the purchase of substantial quantities of these products.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are now in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as sold by respondents.

PAR. 12. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and respondents' competitors and constitute unfair or deceptive acts or practices and unfair methods of competition in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

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

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

A. Respondent Carson Products Company, formerly known as Carson Chemical Company, Inc., is a Georgia corporation with its office and principal place of business located at P.O. Box 3457, Savannah, Ga.

Respondent Parker A. Reische, Jr. is an officer of Carson Products Company. He formulates, directs and controls the policies, acts and practices of Carson Products Company. 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

##### I

*It is ordered,* That respondents Carson Products Company, a corporation, its successors and assigns, and its officers, and Parker A. Reische, Jr., 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 the advertising, offering for sale, sale or distribution of Magic Shaving Powder, Magic Cream Shave, or any depilatory product, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated by United States mails or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which fails to clearly and conspicuously disclose the following statement in boldface capital letters exactly as it appears below, with nothing in contradiction thereof:

CAUTION: THIS PRODUCT MAY CAUSE SKIN IRRITATIONS. DO NOT USE IF SKIN IS TENDER OR SEVERELY IRRITATED. FOLLOW DIRECTIONS CAREFULLY.

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which fails to meet the requirement of part IA of this order.

##### II

*It is further ordered,* That respondents Carson Products Company, a corporation, its successors and assigns, and its officers, and Parker A. Reische, Jr., 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 the offering for sale, sale or distribution of Magic Shaving Powder, Magic Cream Shave, or any depilatory product, in or

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affecting commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from failing to clearly and conspicuously disclose on the outer package box, if such is used, and on the product label:

A. The following statement in boldface capital letters exactly as it appears below with nothing in contradiction thereof:

**CAUTION: THIS PRODUCT MAY CAUSE SKIN IRRITATIONS. DO NOT USE IF SKIN IS TENDER OR SEVERELY IRRITATED. FOLLOW DIRECTIONS CAREFULLY.**

The above statement shall appear as the first item on the information panel of the product label and package box, if such is used.

B. A statement that use of the product should be discontinued if irritation, burning or allergic reactions occur.

C. Complete directions for use of the product, including but not limited to the following:

1. The product should not be used in conjunction with an alcoholic shaving lotion;
2. The product should not be used if perspiring heavily;
3. One should not wash before using the product;
4. To avoid excessive irritation, the amount of time the product is left on the skin is crucial; and
5. If hairs remain after the first application, do not immediately reuse the product. The product should not be used in any event within 36 hours or longer after shaving with a razor or a depilatory.

## III

*It is further ordered,* That respondents forthwith deliver a copy of this order to their present and future officers, directors and operating divisions and that respondents secure from each such person and division a signed statement acknowledging receipt of this order.

## IV

*It is further ordered,* That respondents maintain complete business records relative to the manner and form of their continuing compliance with the terms and provisions of this order. Each record shall be retained by respondents for at least three years after such record is made.

## V

*It is further ordered,* That the individual 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



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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.

## VI

*It is further ordered,* That respondent Carson Products Company 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 this order.

## VII

*It is further ordered,* That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

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IN THE MATTER OF

## IRA SACHS T/A BURGLAR KING

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

*Docket C-2762. Complaint, Nov. 4, 1975-Decision, Nov. 4, 1975*

Consent order requiring a Chicago, Ill., door-to-door seller of burglar gates, among other things to cease violating provisions of the Trade Regulation Rule on Door-to-Door Sales (16 CFR 429) by failing to disclose to customers of their right to cancel contracts during a specified cooling-off period with full refund of any monies paid.

*Appearances*

For the Commission: *Walter R. Baron.*

For the respondent: *Pro se.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ira Sachs, an individual, trading and doing business as Burglar King, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof

would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ira Sachs is an individual trading and doing business as Burglar King with his principal office and place of business located at 30 W. Washington St., Chicago, Ill. He formulates, directs and controls the policies, acts and practices hereinafter set forth.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale and retail sale and distribution of burglar gates to the general public.

PAR. 3. In the course of advertising the products and services which respondent offers for sale and sell, as aforesaid, respondent transmits and causes to be transmitted advertisements or other promotional material among or between different States of the United States.

Accordingly, respondent has maintained, and now maintains, a substantial course and conduct of business in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of his business as aforesaid, respondent regularly engages in door-to-door sales, as such sales are defined in the Federal Trade Commission Trade Regulation Rule concerning a Cooling-Off Period for Door-to-Door Sales, 16 C.F.R. §429 (1974).

PAR. 5. In the ordinary course and conduct of his business, as aforesaid, respondent engages in door-to-door sales of consumer goods, as the terms "door-to-door sales" and "consumer goods" are defined in the Federal Trade Commission Trade Regulation Rule concerning a Cooling-Off Period for Door-to-Door Sales, 16 C.F.R. §429 (1974) (hereinafter referred to as the "Commission Rule") duly promulgated by the Federal Trade Commission.

