under circumstances similar to those of the purchaser to whom the representation is made.

B. Misrepresenting in any manner the earnings or profits to purchasers or reproduction capacity of any chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen and other persons engaged in the sale of respondents' products or services, and failing to secure from each such individual a signed statement acknowledging receipt of said 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 respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the 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

UNIVERSAL ELECTRONICS CORPORATION, ET AL.

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

Docket 8815. Complaint, May 26, 1970—Decision, Jan. 28, 1971

Order requiring a St. Louis Mo., distributor of radio and television tube testing devices and franchises for the sale of such products to cease misrepresenting that persons investing in respondents' franchises will receive any stated amount of income or any discounts from respondents on repeat business, that they will obtain profitable locations for their machines or can expect the sale of any certain number of tubes per day, that they will be granted exclusive territories in which to locate their machines, and that respondents will accept the return of, or aid in the resale of, the machines; respondents are also required to place in all franchise contracts a notification that such contracts may be cancelled within three days, and that respondents will refund all monies to customers cancelling contracts within this period.

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 Universal Electronics Corporation, a corporation, and Wendell Coker, 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 Universal Electronics 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 8363 Olive Street Road, in the city of St. Louis, State of Missouri.

Respondent Wendell Coker is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR 2. Respondents are now, and for more than one year last past have been, engaged in advertising, offering for sale, selling, and distributing radio and television tube testing devices and the tubes, supplies and equipment used in connection therewith, and franchises and dealerships for the sale of such products to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents' usual method of doing business is to insert advertisements in the classified advertisement section of newspapers and periodicals. Persons responding to said classified advertisements are then contacted by respondents or their employees, agents or representatives who display to the prospective purchaser a variety of promotional material and make various oral representations respecting the aforesaid devices and products, and the business opportunities afforded by franchises or dealerships using and selling such devices and products.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their tube testing devices, tubes, and other products respondents have made and are making numerous statements and representations concerning said articles of merchandise and the business opportunities afforded through advertising and promotional material furnished by respondents to their employees, agents or representatives, and through advertisements inserted in newspapers and periodicals, and through letters and other advertising literature circulated generally among the purchasing public, and through oral representations made by respondents, their employees, agents or representatives, with respect to earnings, locations of machines, business methods, training, security of investment, territory and qualifications.

Typical and illustrative of the newspaper advertisements used by respondents, but not all inclusive thereof, is the following:

FOR MIAMI AREA
NOT AN AMAZING
OPPORTUNITY NOR A ONCE IN A
LIFETIME GET RICH
PROPOSITION

But: A steady—dependable and proven successful type of business, merchandising famous brand Sylvania radio and TV tubes thru our newest self-service equipment. All accounts fully established and set up for our dealers. No selling or soliciting required. Exceptional profit margin on nationally advertised product selling in the hundreds of millions—annually. You could earn up to $400.00 per month in spare time.

FULL INVESTMENT STARTS AT $1,895.00 UP TO $3,695.00 TO ENTER THIS BUSINESS.

No experience necessary; just four to eight hours a week, car, ambition, and the aggressive desire to be in business for yourself.

For more information and personal interview, write today to: UNI-TEST, 8363 Olive Blvd., Olivette, Mo., 63132. Include phone number.

OUR COMPANY INTEGRITY CAN WITHSTAND
RIGID INVESTIGATION

PAR. 6. Through the use of the statements and representations set forth above, and others similar thereto but not specifically set out herein, and through said statements orally made by respondents, their employees, agents and representatives, respondents have represented and do now represent, directly or by implication to the purchasing public, that:

1. Persons investing from $1,895 up to $3,695 can earn up to $400 per month or more.

2. Respondents' discounts on repeat business assure exceptional and profitable income for their dealers.

3. Purchasers of respondents' tube testing machines and tubes can expect to receive profitable earnings from the sale of one to five tubes per machine per day.

4. Respondents obtain top sales producing locations for the placement of tube testing machines purchased from them.

5. The purchasers of said machines will be trained by the respondents as to the operation of the machines and the methods to be used in servicing them.

6. No selling or soliciting will be required, and no experience is necessary.

7. If the purchaser becomes dissatisfied, or for any reason wishes to go out of the business, the respondents will repurchase the machines or assist the purchaser in reselling them.

8. The purchaser's investment in the tube testing machines and tubes will be returned in nine months or one year.

9. Persons purchasing respondents' machines will have an exclusive territory in which to operate the machines.

PAR. 7. In truth and in fact:

1. Income in the foregoing amount will not be realized by persons investing the sum indicated. In fact, persons purchasing tube testing machines and tubes from respondents generally receive little or no net profit.

2. Respondents' discounts to their dealers on repeat business do not assure an exceptional or profitable income nor are such dealers assured of an exceptional or profitable income for any other reason.

3. Purchasers of respondents' tube testing machines and tubes have not received profitable earnings from the sale of one to five tubes per machine per day and usually have not realized the number of tube sales per machine per day as specified by respondents, their salesmen or agents.

4. Respondents do not obtain top income producing locations, but place most of the machines in retail establishments such as service stations which have very little consumer traffic. The locations secured by respondents are usually undesirable, unsuitable and unprofitable.

5. Respondents do not train the purchasers of the tube testing machines in the operation of the machines or the methods to be used in servicing the locations where the machines are installed.

6. The purchasers of the machines are required to do selling and soliciting and to have experience since it is frequently necessary to place machines in other locations because of the unprofitable nature of the locations selected by the respondents and like any other business venture experience is required.

7. Respondents do not repurchase the machines at a price comparable to the customer's investment and do not assist the purchaser in the resale of the machines regardless of the purchaser's reason for going out of business.

8. The purchaser's investment in tube testing machines and tubes is not returned within nine months, one year or within any other period of time.

9. Persons purchasing respondents' machines do not have an exclusive territory in which to operate these machines and respondents will sell the machines to any purchaser, in any location, with the necessary capital.

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

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals in the sale of franchises and dealerships for tube testing devices, tube testing machines, radio and television tubes and other products of the same general nature and kind as sold by respondent.

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

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

Mr. Harry G. Shupe and *Mr. John T. Hankins*, for the Commission.

Green & Lander, by *Mr. Martin M. Green*, Clayton, M., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

NOVEMBER 6, 1970

On May 26, 1970, the Commission issued a complaint (mailed on June 3, 1970) charging the respondents with unfair and deceptive

acts and practices in violation of Section 5 of the Federal Trade Commission Act in connection with the selling of radio and television tube testing devices. Respondents' answer, filed on June 29, 1970, admitted the existence of the corporate respondent, but denied the other allegations of the complaint. On July 1, 1970, complaint counsel and counsel for respondents participated with the hearing examiner in a telephonic conference and an order was issued reciting the results thereof. The order contained a directive to each party to prepare a trial brief setting forth the anticipated issues and disclosing the names of witnesses, together with a statement of the nature of the testimony and the documentary exhibits which the party plans to introduce. The order also set forth the dates and places of hearings agreed upon. Complaint counsel's trial brief was submitted on July 10, 1970, and the respondents' trial brief on August 5, 1970.

Hearings were held at Omaha, Nebraska, on August 10, 11 and 12, 1970, at which time complaint counsel called 14 consumer witnesses and the respondent, Wendell Coker. After the case-in-chief was completed, a motion by respondents' counsel to dismiss was denied by the hearing examiner, and the respondents elected not to offer any evidence in their defense.

The hearing examiner has given full consideration to the proposals submitted and all proposed findings not hereinafter specifically found or concluded are herewith rejected. Upon consideration of the entire record herein, the hearing examiner makes the following findings of fact and conclusions:

Respondent Universal Electronics Corporation is a corporation organized (in 1962), 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 8363 Olive Street Road, in the city of St. Louis, State of Missouri (CX 110), and its volume of business over a four-year period is as follows:

1966	297, 215 (CX 116A)
1967	375, 219 (CX 117A)
1968	320, 181 (CX 118A)
1969	212, 655 (CX 119A)

The company operates on a fiscal-year basis, from September 1 to August 31. The figure for 1966 is from September 1, 1965, to August 31, 1966 (Tr. 116; CX 116A).

Respondent Wendell Coker is now and has been, during the entire period of the existence of the corporation, president of, and the sole stockholder of, the corporate respondent. During that period, he has

formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices which are the subject of this proceeding, hereinafter set forth. His address is the same as that of the corporate respondent (Tr. 25–28).

Respondents are now, and, since the corporate respondent came into existence, have been, engaged in advertising, offering for sale, selling and distributing radio and television tube testing devices and the tubes, supplies and equipment used in connection therewith, and franchises and dealerships for the sale of such products to the public. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals in the sale of franchises and dealerships for tube testing devices, tube testing machines, radio and television tubes and other products of the same general nature and kind as sold by respondent (Tr. 313–317).

In the course and conduct of their business as aforesaid, respondents now cause, and, since the corporate respondent came into existence, have caused, their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondents' usual method of doing business is to insert advertisements in the classified advertisement section of newspapers and periodicals. Persons responding to said classified advertisements are then contacted by respondents or their employees, agents or representatives who display to the prospective purchaser a variety of promotional material and make various oral representations respecting the aforesaid devices and products, and the business opportunities afforded by franchises or dealerships using and selling such devices and products.

In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their tube testing devices, tubes, and other products, respondents have made and are making numerous statements and representations concerning said articles of merchandise and the business opportunities afforded through advertising and promotional material furnished by respondents to their employees, agents, newspapers and periodicals, and through letters and other advertising literature circulated generally among the purchasing public, and through oral representations made by respondents, their employees, agents or representatives, with respect to earn-

ings, locations of machines, business methods, training, security of investment, territory and qualifications.

Typical and illustrative of the newspaper advertisements used by respondents, but not all inclusive thereof, is the following which appeared in *The Miami News*, Miami, Florida, on October 22, 1965 (CX 9):

FOR MIAMI AREA
NOT AN AMAZING
OPPORTUNITY
NOR A ONCE IN A
LIFETIME GET RICH
PROPOSITION

But: A steady—dependable and proven successful type of business, merchandising famous brand Sylvania radio and T.V. tubes thru our newest self-service equipment. All accounts fully established and set up for our dealers. No selling or soliciting required. Exceptional profit margin on nationally advertised product selling in the hundreds of millions—annually. You could earn up to $400.00 per month in spare time.

FULL INVESTMENT STARTS AT $1,895.00 UP TO $3,695.00 TO ENTER THIS BUSINESS.

No experience necessary; just four to eight hours a week, car, ambition, and the aggressive desire to be in business for yourself.

For more information and personal interview, write today to: UNI-TEST, 8363 Olive Blvd., Olivette, Mo., 63132. Include phone number.

OUR COMPANY INTEGRITY CAN WITHSTAND
RIGID INVESTIGATION.

Also, the following appeared in *The Clearwater Sun*, Clearwater, Florida, on January 9, 1967 (CX 10):

DISTRIBUTOR
For This Area
Recession-Depression Proof Business
Part-Time Work—For Extra Income.

Now! A chance to enter the multi million dollar Electronics Replacement field. No experience required! Merely restock locations with world famous SYLVANIA or RCA radio, TV, and color tubes; sold through our new (1957 Model) self—service tube testers. Company guaranteed discounts in this repeat business assures exceptional and profitable income for our dealers. All accounts contracted for and set up, plus training and operating instructions by Company. Will not interfere with present business or occupation, as accounts can be serviced evenings or weekends! Color TV creating enormous demand and surge in future sales throughout the industry.

Earning potential up to $500.00 per month or more, depending on size of route.

MINIMUM INVESTMENT Required. Also, a good car and 4 to 8 spare hours a week. If you are interested and meet these requirements; have a genuine desire to be self-sufficint and succssful in an ever expanding business of your own, then write us today! UNIVERSAL ELECTRONICS CORP.; 8363 Olive Street Road; St. Louis 32, Mo. Include phone number in resume.

OUR COMPANY INTEGRITY CAN WITHSTAND
THOROUGH INVESTIGATION.

For other advertisements of like import, see also CX 11-14, CX 88, and CX 138.

Paragraph Six of the complaint reads:

Through the use of the statements and representations set forth above, and others similar thereto but not specifically set out herein, and through said statements orally made by respondents, their employees, agents and representatives, respondents have represented, and do now represent, directly or by implication to the purchasing public, that:

1. Persons investing from $1,895 up to $3,695 can earn up to $400 per month or more.
2. Respondents' discounts on repeat business assure exceptional and profitable income for their dealers.
3. Purchasers of respondents' tube testing machines and tubes can expect to receive profitable earnings from the sale of one to five tubes per machine per day.
4. Respondents obtain top sales producing locations for the placement of tube testing machines purchased from them.
5. The purchasers of said machines will be trained by the respondents as to the operation of the machines and the methods to be used in servicing them.
6. No selling or soliciting will be required, and no experience is necessary.
7. If the purchaser becomes dissatisfied, or for any reason wishes to go out of the business, the respondents will repurchase the machines or assist the purchaser in reselling them.
8. The purchaser's investment in the tube testing machines and tubes will be returned in nine months or one year.
9. Persons purchasing respondents' machines will have an exclusive territory in which to operate the machines.

Paragraph Seven of the complaint reads:

In truth and in fact:

1. Income in the foregoing amount will not be realized by persons investing the sum indicated. In fact, persons purchasing tube testing machines and tubes from respondents generally receive little or no net profit.
2. Respondents' discounts to their dealers on repeat business do not assure an exceptional or profitable income nor are such dealers assured of an exceptional or profitable income for any other reason.
3. Purchasers of respondents' tube testing machines and tubes have not received profitable earnings from the sale of one to five tubes per machine per day and usually have not realized the number of tube sales per machine per day as specified by respondents, their salesmen or agents.
4. Respondents do not obtain top income producing locations, but place most of the machines in retail establishments such as service stations which have very little consumer traffic. The locations secured by respondents are usually undesirable, unsuitable and unprofitable.
5. Respondents do not train the purchasers of the tube testing machines in the operation of the machines or the methods to be used in servicing the locations where the machines are installed.

6. The purchasers of the machines are required to do selling and soliciting and to have experience since it is frequently necessary to place machines in other locations because of the unprofitable nature of the locations selected by the respondents and like any other business venture experience is required.

7. Respondents do not repurchase the machines at a price comparable to the customer's investment and do not assist the purchaser in the resale of the machines regardless of the purchaser's reason for going out of business.

8. The purchaser's investment in tube testing machines and tubes is not returned within nine months, one year or within any other period of time.

9. Persons purchasing respondents' machines do not have an exclusive territory in which to operate these machines and respondents will sell the machines to any purchaser, in any location, with the necessary capital.