PAR. 6. Subsequent to June 7, 1974, respondent, in the ordinary course and conduct of his business, as aforesaid, and in connection with his door-to-door sales of consumer goods:

a. Now fail and have failed to furnish the buyers with a fully completed receipt of the sale in accordance with subsection (a) of the Commission Rule; and

b. Now include and have included in their door-to-door contracts a confession of judgment clause, in violation of subsection (d) of the Commission's Rule; and

c. Now fail and have failed to inform each buyer orally of his right to cancel, in the form and manner provided by subsection (e) of the Commission Rule.

Therefore, respondent's aforesaid failure to comply with subsections

(a), (d) and (e) of the Commission Rule constitute unfair and deceptive acts or practices in violation 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 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, 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, Ira Sachs, an individual trading, existing and doing business as Burglar King, with its office and principal place of business located at 30 W. Washington St., Chicago, Ill.

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 respondent Ira Sachs, an individual, trading and doing business as Burglar King, or under any name or names, its successors and assigns and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other devise, in connection with any door-to-door sale of consumer goods or services, as such sales are defined in the Federal Trade Commission Trade Regulation Rule concerning a Cooling-Off Period

Rule for Door-to-Door Sales (16 C.F.R. §429.1) (hereinafter "the Commission Rule"), do forthwith cease and desist from:

1. Failing to furnish their buyers with a fully completed copy of the contract used in door-to-door sales, as such transactions are defined in the rule, which contains in immediate proximity to the space reserved in the contract for the signature of the buyer a summary notice of the buyer's right to cancel in substantially the same form as that required in subsection (a) of the Commission's Rule.

2. Failing to inform each buyer orally at the time he signs the contract or purchases the goods or services of his right to cancel as required in subsection (e) of the Commission's Rule.

3. Including in their door-to-door contracts a confession of judgment clause.

4. Engaging in any act or practice which constitutes an unfair or deceptive act or practice pursuant to the Commission's Trade Regulation Rule entitled "Cooling Off Period for Door-to-Door Sales," effective June 7, 1974, 16 C.F.R. §429 (a copy of which is attached hereto as Appendix A), and any amendments thereto.

*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 door-to-door sale of the respondent's goods or services, as such transactions are defined in the Commission's Rule, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the company ownership, such as dissolution, assignment or sale, the creation or dissolution of subsidiaries, incorporation, or any other change in the ownership which may affect compliance obligations arising out of the order.

*It is further ordered,* That respondent, in connection with the promotion, offering for sale, sale or distribution of any consumer goods or services included in this order, offer to cancel the sale of such goods or services and to refund immediately all monies paid by any customer who was procured by or involved a violation of any of the provisions of this order; and make such cancellation and refund to any customer who so elects. Respondent shall maintain a list of the names and addresses

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of such customers requesting a cancellation of their contracts or a refund under the terms of this paragraph for a three (3) year period together with a record of the action taken in each case and make such records available for inspection by the Commission.

*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 form and manner in which they have complied with this order.

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IN THE MATTER OF  
HEUBLEIN, INC.

*Docket 8904. Order, Nov. 11, 1975*

Granting of joint motion to withdraw matter from adjudication for settlement purposes.

*Appearances*

For the Commission: *William A. Arbitman, Nelson M. Ishiyama and Jeffrey Klurfeld.*

For the respondents: *Ralph J. Savarese, John D. Wintrol, J. Wallace Adair and Robert E. Hebda, Howrey, Simon, Baker & Murchison, Wash., D.C. George J. Casper, Secretary and General Counsel, Hartford, Conn. and McCutchen, Doyle, Brown & Enevsen, San Francisco, Calif.*

ORDER GRANTING JOINT MOTION TO WITHDRAW MATTER  
FROM ADJUDICATION

The administrative law judge has certified a joint motion to withdraw this matter from adjudication for settlement purposes (Rules of Practice, Section 3.25(b)). The motion is opposed by Allied Grape Growers, whom we allowed to participate in these proceedings on the limited issue of relief by our order of June 26, 1973 (82 F.T.C. 1826).

The complaint alleged that on or about Feb. 21, 1969, respondent Heublein acquired a controlling interest in United Vintners, Inc., a wholly-owned production and marketing subsidiary of Allied. United is now a wholly-owned subsidiary of Heublein Allied Vintners, Inc., in which Heublein has an 82 percent interest and Allied the remainder.

The acquisition was alleged to have violated Section 7 of the Clayton Act. The notice order would require divestiture, within nine months from the date the order becomes final, of all assets acquired by Heublein and would allow individuals or groups of individuals who were

members of Allied on Aug. 31, 1968, first option to purchase the divested property.