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

Based upon the evidence hereinafter set forth, it is the opinion and finding of the hearing examiner that all of the charges under Paragraphs Six and Seven of the complaint have been sustained; that the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' franchises, dealerships and products by reason of such mistaken and erroneous belief; and that the aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Respondent WENDELL COKER was called as a witness by complaint counsel and testified at length as follows (Tr. 20–88; 115–146; 313–354): The advertisements run by Universal Electronics Corporation hereinbefore mentioned were composed by him; referring to the figure of $400 earnings used in the Miami, Florida, ad, he said he arrived at this figure from reports he received from places that had tube testers and a report published by Vend Magazine of a survey they conducted which showed the average location sold 30 to 40 tubes a week; regarding the statement of "Earning potential up to $500 per month" appearing in the *Clearwater Sun*, Clearwater, Florida (CX 10), he said, "We had two seventy-five, three hundred, four hundred, five hundred. It fluctuated over the years" (Tr. 72); that the $400 figure is not based on actual experience with his dealers, but on "what we feel they could earn" (Tr. 71); that he was aware

that customers responded to the ads containing earning statements (Tr. 343); and he stated (Tr. 343):

My conclusion has been and is, the average person that sees the ad in the paper, cuts the ad in half. In other words, they see the ad in the paper, I have had them tell me, they only expected to make half of what you generally tell them. They didn't expect to make that much in the first place. And I really felt and believed anybody that worked at this business, kept a machine at the location, could make $200 to $250 a month. But, to compensate for the average person's cutting promotional figures in half and to keep up with the competition advertising at the same time six and seven hundred dollars a month, I said four and five hundred dollars a month. I always try to keep a little lower than my competition.

Mr. Coker testified that, to earn $400 per month, a dealer would have to have five machines costing $3,695, and he would have to sell between 300 and 350 tubes, or in excess of 60 tubes per machine per month, and he did not know how many of his dealers sold on an average of two tubes a machine each day (Tr. 68-69). They advertised in every state except Alaska; the average cost for each ad was around $30, and in the fiscal year ending in August 1966 they ran about 500 ads; during the time they have been in business, they have made sales in 44 or 45 states (Tr. 128–130). Upon the receipt of an inquiry by a person answering one of its ads, Universal, on one of its letterheads over the signature of Mr. Coker, would answer as follows CX 1):

We would like to take this opportunity to thank you for the interest you have shown in our advertisement in your local paper.

This is a business that can be handled on a part-time basis to start and expanded to a full-time operation *with unlimited earning potential.* We furnish equipment and locations, plus fully set up the business for our dealers; so, there is no selling or soliciting required of the party we select.

If you have never had an occasion to use a self-service tube tester, may we suggest that you check with a local store which has a tube tester, so you will know radio and television tubes are being sold through these self-service units.

We are placing you on our representative's schedule for an early interview. *Since this is a proven business,* we have many inquiries from people who are sincerely interested in becoming dealers for us and act promptly on appointing the party we feel best qualified. Should you be further interested in our type of business, please feel free to check with the references on the enclosed sheet; so, that in the event we meet each others approval, at the time of our representative's interview, we will both be in a position to consummate a dealership.

Our representative will contact you in the immediate future in regard to setting up an interview with you on this opportunity. (Emphasis added.)

Mr. Coker did most of the selling for the company in 1962 and 1963; since that time, he has sold a few machines each year, but the

bulk of sales were made by others (Tr. 144); he interviews prospective salesmen and hires them for the company; "They just come around to see me. * * * they will take a trip and act as an agent for me on the leads that I have" (Tr. 134); "* * * these * * * are what we call professional salesmen. Most of them sold tube testers before I got in the business" (Tr. 135); a salesman was furnished a price list and a certain amount of sales information; part of the literature that the salesmen carried with them when they interviewed customers was the Vend Magazine; the statements concerning earnings that were made by the salesmen were figures taken from the magazine article (Tr. 336-338); when asked if he furnished some information to his salesmen concerning the number of tubes that a machine would sell, Mr. Coker replied: "I would show him the article in Vend Magazine and let the man make his own conclusions" (Tr. 339); when asked, "Now, how would they sell a machine to a customer without explaining to him how much the machine would produce as far as sales and earnings are concerned?" he said: "It seems to me it would be hard to sell if he didn't" (Tr. 341); a salesman in making a sale would obtain the signature of the purchaser, called a "Dealer," on a PURCHASE ORDER CONTRACT (CX 4), which provided in part that Universal agreed to furnish the number of "Tube Testing Machines" ordered; "Secure initial locations" in a specified area; "Give Dealer signed location contracts for Tube Tester and Tube Inventory for each location;" and "Instruct Dealer and Locations on the functions and operation of equipment;" payments thereon were to be made to Universal, and the "Dealer is to retain full title to all equipment & merchandise." The contract mailed to the company by the salesman (Tr. 34) was subject to company approval, and would be approved by Mr. Coker (Tr. 49); only in one instance did he reject a contract and that was in 1964 (Tr. 46); a salesman was paid on a commission basis, receiving $900 on a sale of $3,590 (Tr. 84). By letter (CX 24), Universal would notify the purchaser of his acceptance as a dealer, of the approval of the contract, request the money balance due thereon, and state the following: "We will process your order accordingly and keep you posted of its progress, shipping data, and tenure of our location man." The machines would not be shipped before they were fully paid for (Tr. 49); shortly after payment, the machines and tubes would be shipped to the dealer; a location man employed by Universal, who is paid $35 or $40 for each tester placed, would contact the dealer, canvass various stores and filling stations in the territory assigned by the contract, and secure the number of places he would need for the

machines; the locator sets up the machines with tubes, on a consignment basis, at the places agreed to by the owners, who are paid a commission of 25 percent or 30 percent of the retail price for each tube sold; if a dealer is not satisfied with the original location, it is up to him to change the location (Tr. 55–58); the reason for relocating a machine was that such location was not proving profitable or for other various reasons (Tr. 61–62); three-fourths of the total number of dealers for Universal have had to relocate at least one of their machines (Tr. 64). Universal does not repurchase the machines from all dealers who become dissatisifed with the business; when asked, "How do you select those you repurchase and those that you don't?" he answered: "There are two determining factors actually. One is how great the need is to get out of the business, or liquidate it, and also the financial position of the company, if we can afford to buy them back" (Tr. 125); he stated: "I generally bought back a machine and tubes on the basis of approximately $300 per machine and tubes" (Tr. 122), which figure represented Universal's cost for a machine and a kit of 200 tubes (Tr. 80–81). The amount of repurchases for the fiscal year ending 1966 totaled $18,437; 1967—$23,344; 1968—$22,880; and 1969—$6,216 (Tr. 77, 117 thru 122; CX 112E, 117A, 118A and 119A). The tube testers consist of a head panel, purchased by Universal from a New York manufacturer at a cost of $70 or $75, and a cabinet designed by Mr. Coker and made by a Missouri firm at a cost of $37. The panels are shipped to the cabinet maker where they are assembled, boxed ready for shipment, and, on orders from Universal, are sent to purchasers (Tr. 43, 44, 80). Sales have been going down in recent years (Tr. 127). He testified (Tr. 128):

> The main factor of the tubes is being designed out of television sets. In another year or two, there won't be any television sets hardly on the market coming out with tubes in them.