The proposed consent order, agreed to by complaint counsel and counsel for respondent Heublein, would exclude from divestiture certain trademarks,<sup>1</sup> properties and equipment and does not provide that members of Allied will have a first option.<sup>2</sup> The proposed order requires that divestiture be accomplished within two years from the date the order becomes final subject to the following proviso:

That the running of the period within which respondent must divest shall be suspended until the effect of this consent agreement and the obligations imposed on Heublein by this consent agreement on the rights and obligations of Heublein, United and Allied Grape Growers ("Allied") relating to the grape supply contract executed by said firms on February 19, 1969, and the legality of said supply contract are finally adjudicated or resolved and, *Provided, further*, however, that the divestiture period will not be suspended unless a proceeding to resolve any unresolved issues with respect to the effect of this consent agreement upon said rights and obligations and the legality of said supply contract is instituted no later than sixty (60) days after this order becomes final.

The grape supply contract purports to grant Allied the right to supply United's grape requirements for up to 80 years as well as much of Heublein's California grape requirements for the same period. The contract also provides that Allied would have a first option to purchase United's capital stock.

The proposed consent order makes no further reference to the supply contract. However, Exhibit A to the joint motion provides that, in the event the current supply agreement is held to be illegal or inoperative, alternative supply agreements for shorter periods of time and smaller percentages of requirements would become effective.

The Commission granted Allied leave to participate in these proceedings with respect to the issue of relief "either at a special hearing devoted to the issue of relief, or during such parts of the trial as may relate to the issue of relief\* \* \*." (82 F.T.C. 1826, 1828). The Commission, in granting Allied limited participation, recognized "that in selling 82 percent of its marketing arm to Heublein, Allied intended thereby to retain sufficient contractual rights so that United would remain a large purchaser of grapes produced by Allied's grower-members.<sup>3</sup> Allied now sees the rights and expectations with which it entered into its joint venture threatened by the Commission's complaint." (82 F.T.C. at 1828).

Although the instant motion was opposed by Allied, the law judge

<sup>1</sup> Inglebrook, Annie Green Springs, T.J. Swann and any trademark owned by respondent for a refreshment wine product.

<sup>2</sup> Respondent has, however, indicated a willingness to add to the proposed consent order a provision granting Allied a right of first refusal.

<sup>3</sup> Heublein asserts that the supply contract was not consideration for the acquisition. However, whether or not it was consideration, the important point is that Allied claims that its contract rights could be jeopardized by a divestiture order.

concluded that the motion was "unopposed" within the meaning of Section 3.25(b) of the rules of practice, and that he was, accordingly, required to certify the motion to the Commission. The law judge, however, included in his certification a recommendation that the joint motion be denied.

We agree with the law judge's determination that he was required to certify the joint motion to the Commission. We also concur in his conclusion that the opposition of a non-party participant does not necessarily preclude acceptance of a consent order. Non-parties are permitted to participate in our proceedings upon a determination that they will make a sufficiently important contribution to our understanding of one or more issues to outweigh any delays and other added costs resulting from their participation. We see no reason why non-party participants should be afforded a right to veto a proposed agreement. We disagree, however, with the law judge's recommendation that the joint motion be denied. The judge recommended that we deny the motion for the following reasons:

1. The number of issues and the prolonged hearings that may be required preliminary to acceptance of the consent agreement and the possibility that the consent agreement may then not be accepted, in which event the entire case would still have to be tried anew, but would be substantially delayed by virtue of the interim proceedings;
2. The apparent reliance of complaint counsel and respondent in agreeing upon the consent order upon the mistaken belief that an order allowing the transfer of the property back to Allied under right of first refusal would *per se* violate the principles of the antitrust laws;
3. The inappropriateness of submission of a consent order where the meaning and effect thereof on interested parties requires subsequent adjudication with provision for delay in implementing that order of two years following finality of that subsequent adjudication. A consent order should be intrinsically clear as to its meaning and intent. This comment is particularly applicable to complaint counsel who recognize, but take no position on, issues that have been raised;
4. The approach of determining private rights as between parties as a condition precedent to considering the consent order—as opposed to considering the consent order but taking into account private rights and equities as appropriate;
5. The determination of contractual rights and obligations between Heublein and Allied as to property proposed to be kept by Heublein, and a rewriting of the contractual obligations between Heublein and Allied as to such property. These appear to be individual rights and obligations not appropriate for Commission determination.

We disagree that any hearings, prolonged or otherwise, would be required preliminary to provisional acceptance of the consent agreement. The first step in our consideration of a consent agreement is our determination whether the proposed consent order is adequate to protect the public interest. In the event that the Commission determines that the proposed order is inadequate, the agreement will be rejected and there will, of course, be no need to hear Allied's objections to the agreement.

In case the agreement is provisionally accepted, it will be placed on

the public record, and members of the public, including Allied, will have an opportunity to raise any and all objections to the agreement. At that time Allied would have an opportunity to argue that hearings were required on its claim that the proposed order is inconsistent with its rights and interests.

Other questions raised by the law judge and Allied about the merits of the consent agreement can best be considered by the Commission in connection with its determination whether to provisionally accept the agreement. Accordingly,

*It is ordered*, That the joint motion to withdraw this matter from adjudication be, and it hereby is, granted.

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IN THE MATTER OF

ELECTRONIC COMPUTER PROGRAMMING INSTITUTE,  
INC., ET AL.

*Docket 8952. Order, Nov. 11, 1975*

Administrative law judge's order denying complaint counsel's application for subpoena duces tecum remanded for reconsideration in accordance with guidelines on Section 19 evidence set forth in the interlocutory order.

*Appearances*

For the Commission: *Deirdre E. Shanahan* and *D. McCarty, IV.*

For the respondents: *Robert E. Fischer, Lowenthal, Landau & Fischer*, New York City.

IN THE MATTER OF

LAFAYETTE UNITED CORPORATION, ET AL.

*Docket 8963. Order, Nov. 11, 1975*

Denial of motion for stay of further proceedings.

*Appearances*

For the Commission: *Raymond J. McNulty, David W. DiNardi, Charles M. LaDue*, and *Alice C. Kelleher.*

For the respondents: *Peter J. Mansback, Kronish, Lieb, Shainswit, Wiener & Hellman*, New York City.



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IN THE MATTER OF  
CONTROL DATA CORPORATION, ET AL.

*Docket 8940. Order, Nov. 11, 1975*

Affirmation of administrative law judge's order denying motion by Control Data Corporation to strike Paragraph Eleven of the complaint.

*Appearances*

For the Commission: *Sharon S. Feather, Peter E. Greene and Edward D. Steinman.*

For the respondents: *Oppenheimer, Wolff, Foster, Shepard & Donnelly, St. Paul, Minn. and James F. Hogg, Bloomington, Minn.*

INTERLOCUTORY ORDER

These matters are before us upon two applications for review and a certification by an administrative law judge. In *Electronic Computer Programming Institute, Inc.*, the administrative law judge denied complaint counsel's application for a subpoena duces tecum seeking, in part, evidence needed to support restitutionary relief and granted complaint counsel the right to appeal pursuant to Section 3.23(b) of the rules of practice. Respondents had argued that the subpoena sought information which was irrelevant in view of *Heater v. F.T.C.*, 503 F.2d 321 (9th Cir. 1974), which held that the Commission lacks authority under Section 5 to order restitution for deceptive practices that occurred prior to the issuance of a final cease and desist order ("retroactive restitution."). The law judge, without deciding the relevancy of the subpoena's specifications, suggested that the Commission might consider whether further proceedings in this matter should be deferred pending final review of *Heater* in the Supreme Court.<sup>1</sup>

In *Lafayette United Corporation*, the administrative law judge issued an order denying respondents' motion to strike the notice order provision providing that consumer redress might be sought, granted in part and denied in part respondents' motion to quash a subpoena duces tecum, and granted respondents' motion for a protective order. The law judge certified to the Commission the limited question whether further proceedings should be stayed, in whole or in part, pending the Commission's decision whether it would be in the public interest to allow complaint counsel to continue to seek restitutionary relief.

Finally, in *Control Data Corporation*, respondent Control Data filed a motion to strike Paragraph Eleven of the complaint which alleges in part that Control Data's retention of funds obtained for "virtually

<sup>1</sup> The Commission subsequently decided not to seek review in the Supreme Court.

worthless" courses of instruction was an unfair act or practice in violation of Section 5. Respondent contended that the paragraph was included in the complaint solely to lay the groundwork for an award of retroactive restitution, barred by the *Heater* decision. The law judge denied the motion but granted respondent permission to appeal under Section 3.23(b).

On July 15, 1975 [p. 180; herein], the Commission placed the above-captioned matters on its docket for review pursuant to Section 3.23(b) of the rules of practice and invited the parties to brief the following issues:

(1) To what extent, if any, should evidence be presented and findings be made in the administrative proceedings regarding the nature and extent of the injuries sustained by consumers as a result of the challenged acts or practices?

(2) To what extent, if any, should evidence be presented and findings be made on the issue whether the challenged acts or practices are such that "a reasonable man would have known under the circumstances [that they are] dishonest or fraudulent"? [Federal Trade Commission Act, 9(a)(2), as amended by Federal Trade Commission Improvement Act, Pub. Law 93-637, §206 (Jan. 4, 1975)].