DONALD H. RING, of McFarland, Wisconsin, an automobile body man for 23 years, testified (Tr. 89–115) that, while a resident of Madison, Wisconsin, in 1966, after answering an ad in the local paper, he received a letter from Universal (CX 113) advising that its representative would call upon him. Universal's representative, Mr. George Turner, called upon him, and he gathered that he could make about $1 profit per tube and each machine that he purchased would sell no less than a tube a day or approximately $100 a month for three machines. He was told that the locations were already established by the company and, that, if he subsequently changed his mind, "they would buy the whole thing back, the tubes and equip-

ment, at a 25 per cent discount; in other words, they would give me three-quarters of the money back" (Tr. 102). He stated that he understood that it was to be a franchise deal of one dealer to a town or area (Tr. 113). On March 31, 1966, he signed a purchase order contract (CX 114), because "it sounded like I could make some money" (Tr. 99), for three tube testers for the sum of $1,895 to be located in the city of Madison and within a 15-mile radius. The location man and the machines arrived in Madison the same day, which was in the last part of May or the first part of June 1966. Locations had not been previously procured and the location man "used my phone book and found three locations. It took him two days to do it" (Tr. 100). Locations were secured at a hardware store, grocery store, and variety store. The locations were not profitable. The machine at the grocery store remained there for six months and, although it was the best of the three locations, it was removed for the reason that the grocer said he did not have room for it and that it did not make him enough profit. After about six months he did not call on the locations or service the machines for the reason that he had lost interest because he could not make enough money to cover the route. He did not keep any books but he was sure that he did not gross over $200. Mr. Ring did not attempt to find other locations for the reason that he had become discouraged and lost interest after the first six months. He wrote a letter to Universal about buying back the tubes and equipment and received a letter in return from Universal, signed by Mr. Coker (which has been lost), in which they told him they were very disappointed that he didn't do better, and that they couldn't buy back the machines at that time.

YANO S. FALCONE, of Omaha, Nebraska, 42 years of age, with a tenth grade education, and a manufacturing representative for 22 years, testified (Tr. 148–176) that he answered an ad that appeared in an Omaha newspaper and on March 13, 1967, Mr. Pat O'Brien, Universal's representative, came to see him. Mr. O'Brien said he had tube testers in various locations in California from which he derived a net income of around a hundred thousand dollars a year. This statement made Mr. Falcone "a little more enthusiastic about wanting to get into the business" (Tr. 149). Mr. O'Brien had him write down figures (CX 20) which showed that he could realize a minimum profit of $654.00 a month from five machines. The profit on the sale of one tube was $1.09, and the sale of 4 tubes per location each day would give $4.36, or $21.80 a day for five locations, times 30 days would give $654.00 a month; assuming his sales were only half of that, his minimum still would be $327.00 a month and, based on

the statistics, it was his (Mr. O'Brien's) opinion that this would not be hard to make (Tr. 153). After hearing the foregoing, Mr. Falcone said he wanted a few days to think it over and to contact his attorney to see what he thought. Mr. O'Brien said he couldn't have that amount of time; "If I didn't sign that evening, someone else would get the franchise. They had only one franchise available for the Omaha area" (Tr. 154). [Mr. James R. Edmonds, whose testimony follows, was assigned the same area by Mr. O'Brien the day before.] Mr. Falcone was shown a document (CX 22), which was subsequently delivered to him, reading:

Bona Fide

RESALE OPTION AGREEMENT

It is agreed that after ONE YEAR from the date of purchase should the operator for any reason decide to sell his established Tube Testing route at a fair and equitable price over the original cost of equipment and locations, it is agreed the operator has the first 90 day option and shall retain all profits. After the expiration of 90 days the operator agrees to give UNIVERSAL ELECTRONICS or their authorized Representative the EXCLUSIVE SALES OPTION to sell said business for him and he also agrees to allow them 25% OF THE NET PROFIT over the original cost for services rendered.

He stated (Tr. 172): "My understanding of this was that after one year, if I wasn't satisfied with the profits that I was deriving from the equipment that I could contact Universal Electronics and they would buy these back from me." Mr. Falcone signed a contract to purchase five testers with tubes to be placed on locations for the sum of $3,690 (CX 21). To finance the transaction, he said, "Well, I cashed in some of my savings bonds and took a loan out on my insurance policies and borrowed whatever cash I had in the bank" (Tr. 156). Asked why he signed the contract, he replied, "Supplemental income, I have a large family" (Tr. 156). On June 6 and 7, 1967, Universal's location man placed the units at five gasoline service stations (CX 30, 31, 32, 33 and 34). Four of the machines remained at the locations for about one year, and the fifth for nine months. Mr. Falcone received a total of $50 gross income from all of the machines during that time. He did not attempt to relocate the machines because "I thought it was a fruitless effort" (Tr. 158). On cross-examination, he testified that, after he became dissatisfied and felt the machines would not produce a sufficient income, he called Mr. Coker twice but could not reach him; he left his phone number with Mr. Coker's secretary, but he did not call back. With reference to the provision in the contract (CX 21), "No guarantee as to any specific amount of money to be derived from this business," he believes he remembers reading that before he signed the contract (Tr.

161). As to reading the provision therein, "No exclusive territories promised," Mr. Falcone said, "Evidently not, sir. Here again, I might add, it may not be called for, but I thought Mr. O'Brien was verbally quite persuasive. I basically relied upon his honesty" (Tr. 166). He did not remember seeing the words "and no verbal agreements are valid" in the contract. He testified (Tr. 173–174):

Q. What he [Mr. O'Brien] did was to spin an almost fantastic tale to you about the profits you could ultimately derive based on statistics and based on the figures that he had you write down on that piece of paper, isn't that a fair statement?

* * * * * * *

A. Fantastic or not, sir, I hung my hopes on it.

JAMES R. EDMONDS, of Omaha, Nebraska, a high school graduate, 60 years of age, and a building contractor for 25 or 30 years dealing mostly in small homes and remodeling, testified (Tr. 176–204) that, after he answered an ad in an Omaha paper, he was contacted by Universal's representative, Mr. Patrick O'Brien, and on March 12, 1967 he signed a contract (CX 15) for the purchase of five tube testers and tubes to be located in "Omaha and Gen Area—25 mile radius" for $3,690. He was told by Mr. O'Brien that he was to be the only person with Universal machines in that area. As to potential earnings, Mr. O'Brien gave him the same set of figures recited in the testimony of Mr. Falcone. (See CX 18, 19 and 20.) Mr. O'Brien said Mr. Edmonds should have his total investment back in nine months and, if the decided to quit the business, he had to give Universal the first chance to buy them back at 25 percent less than the amount paid. Universal's location man arrived the first part of May 1967. Two of the machines were placed in hardware stores, two in drug stores owned by a Mr. Kohl, and the fifth was to be set up in a third drug store also owned by Mr. Kohl. Two days after placement, Mr. Edmonds complied with the request of the owner to remove the testers from the two drug stores and not to place the one in the third drug store for the reason that the machines would not take care of the tubes that the people would bring in to test. By letter, Universal was told of the difficulty, and, in June of 1967, another one of its representatives called on Mr. Edmonds who asked if there was any way of getting his money back. He was informed, "well, no, outside of waiting, and if I find a buyer who would buy my machines, otherwise he said, just write it off" (Tr. 194). An offer to assist Mr. Edmonds to relocate the testers was refused by him; "Well, it just seemed like it was a lost cause" (Tr. 200) because of the number of machines that were already on location in the city and the machines

would not test some colored TV tubes. Two of the machines remained in location at the hardware stores from May 1967 to December 1968, and the gross therefrom totaled $42. In October 1969, Mr. Edmonds filed suit against Universal, which resulted in a settlement whereby the company paid $1,000 on the return of the machines to it.