Although the Commission adheres to its view that *Heater* was wrongly decided, we have determined that restitution under Section 5 will not be ordered in these cases. In the event, however, that cease and desist orders issue in these matters, and should the circumstances warrant, the Commission reserves the right to bring consumer redress actions under these cases is whether inquiry into issues relating solely to redress under Section 19 should be permitted before the administrative law judges.

Section 19(a)(2) authorizes the Commission, after it has issued a final cease and desist order, to seek consumer redress in a court of competent jurisdiction. "If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b)."<sup>2</sup>

Section 19(c)(1) provides that in a consumer redress action, "the findings of the Commission as to the material facts in the proceeding under Section 5(b)\* \* \* shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of Section 5(g)(1) [providing that a cease and desist order becomes final if a timely appeal is not taken], in which case such finding shall be conclusive if supported by evidence."

Section 19 clearly contemplates that the Commission will make all

<sup>2</sup> Subsection (b) authorizes the court to grant such relief as may be necessary to redress injury, including, but not limited to "rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting \* \* \* the unfair or deceptive act or practice \* \* \*."

findings pertinent to the Section 5(b) proceeding and the court will make those additional determinations relevant to the redress action. Thus, the court will decide whether redress is warranted under the "reasonable man" standard, applicable to actions brought under Section 19(a)(2), the nature of the relief necessary to redress any injury to consumers, and which consumers, if any, are entitled to relief.

However, as complaint counsel argue, the roles of the Commission and the court will frequently overlap. Subject to the exceptions set forth in Section 19(c)(1), "the findings of the Commission as to the material facts in the proceeding under Section 5(b) \* \* \* shall be conclusive \* \* \*." Frequently, findings material to the Section 5 proceeding will also have a bearing on whether the "reasonable man" standard has been satisfied and on consumer injury issues.

For instance, while an advertiser's knowledge of the falsity of a representation is not an element of a Section 5 violation, see, e.g., *D.D.D. Corp. v. F.T.C.*, 125 F.2d 679 (7th Cir. 1942), it may be relevant to issues relating to the scope of relief and the degree to which a respondent must be "fenced in" to prevent recurrences of the illegal conduct in the future. See, e.g., *F.T.C. v. National Lead Co.*, 352 U.S. 419, 429 (1957); *William H. Rorer, Inc. v. F.T.C.*, 374 F.2d 622, 626 (2d Cir. 1967); *Joseph A. Kaplan & Sons, Inc. v. F.T.C.*, 347 F.2d 785, 789 (D.C. Cir. 1965); *Taylor-Friedsam Co., Inc.*, 69 F.T.C. 483, 497 (1966).

Moreover, while a showing of actual injury to consumers is not necessary to a finding that Section 5(b) has been violated, see, e.g., *Northern Feather Works, Inc. v. F.T.C.*, 234 F.2d 335 (3d Cir. 1956), evidence relevant to injury may, under some circumstances, also be pertinent to whether the challenged representations were false and, hence, in violation of Section 5. The complaints in the instant cases allege that respondents falsely represented the availability of jobs for which their students were trained. A finding that graduates were not placed in such jobs would be relevant both to whether the representations were false and to whether consumers were injured.

Nevertheless, it is clear that findings pertinent to Section 19 issues, but not material to Section 5 issues, would not be conclusive in a consumer redress action. This does not mean that inquiry into Section 19 consumer redress issues<sup>3</sup> should await the issuance of a cease and desist order. If consumers are to be afforded the relief to which they are entitled, redress actions must be commenced as soon as possible and the actions must be prosecuted expeditiously. Delay in such cases would often reduce the chances of granting fully effective relief to

<sup>3</sup> Issues relevant to the Section 19 action but not to the determination of Section 5 liability will henceforth be referred to as "Section 19 issues." Evidence relevant to whether a Section 19 action should be brought and to the determination of Section 19 liability, but not to liability under Section 5, will be referred to as "Section 19 evidence."

consumers since, with the passage of time, evidence inevitably becomes more difficult to obtain, assets are dissipated or hidden, and some of the consumers to be granted redress become impossible to locate.

There can be little doubt that during the pre-complaint stage of an investigation, the Commission can collect Section 19 evidence since the prospect of obtaining consumer redress will often be a factor in deciding whether the issuance of a complaint would be in the public interest. Information collected during the pre-complaint investigation will, of course, also be available at the close of the administrative proceedings to assist the Commission in deciding, assuming law violations have been found, whether to commence a redress action. It is likely that information collected during the pre-complaint investigation and the record of the Section 5 proceeding will provide the Commission with most of the information it will need to decide whether to commence a redress action.

Therefore, we can see little reason why proceedings before the law judges should be delayed by the discovery and reception of evidence relevant only to Section 19 issues. We have, thus, determined that the law judges should not permit the discovery or introduction of evidence relevant only to Section 19. On the other hand, efforts to obtain or introduce evidence material to the Section 5(b) proceeding shall not be objectionable merely because the evidence might also be relevant to a Section 19 redress action.<sup>4</sup>

With these guidelines in mind, we shall consider the motions now before us:

1. Control Data Corporation, et al.

We agree with complaint counsel that Paragraph Eleven should not be stricken from the complaint. Since a seller's retention of its customer's money can be an unfair trade practice in and of itself, *e.g.*, *Curtis Publishing Co.*, 78 F.T.C. 1472, 1516 (1971), the paragraph states a cause of action, and, if proved, might warrant the ordering of other than restitutionary relief.

2. Electronic Computer Programming, Inc., et al.

Now that we have ruled how the redress issues in these cases should be treated, there is obviously no need to defer further proceedings. Since the law judge has not ruled on the propriety of complaint counsel's discovery requests, he should now consider their application in accordance with the guidelines set forth in this opinion.

3. Lafayette United Corporation, et al.

As in *Electronic Computer Programming Institute, Inc.*, there is

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<sup>4</sup> Because of our decision not to permit inquiry into Section 19 issues during the proceedings below, we find it unnecessary at this time to decide claims made in Docket Nos. 8940 and 8963 that discovery of Section 19 evidence would be inappropriate because Section 19 does not reach acts that occurred prior to Jan. 4, 1975, the date of enactment of the Improvement Act, or prior to the issuance of the complaints in these matters.

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now no need to stay further proceedings. Respondents' claim that restitution is inappropriate in this matter because their services were not "worthless" has largely been mooted, in view of our decision not to order retroactive restitution under Section 5 in this matter. To the extent that it might be relevant to other kinds of relief under Section 5, a determination of respondents' claim will have to await a fuller record. Accordingly,

*It is ordered,* That the administrative law judge's order in Docket No. 8940 denying the motion by respondent Control Data Corporation to strike Paragraph Eleven of the complaint is affirmed; the order of the administrative law judge in Docket No. 8952 denying complaint counsel's application for a subpoena duces tecum is remanded for reconsideration in accordance with the guidelines set forth at p. 5 of this interlocutory order; and the motion in Docket No. 8963 that further proceedings in this matter be stayed is denied.<sup>5</sup>

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IN THE MATTER OF

INTER-CONTINENTAL SERVICES CORPORATION, ET  
AL.

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

*Docket C-2763. Complaint, Nov. 14, 1975-Decision, Nov. 14, 1975*

Consent order requiring two Shawnee Mission, Kans., debt collection agency affiliates, among other things to cease using legal-looking forms, letterheads or language that might deceive debtors or credit card holders, and making telephone misrepresentations. Further, the order limits the times during which the credit card holder or debtor may be called.

*Appearances*

For the Commission: *E. Eugene Harrison.*

For the respondents: *William S. Glickfield, Glickfield, Riley & Gillie, Marion, Ind.*

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 Inter-Continental Services Corporation, a corporation, and North American Credit

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<sup>5</sup> The Commission denies the motions by respondents in Docket Nos. 8940 and 8963 for oral argument.

Services, Inc., a corporation, and Jerome E. Baker, Jerry L. Nickell and James F. Bell, individually and as officers of said corporations, and Ronald A. Green and Thomas F. Fangrow, individually and as officers of Inter-Continental Services Corporation, and Richard L. Wilson, individually and as an officer of North American Credit Services, Inc., 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 Inter-Continental Services Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 2000 Johnson Dr., in the city of Shawnee Mission, State of Kansas.

Respondent North American Credit Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at 2000 Johnson Dr., in the city of Shawnee Mission, State of Kansas.

Respondents Jerome E. Baker, Jerry L. Nickell and James F. Bell are officers of both corporations. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

Respondents Ronald A. Green and Thomas F. Fangrow are officers of Inter-Continental Services Corporation. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondent Richard L. Wilson is an officer of North American Credit Services, Inc. He formulates, directs and controls 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 business of collection of delinquent accounts and the retrieval of credit cards for business organizations throughout the United States.

PAR. 3. In the course of their business as aforesaid, respondents, and each of them, now cause, and for some time last past have caused, money, contracts, business forms, information requests, payment demands and other commercial paper and printed materials, in connection with said collection and retrieval business, to be sent by United States mail from respondents' place of business to creditors, debtors and other persons located throughout the United States and maintain, and at all times mentioned herein have maintained, a

substantial course of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their collection and retrieval business, respondents have, at all times mentioned herein, been in substantial competition, in commerce, with other corporations, firms and individuals engaged in the collection of delinquent accounts and the retrieval of credit cards.