ROBERT O. GREBER, of El Paso, Texas, 34 years of age, with two years of college, and a radio repairman, testified (Tr. 205–230) that he answered an ad of Universal, and on May 15, 1967), its representative, Mr. George Turner, contacted him. Mr. Turner explained that a $654 net profit was the average earnings from five machines per month, and on a sheet of paper (CX 123) he wrote down a detailed explanation of how he arrived at this projected profit picture. Mr. Greber said, "after one year, if I wasn't pleased, that the company would take and try to sell the machines for me, or buy them back with 25 percent of the profit that would go to Universal" (Tr. 212). A contract was signed on May 15, 1967, for the purchase of three units and tubes with locations in the "Eastern 1/2 of El Paso and Gen Area not to exceed 20 mile radius" (CX 122) for the sum of $2,290. Universal's location man appeared in August 1967 and placed the machines in two grocery stores and a hardware store. The hardware store sold one tube in 90 days so this unit was pulled out, and one of the grocery stores went out of business. Mr. Greber made arrangements with a chain of three stores to place units in each of the stores, so he purchased a fourth machine from Universal. The machines remained at the chain stores for six or eight months and, at the request of the owner, for the reason they were not doing enough business, the three machines were removed and relocated in grocery stores. All the units remain at the locations indicated, and have netted a profit of about $100 a year. Mr. Greber contacted Mr. Coker by telephone, asking that Universal repurchase the machines, and in answer thereto, by letter dated February 17, 1969, Universal stated, "I hope you can sell the route and thus keep the business intact and working. * * * We are enclosing an ad similar to the one you answered in the paper" (CX 124). He called on the two local newspapers, but they would not accept the ad (CX 125), because it contained a profit potential statement. The ad was placed and ran in a shoppers' paper devoted strictly to advertising, but there were no responses. By letter dated April 17, 1969 (CX 126), Universal submitted another ad (CX 127), which also was refused by the local paper, but was run in the shoppers' paper in the name of, and paid for by, Universal. By letter dated July 21, 1969 (CX 128), Universal informed Mr. Greber they were "sorry to say we did not receive one

reply to the ads. On the testers, I don't know what to tell you to do about them, unless you would be willing to sell them at a considerable reduction. We have a routeman in St. Louis that would pay $75.00 each for the units, if they were in St. Louis and in reasonably clean condition." Mr. Greber "felt that that was not quite enough return on the investment" (Tr. 215). He figured that he had a loss of $2,600 or $2,700 on the transaction. Mr. Greber said that the "Resale Option Agreement" (CX 22) he received from Universal after signing the purchase order contract was different from what Mr. Turner represented. He testified that "according to Mr. Turner, if they couldn't sell it, they would repurchase it" (Tr. 230).

CLIFFORD NOLLEY, of Miles City, Montana, 52 years of age, a high school graduate, and a welder for 20 years, owning his own business for 15 years which he sold in 1966 on account of a heart condition, testified (Tr. 231–254) that he answered an ad appearing in the local paper, and on July 18, 1967, he was contacted by Universal's representative, Mr. Misemer, who told him that in the proper operation of five machines he should realize $500 a month; that the company would furnish the locations, a survey having been made and the locations established, and would instruct him in the operation of the machines; that he would have the exclusive franchise in Miles City; and that it was possible to get his investment back in a year. He signed a contract to purchase five tube testers with tubes to be placed in Miles City for $3,690 (CX 129 and 130). Universal's location man arrived in November of 1967, who informed Mr. Nolley that no locations had been established and that he would have to go out and secure them. He placed four of the units, three in grocery stores and one in a service station, and the fifth was located by Mr. Nolley in a radio repair place at the airport. He received no training as to the operation of the machines for the reason that the location man knew very little about it, himself. The one at the airport was removed when the place was closed for business, and one was removed from a grocery store at the request of the owner. The witness stated, "I couldn't locate them in the other stores because there were other company machines in these stores" (Tr. 245). Three of the machines remain at the original locations. The gross amount taken from the machines is approximately $500. About two weeks after the machines were installed, Mr. Nolley observed a Universal ad, the same as he had answered, in the Miles City newspaper. On April 11, 1968, Mr. Nolley wrote a letter to Universal (RX 1) in which he stated:

After six months, it is quite evident now that these machines are not going over in this community. I feel it would be advant[a]g[e]ous to us both if you

could take these machines back and place them in some territory where more tubes can be sold.

I am willing to take a loss on these in order to get part of my investment back. As it is, I am not getting enough from them to pay for the car expense of tending them.

In its reply dated April 17, 1968, Universal made no commitment to repurchase the machines, but urged that Mr. Nolley "try and overcome, persist and prevail over your local problems, difficulties and competition" (RX 2).

C. P. DAVIDSON, of Angelton, Texas, testified (Tr. 255–266) with reference to a purchase order contract that he signed with Universal on October 12, 1966 (CX 31), for the purchase of five tube testers and tubes to be located in the Houston, Texas, area. In the opinion of the hearing examiner, there is nothing in his testimony that has any bearing on the issues herein so it will not be discussed.

HARRY EUGENE WOLKING, of Montrose, Colorado, 47 years of age, a high school graduate, who retired on July 1, 1969, as a Commander of the United States Navy and is now a salesman of greeting cards, testified (Tr. 267-293) that while he was a resident of Arvada, Colorado, he saw an ad of Universal in a Denver, Colorado, newspaper, which he answered. Mr. George Turner, a sales representative of Universal, called on him on June 9, 1966, and gave him detailed figures which showed a net profit of $1.02 for each tube sold and the net profit for one machine would yield $122.00 per month (CX 67). Mr. Wolking said (Tr. 278): "In our discussion concerning a franchise territory, it was indicated that a territory plus five miles surrounding was what was normally assigned and normally a population of 50,000 would be given to any one dealer." Mr. Turner told him (Tr. 279): "The ideal locations being super markets, drug stores, hardware stores, and variety stores with the initial locations selected open seven days per week, after 6 p.m. open, also. And that 30 to 40 tubes were average per unit per week." On June 9, 1966, Mr. Wolking signed a contract to purchase five tube testers with tubes to be located in "Arvada, Boulder, Western 1/2 of Denver and Gen. area not to exceed 30 miles West of Denver" for the sum of $3,590 (CX 65). A personal loan was made to finance the transaction. On August 5, 1966, Universal's location man arrived, and on that day and the following day the units were placed on location. One was placed in a modern hardware store at Boulder, Colorado, where it remained until September 26, 1966, when it was removed at the store owner's request. Two tubes were sold in that period of time. Mr. Wolking tried to relocate the tester, but he could not find a de-

sirable place. A unit placed in a small neighborhood grocery store in Boulder was removed three months later. No tubes were sold and it was not relocated. A unit was placed in a hardware store in Lakewood, Colorado, where it remained for a little over sixteen months, and 80 tubes were sold. About six months later, the tester was placed in a service station where it remained for eighteen months, 15 tubes were sold, and it was not relocated. A unit placed in a small modern pharmacy in Arvada, Colorado, remained until Mr. Wolking retired and moved to Montrose, Colorado, and 29 tubes were sold during the period of two years and eleven months. A unit was placed in an Arvada hardware store where it remained until Mr. Wolking left Arvada; about 45 tubes were sold. Two testers have been on location in Montrose since August, 1969; one unit sold 2 or 3 tubes and the other may have sold 20 tubes. Mr. Wolking stated (Tr. 286): "I won't try to locate any more. There are already competitive type tube testers there." There was received in evidence Universal's "Resale Option Agreement" issued to Mr. Wolking (CX 72). He said the document meant nothing to him; "It is an agreement, resale option agreement, which I tried to execute, but it had no bearing" (Tr. 279). On October 23, 1967, Mr. Wolking wrote to Universal (CX 82) as follows:

> Assistance is requested in the liquidation of our tube testing business. Inasmuch as the business has not shown a profit it would be difficult for us to sell on the open market, and therefore we approach you for assistance. Fees and details are requested prior to execution of any liquidation proceedings.

On October 26, 1967, Universal answered in part (CX 83):

> We do not have any ready-made prospects on hand, and therefore could not definitely state whether or not we can sell the route for you or not.
> We wish you would re-consider this matter and try to bolster your sales.
>
> * * * * * * *
>
> Hoping for your reconsideration in this matter, and also would like to point out the fact that the route could be hard to sell at this time and even impossible.

On November 14, 1967, Mr. Wolking wrote to Universal (CX 84), wherein he stated:

> We too are interested in bolstering our sales, however, the locations in which our units were originally placed leave a lot to be desired. Efforts to improve the locations have not been successful because of competitor units already on location.

He added, "we still desire to liquidate." On March 16, 1968, Mr. Wolking wrote to Universal (CX 86), stating: "I still desire to liquidate my route and any assistance you can provide will be appreciated."

ELDAN LEONARD, of Baraboo, Wisconsin, employed by an Ordnance Works as a shift supervisor, testified (Tr. 293–312) that he answered a Universal ad in a Milwaukee, Wisconsin, newspaper and was contacted by one of its representatives, Mr. George Turner, on March 29, 1966, who wrote on a Universal letterhead (CX 51) detailed figures of profits to be made in the tube testing business. Mr. Turner wrote that a tube selling for $3.20, after deducting the cost thereof of $1.22 and the commission of 30 percent to be paid to the owner of the location in the amount of 96 cents, would yield a net profit of $1.02. Each location would sell 5 tubes each day, netting $4.08 per day, and $122.40 for a month (30 days). Six machines would produce a net of $734.40. Relying on the Representations made to him, Mr. Leonard, on March 29, 1966, signed a contract (CX 53) to purchase six tube testers and tubes to be located in Madison, Wisconsin, and the general area. Universal's location man, when he arrived on July 16, 1966, said it would be much better if the machines were located in Mr. Leonard's immediate area rather than Madison. Two machines were placed in stores in Baraboo, and the other four in stores in Reedsburg, Portage, Sauk City, and Prairie du Sac, Wisconsin (CX 57, 58, 59, 60, 61 and 62). Four of the units still remain on location. One unit has been off of location for two years, and one for one year. After paying the owners of the locations their commissions, Mr. Leonard grossed $177.25 in 1966, $443.55 in 1967, $95.13 in 1968, $301.83 in 1969, and $187.42 for the first six months of 1970. Without taking into consideration his overhead—gas and automobile service—Mr. Leonard estimated that his net profit would be between 30 and 40 percent of the quoted figures.

RICHARD ROSS DAWES, of Evansville, Indiana, age 31, with one year of college, and employed in a bank, testified (Tr. 356–389) that he answered a Universal ad which appeared in an Evansville newspaper on October 18, 1967; that the respondent, Wendell Coker, came to his home, at which time he contracted to purchase three tube testers and tubes to be located in Evansville for $2,260 (CX 106). In regard to profits, Mr. Coker said "that he felt that I should get my investment back within roughly a year's time" (Tr. 360); that if sales were not this good, the minimum net return on three machines should be $800 to $1,000 a year; that "a detailed study would be made of the section of Evansville that I lived in to determine the best location for my machines. A representative would come and place the machines in these locations" (Tr. 361); that the representative "then would instruct me on the use of these machines and introduce me to each of the store managers" (Tr. 361-362); that no other

distributors would be placed in this area. On November 28, 1967, Universal's representative came to town and he found locations at neighborhood grocery stores which Mr. Dawes did not think were the best. The location man "did not stay long enough to instruct me how to use these machines—* * *—or introduce me to any of the locations" (Tr. 387). One of the machines was removed from the original location in February of 1968 for the reason that it did not sell a tube, except for 5 or 6 tubes purchased by the owner. The second machine was removed about the end of 1968 when the store went out of business, and the third machine was removed about the middle of 1969 at the request of the owner of the store. The first machine removed was relocated in a supermarket on April 1, 1968, where it still remains, by Mr. Dawes who considered it a good location for the reason that it was a 24-hour discount grocery store drawing trade from all over town and not just the immediate neighborhood. About 100 to 150 tubes have been sold at this location. The record does not show whether or not the other machines were relocated, except on cross-examination Mr. Dawes said that, at his request, Universal did send a representative who relocated one of the testers where it was left for three months and did not sell a tube. Mr. Dawes said that his net earnings each year during the three-year period were less than a hundred dollars a year. On cross-examination, Mr. Dawes acknowledged that he read the purchase order contract before he signed it and that it contains the provisions, "No exclusive territories promised" and "no verbal agreements are valid," but he relied on the oral representations made to him at the time of the sale.

KENNETH F. HELMLE, of Mico, Texas, 30 years of age, with two years of college, who has been engaged in the business of floor covering sales during the past ten years, testified (Tr. 390–402) that on January 4, 1966, when he was living in San Antonio, Texas, he answered a Universal ad; that on January 20, 1966, Universal's representative, Mr. P. A. Krane, called on him and, with regard to potential profit from tube testing machines, he gave figures based on half of what the national average was; that a profit of $75 per week income could be made from six machines; that Universal secured locations and set up the machines; that they had taken a survey and there was an abundance of locations in his locality, and that he would get the pick of the group because he was the first to answer the ad in this area; that "if we ran into difficulties and the deal didn't go, he would have the company buy back the machines or arrange to sell them for us as an agent" (Tr. 399). After some discussion with Mr. Krane, Mr. Helmle said (Tr. 401): "I told him I

would like to think about it within the next day. He said he had a couple of other people in the area and it had to be now or never." On January 20, 1966, Mr. Helmle signed a purchase order contract (CX 96) for six tube testers with kits of tubes to be located in San Antonio for a total price of $3,595. The contract was approved by Universal and the company sent him a Resale Option Agreement (CX 97). On February 14, 1966, Universal's location man arrived and Mr. Helmle accompanied him to find places to locate the machines. Three were placed in small community hardware stores with a common owner, and three in small family grocery stores. In about two months, at the request of one of the grocery store owners, Mr. Helmle removed the machine; it was never relocated. He explained (Tr. 396): "I went to ten different small neighborhood groceries and got a refusal at each one. Most of them had some experience and found it wasn't worth their while to have the machine. It took up too much of their time for the profit involved." The three machines in the hardware stores were removed after a six-month period at the request of the owner, and an attempt to relocate them was unsuccessful. The remaining two machines were removed after eleven months on location for the reason that they were selling less than a tube a week. The gross sales from the locations were less than $300, which netted Mr. Helmle less than $100. On June 14, 1966, Mrs. Kenneth Helmle wrote to Universal (CX 99) in part:

> We are very disappointed in our business venture with you. We feel the returns are pitifully small for the investment involved, much smaller than was verbally presented. We would like to know what is involved in you exercising your right to buy back these testers.