PAR. 5. In the course and conduct of their collection and retrieval business, respondents have made, and are now making, numerous statements and representations, both orally, in conversations with consumers, and written, in various form letters, forms, documents and other printed materials which respondents mail or otherwise transmit to consumers. Typical of such oral and written statements and representations, but not all inclusive thereof, are the following:

Your promptness may bear on your future credit.

We have been retained in an action against you.

If these cards are not received in three days, it may be necessary to take legal action to recover them.

Further delay in settlement of this action will leave our firm with no recourse but to institute proceedings.

We would like to discuss this matter with your employer.

RECOMMENDATION FOR CIVIL SUIT

NOTICE OF INTENT TO FILE SUIT

PAR. 6. By and through the use of the above-quoted statements, and others of similar import and meaning but not specifically set forth herein, respondents have represented, and are now representing, directly or by implication that:

1. Respondents are credit reporting agencies and maintain general files as to the credit-worthiness of members of the public.

2. Failure to pay amounts requested will result in immediate legal action.

3. Failure to pay amounts requested will result in garnishment of wages or attachment of the property of the debtor.

4. Respondents are empowered to file legal actions against the debtor.

PAR. 7. In truth and in fact:

1. Corporate respondents are not credit reporting agencies and perform no credit reporting functions and keep no credit records other than those associated with accounts referred to them for collection.

2. Failure by debtors to pay amounts requested by respondents does not, normally, result in legal action.

3. Failure by debtors to pay amounts requested by respondents does not result in prejudgment garnishment of wages or attachment of property of the debtor.

4. Respondents are not empowered to file legal action against the debtor.

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 have engaged, and are now engaging, in numerous acts and practices intended to induce payment of amounts requested from debtors or the retrieval of credit cards. Typical of such acts and practices, but not all-inclusive thereof, are the following:

1. Respondents have mailed or caused to be delivered to debtors forms that resemble legal process.
2. Respondents have mailed or caused to be delivered to debtors letters which, taken as a whole, represent that such letters are from a law firm contemplating legal action.

PAR. 9. In truth and in fact:

1. Such forms are not legal process.
2. Such letters are not from a law firm, but in fact are from certain of corporate respondents' employees who are not licensed attorneys.

The use of such forms and letters misleads the recipient as to their nature, import, purpose and urgency. Therefore, the use by respondents of said forms and letters as set forth in Paragraph Eight was and is false, misleading and deceptive.

PAR. 10. In the further course and conduct of their business, respondents have contacted persons not liable for the alleged debts and discussed debtors' accounts with such persons.

PAR. 11. The aforesaid acts and practices of respondents as described in Paragraph Ten hereof have had and now have the tendency and capacity to endanger the alleged debtor's employment and job advancement and to invade his privacy. Therefore, the use by respondents of such acts and practices was and is unfair.

PAR. 12. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations were and are true and to induce recipients thereof into the payment of accounts and other actions by reason of the said erroneous and mistaken belief.

The use by the respondents of the aforesaid unfair acts and practices has had and now has the tendency and capacity to induce alleged debtors into the payment of accounts and other actions by reason of the said unfair acts and practices.

PAR. 13. The aforesaid acts and practices of respondents, as herein



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

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Kansas City 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its rules, 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 Inter-Continental Services Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 2000 Johnson Dr., city of Shawnee Mission, State of Kansas.

Respondent North American Credit Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 2000 Johnson Dr., city of Shawnee Mission, State of Kansas.

Respondents Jerome E. Baker, Jerry L. Nickell and James F. Bell are officers of said corporations. They formulate, direct and control the

policies, acts and practices of said corporations and their principal office and place of business is located at the above-stated address.

Respondents Ronald A. Green and Thomas F. Fangrow are officers of Inter-Continental Services 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-stated address.

Respondent Richard L. Wilson is an officer of North American Credit Services, Inc. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

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

#### ORDER

*It is ordered,* That respondents Inter-Continental Services Corporation, a corporation, its successors and assigns, and its officers, and North American Credit Services, Inc., a corporation, its successors and assigns, and its officers, and Jerome E. Baker, Jerry L. Nickell and James F. Bell, individually and as officers of said corporations, and Ronald A. Green and Thomas F. Fangrow, individually and as officers of Inter-Continental Services Corporation, and Richard L. Wilson, individually and as an officer of North American Credit Services, Inc., and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of accounts or the retrieval of credit cards in or affecting commerce as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any legal action is being considered, will be taken, or has been taken, or using any forms, letters or other documents which simulate legal process.

2. Representing, directly or by implication, that respondents or their agents or employees are attorneys, or misrepresenting in any manner the position or function of any of respondents, their agents or employees.

3. Representing, directly or by implication, that the failure of any individual to pay amounts requested, or to take any other action, will result in garnishment of wages, attachment of any property, or will affect the individual's credit rating.