On June 24, 1966, Universal wrote to Mrs. Helmle (CX 100), stating in part:

> It would seem that your route and business could stand some improvements by the statements in your letter. We are enclosing a guide line set of suggestions, that should help you in this matter if they are conscientiously applied.

On February 7, 1967, Mrs. Helmle wrote to Universal (CX 102) in part:

> Due to personal financial problems we need to sell our tube testers. * * *
> Five of the machines are out in locations, possibly not too good, as you can tell from our sales. * * *
> Please let us know how you can help us.

On February 17, 1967, Universal wrote to Mrs. Helmle (CX 103) in part:

> I am sorry to hear of your problems with the tube testing business and financial ones also.

We happen to have too many used machines on hand now, and cannot possibly use anymore than we have. We are presently using a newer model machine with some design changes and much newer head panels, so, it is hard for us to do anything with the older 202 or 203 model testers.

On September 19, 1967, Mrs. Helmle again wrote to Universal (C–104) in part:

The testers have not worked out in any way like your salesman indicated that they would and it looks as if we have been *taken*. If there is any way that you would or would help us move these testers at ⅔ or even ½ of what we paid for them, we would consider it a favor.
The machines are still complete and full of tubes.

WOODROW W. WILLIAMS, of Hutchinson, Kansas, 58 years of age, with one year of college, who has been employed as a warehouse foreman for the past two years, was a laundry truck driver for two years and prior to that had a cigar route, testified (Tr. 403–424) that he observed a Universal ad (CX 88) in a Hutchinson newspaper on March 5, 1967, which he answered. On March 19, 1967, Universal's representative, Mr. A. C. Dachroeden, came to see him and said that the bare minimum profit would be $1 each day per machine; that Universal would send out a man to find locations and give instructions on their operation; that he would be given an exclusive territory; and that "they would buy them back after a year's time, if I wanted, the sales representative said they would discount approximately 20 per cent. We stood to lose no more than the 20 per cent they would discount, if we sold them back at the end of the year" (Tr. 414). Mr. Williams said he would like another day to think it over. "He informed me he was just in town for the night. Other people were interested in the deal, if I didn't take it right now, I wouldn't have a chance" (Tr. 410). A purchase order was signed for three tube testers with tubes to be located in Hutchinson and the general area not to exceed five miles for the sum of $2,290 (CX 89) The machines were received on April 20, 1967, and about two weeks later Universal's location man arrived and requested Mr. Williams to help him locate the machines. Mr. Williams testified (Tr. 417):

* * * I told him that I was working and couldn't take the day off, that would be up to him. The ad stated he would do that. He said he was sorry, a company that big couldn't send a man all over the United States finding locations, I would have to help him find locations. So, I called my boss asking for the day off. We got two machines located that afternoon. He did help me. I hauled them in my car, but he did help me haul them.

He said, "Now, I have got to get out of town tonight. This should be the last time I am in town, I want you to sign this paper that I located the machines."

By that time, I knew I had been taken, and the quicker to get rid of him, the better. I signed the paper, and he was on his way. * * *

One machine was never put on location; one of the machines was placed in a small grocery store where it remained for fifteen months; and one was placed at a news and book stand where it was for about seven months. Mr. Williams did not relocate the machines, although he attempted to do so. He "found out that the machines were in practically every desirable outlet in Hutchinson. I decided it was useless * * * " (Tr. 412). The tube testers for the period on location grossed between $90 and $100, netting approximately $30. He did not receive any training on how to operate and take care of the machines. Mr. Williams said he did not receive an exclusive territory; that one of Universal's machines was within ten blocks of his home. On March 8, 1968, Mr. Williams wrote to Mr. Coker, president of Universal, stating (CX 92):

> According to our contract, if after 1 year on placement the tube testing machines proved unsatisfactory, you would re-purchase same from us.
> Will you please advise us as to how we are to proceed for your repurchase.

Universal responded on March 11, 1968, in part (CX 93):

> In reference to your letter of March 8th, you, apparently, are referring to the Resale Option Agreement. This instrument means we have the first option to sell your route for you, if after one year of operation, you are dissatisfied and decide to try and dispose of it. This does not mean we repurchase said route.

JERRY L. JOYNER, of Durango, Colorado, 36 years of age, a high school graduate, who until recently was the owner of a package liquor store, testified (Tr. 426–444) that, after answering a Universal ad that appeared in a local newspaper, Universal's representative, Mr. Benny Herwitz, called on him on August 8, 1966; that he could not definitely say that the salesman and he discussed profits, but he imagined they did, and "out of the Durango Herald advertisement it had from 250 to 350 a month could be realized profit" (Tr. 430). During the conversation, Mr. Herwitz said that, if he did not like the business and wanted out after at least one year, the machines be sold back to the company for $1,000 plus the original purchase price. A purchase order contract was signed on August 8, 1966, for three tube testers and tubes to be located for the sum $1,895 (CX 139). On September 23, 1966, Universal's location man arrived in Durango and he and Mr. Joyner found places to locate the three machines: No. 1 was placed in a Durango Service Station, and on November 17, 1966, it was moved to a Durango Seven-Eleven Store on a 25 percent commission basis where it remained until August 12, 1966 when another company moved in giving commissions of 50 percent. "This left the town flooded with T.V. tube testing machines" (Tr.

435). The unit was moved to a place in Bayfield, Colorado, where it was from August 12, 1968, to June 16, 1969. Mr. Joyner attempted to relocate the machine, but was not successful because "good locations already had machines" (Tr. 436). No. 2 was placed in a book and magazine shop in Durango where it remains on location. No. 3 was placed in a Seven-Eleven Store in Cortez, Colorado, and remained there until January 25, 1968, when, because another place could not be found, it was placed in Mr. Joyner's garage. His gross return on sales for the year 1966 were $98.65; for 1967, $664.70; for 1968, $98.44; for 1969, $139.70; and for 1970, $57.55. Mr. Joyner explained that for the year 1967, when his sales totaled $664.70, he paid commissions of $160.67 to the locations and $254.79 for tubes, which would leave a net of $249.24 without taking into consideration his time and automobile expenses in servicing the machines. Mr. Joyner wrote Universal about repurchasing the business and in response received its letter, dated November 16, 1967 (CX 140), saying in part:

In reference to your letter of November 14, 1967 concerning your inquiry about the possibility of selling your machines, we hope you do not have to undertake such action.

We try to assist a dealer to sell his route after 1 years time and if we have any prospects we can approach there for you. However we have no prospects for a route in your area at this time. The best advise we can offer at this time if you wish to sell your route is to advertise it in a few local papers under Business Opportunity section for 2 or 3 days.

On cross-examination, the following exchange took place (Tr. 439):

Q. Now, was it your understanding that after one year from the time you signed the contract, if you wanted to, you could resell this business to Universal at a profit of a thousand dollars?