4. Communicating or threatening to communicate with any alleged debtor's employer or any other person not liable for the debt, other than the spouse or attorney of the alleged debtor, except by order of a

court, or solely to locate an alleged debtor whose whereabouts are genuinely unknown by respondents, *Provided That*, in these circumstances, no mention of the alleged indebtedness is made.

5. Placing of any telephone call to any alleged debtor or to any individual from whom respondents wish to retrieve a credit card, in the time zone of such person, before the hour of 8:00 a.m. or after the hour of 9:00 p.m. on weekdays, including Saturdays; or before the hour of 11:00 a.m. or after the hour of 9:00 p.m. on Sundays unless permission is received from such person to so call.

6. Misrepresenting in any manner the consequences of individuals' or alleged debtors' failure to comply with any of respondents' requests or demands.

*It is further ordered*, That respondents maintain and make available records relative to complaints received by respondents involving the acts and practices prohibited by this order and which describe steps taken by respondents to investigate and dispose of said complaints. Said records shall be maintained for a period of six (6) months from the date such complaint is received, for inspection and copying by the Federal Trade Commission.

*It is further ordered*, That respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions, to each of their branch offices, and to each of their customers.

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

*It is further ordered*, That 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

## KENNECOTT COPPER CORPORATION

*Docket 8765. Order, Nov. 18, 1975*

Denial of petition to reopen proceeding to enlarge time for compliance.

*Appearances*

For the Commission: *Fiodie P. Favarella* and *Joseph Eckhaus*.

For the respondent: *John L. Warden, Sullivan & Cromwell*, New York City and *John Bodner, Jr. and Francis A. O'Brien, Howery, Simon, Baker & Murchison*, Wash., D.C.

ORDER DENYING PETITION TO REOPEN THE PROCEEDING TO  
ENLARGE THE TIME FOR COMPLIANCE

On Oct. 14, 1975, respondent Kennecott Copper Corporation filed a "Petition To Reopen the Proceeding To Enlarge the Time for Compliance." By answer dated Nov. 10, 1975, the Bureau of Competition has opposed the petition.

The Commission is of the view that respondent's petition to reopen is not a proper vehicle for seeking an extension of time within which to comply with an order, and has determined to deny the petition, for the reasons elaborated in its order of May 5, 1975 [85 F.T.C. 848], denying a similar petition to reopen these proceedings to enlarge the time for compliance.

The Commission will consider separately respondent's request, filed simultaneously pursuant to Section 4.3(b) of the rules of practice, for an extension of time within which to comply with the order to cease and desist in this matter. Therefore,

*It is ordered*, That the "Petition To Reopen the Proceeding To Enlarge the Time for Compliance" be, and it hereby is, denied.

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 IN THE MATTER OF

## AMERICAN GENERAL INSURANCE COMPANY

*Docket 8847. Order, Nov. 18, 1975*

Denial of motion by respondent and intervenor for reconsideration of 1972 order vacating administrative law judge's initial decision and remanding case for further proceedings.

Complaint

86 F.T.C.

*Appearances*

For the Commission: *Harold E. Kirtz, Karen G. Bokart and Charles W. Corddry, III.*

For the respondent: *Michael J. Henke, Vinson, Elkins, Searls, Connolly & Smith, Wash., D.C.*

## ORDER DENYING MOTION FOR RECONSIDERATION

Respondent American General Insurance Company and intervenor Fidelity and Deposit Company of Maryland move for reconsideration of an order by the Commission, dated Dec. 5, 1972 [81 F.T.C. 1052], vacating the administrative law judge's initial decision and remanding the case for further proceedings. The administrative law judge filed an initial decision sustaining the complaint in this matter on Aug. 7, 1975.

Respondent and intervenor have failed to make a sufficient showing why the Commission should grant their motion for reconsideration, especially after the lapse of almost three years from the date of issuance of the order they seek to challenge. Accordingly,

*It is ordered,* That the aforesaid motion for reconsideration be, and it hereby is, denied.

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IN THE MATTER OF

## KOSCOT INTERPLANETARY, INC., ET AL.

ORDER, OPINION ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT AND SEC. 2 OF THE  
CLAYTON ACT

*Docket 8888. Complaint, May 24, 1972-Final Order, Nov. 18, 1975*

Order requiring an Orlando, Fla., seller and distributor, of cosmetics and cosmetic distributorships, among other things to cease using its open-ended, multilevel marketing plan; engaging in illegal price fixing and price discrimination and imposing selling and purchasing restrictions on its distributors; and to cease making exaggerated earnings claims and other misrepresentations in an effort to recruit distributors.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Koscot Interplanetary, Inc., and Glenn W. Turner Enterprises, Inc., corporations, and Glenn W. Turner, Terrell Jones, Malcolm Julian, Ben