A. This is what the salesman told me, yes, sir.

Q. So, if that's true, then you had a situation where you could not lose, is that right?

A. Well, this is why I went into it.

Q. I see. Now, would you consider that, you say that's why you went into it?

A. Well, that was one of the reasons. Plus, the other reason was what the advertisement in the paper said of approximately 250 to 350 per month profit.

SAM J. GEANETTA, of Colorado Springs, Colorado, 44 years of age, with two years of college, a salesman by occupation, testified (Tr. 445–469) that his partner, Mr. Thomas T. Skole, answered an ad of Universal in the Wall Street Journal and the two of them were present at the time. Universal's representative, Mr. Arthur Dachroeden, sold them twenty units with tubes to be located in Colorado

Springs, Denver, and Pueblo, Colorado, for the sum of $13,210 (see CX 109A-B, Universal's Bill of Sale, dated May 17, 1967). Mr. Dachroeden said each machine would sell four tubes per day at a profit of $1.02 per tube; that the area assigned would be an exclusive territory; and that after one year Universal would, at their request, resell the business for them at a price so they would get all of their money back. In July of 1967, the machines were placed by Universal's location man in the three mentioned cities. In about 30 or 90 days, Mr. Geanetta and Mr. Skole relocated a number of the machines for the reason that they were not making any money. They had to make extensive calls because about 90 out of 100 of the places already had a unit. Ten of the machines are now on location and ten are stored in a garage because they could not get anyone to take them. From July 1967 to date, the amount collected totaled about $2,500 after payment of commissions to the locations and the cost of tubes. This figure does not take into consideration the expense of servicing the machines. Mr. Geanetta observed an advertisement of Universal in a Denver newspaper about three to six months after they purchased the twenty units, but does not know of any other Universal dealer in the three Cities. He wrote a letter direct to Mr. Coker of Universal about reselling the units, but he refused. Mr. Geanetta testified (Tr. 464):

> Well, the letter stated, being that we hadn't bought any tubes from him and hadn't helped him any, he wasn't going to do anything for us. That was basically the letter I received back from Mr. Coker. Of course, the only reason we weren't buying tubes from Universal Electronics is because we were not selling any.

HARRY O. BLOUNT, JR., of Great Falls, Montana, 45 years of age, a college graduate, who is a retired Lieutenant Colonel of the Air Force after 23 years of service, and at present is a Civil Service employee at an Air Force base, testified (Tr. 469–485) that he got in touch with Universal after seeing one of their advertisements in a Great Falls newspaper; that Universal's representative, Mr. Misemer, contacted him on July 20, 1967, and sold him on that day three tube testers with tube kits to be located in Great Falls and the immediate area for the sum of $2,290 (CX 141); the Mr. Misemer gave him an estimate that $100 to $200 a month profit should be realized with three to five machines; that they would do a market research to come up with good locations that would sell; that, after a year, if he was dissatisfied with the operation, Universal would attempt to resell the units at a price so that he would get his full investment

back. On November 22, 1967, Universal's location man arrived and obtained locations for the three machines (CX 142, 143 and 144): No. 1 location was a grocery store which Mr. Blount has described as being small in size in the Great Falls slum area which served people who could not afford to purchase a tube; No. 2 location was Texaco Service Station which was described as being small and in complete shambles, with a clientele that would be very unlikely to be searching for tubes; No. 3 location was an Enco Service Station which, Mr. Blount said, was modern and up-to-date and in a good area. Mr. Blount was not satisfied with the locations obtained for him and so informed the location man; but the location man insisted they were good locations and that they would sell. However, he requested the location man to find new locations but he said he could not find any other locations. Mr. Blount said that, after the machines had been on location for about three months, it was obvious to him that he was not going to make anything off of them. He looked around town but could not find a place to relocate them because practically every store in town had machines. The Machine at the grocery store remained on location for six months; the machine at the Texaco Station remained on location for eight to twelve months; and the machine at the Enco Station remained on location for about three or four months. Mr. Blount grossed $30 to $40 from the three machines, which netted him about $16. He said that Mr. Misemer told him at the time he made the sale to him that, after the machines were located, he or someone else would come to see how he was doing and if any improvements could be made, but no one came to assist him. Universal repurchased the machines and tubes for $723.80. He shipped them in April or May 1970, and in June 1970 Universal mailed him a check.

In the proposed findings submitted by the respondents, they do not question the propriety of an entry of an order against the corporate respondent, but contend that the evidence does not warrant the entry of an order against the respondent in his individual capacity, relying primarily for their position on *Coro, Inc., et al.* v. *F.T.C.*, 338 F. 2d 149 (1st Cir. 1964), wherein the Court said (at p. 154):

> We do think, however, that there is not a sufficient showing to warrant the inclusion of Rosenberger personally in the order. He was Coro's largest stockholder, its president and the chairman of its board of directors. And there is testimony, his own, that he had "overall corporate responsibility" and "responsibility for the acts and practices of the corporation" and that he made the decision to put Coro into the catalogue house business. *But there is no showing that he was aware of the pricing practices of catalogue houses or that he personally knew of Coro's participation in those practices.* In short, unlike Theo-

dore R. Hodgkins in Forster Mfg. Co. v. F.T.C., 335 F. 2d 47 (C.A. 1 1964), there is no showing of Rosenberger's active or even actual personal participation in the unlawful practices of the corporation under his overall management and control. In the absence of evidence of personal involvement in Coro's unlawful conduct, we think the hearing examiner was correct in finding no sufficient reason for holding Rosenberger individually responsible and in dismissing the complaint as to him individually. (Emphasis added.)

The respondents also rely upon *Flotill Products, Inc.* v. *F.T.C.*, 358 F. 2d 224 (9th Cir. 1966); *Doyle* v. *F.T.C.*, 356 F. 2d 381 (5th Cir. 1966); and *F.T.C.* v. *Standard Ed. Soc., et al.*, 302 U.S. 112 (1937). Considering the facts in this proceeding, there is nothing in the aforementioned cases that would support the position of the respondents. In the *Standard Education Society* case, *supra*, the Supreme Court said (at p. 120):

The record in this case discloses closely held corporations owned, dominated and managed by these three individual respondents. In this management these three respondents acted with practically the same freedom as though no corporation existed. So far as corporate action was concerned, these three were the actors. Under the circumstances of this proceeding, the Commission was justified in reaching the conclusion that it was necessary to include respondents Standard, Ward and Greener in each part of its order if it was to be fully effective in preventing the unfair competitive practices which the Commission had found to exist. The court below was in error in excluding these respondents from the operation of the Commission's order.

The Commission in *Coran Bros. Corp., et al.*, Docket No. 8697, July 11, 1967 [¶18,030 CCH Trade Reg. Rep.] [72 F.T.C. 1], had this to say:

The public interest requires that the Commission take such precautionary measures as may be necessary to close off any wide "loophole" through which the effectiveness of its orders may be circumvented. Such a "loophole" is obvious in a case such as this, where the owning and controlling party of an organization may, if he later desires, defeat the purposes of the Commission's action by simply surrendering his corporate charter and forming a new corporation, or continuing the business under a partnership agreement or as an individual proprietorship with complete disregard for the Commission's action against the predecessor organization. * * *

It is the opinion of the hearing examiner, on the facts presented by this record, that not only should an order be entered against the corporation, but also against the respondent, Wendell Coker, in his individual capacity as a party in this proceeding. It is shown and established that he is now, and has been during the entire period of the existence of the corporation, the president and sole stockholder thereof; that he, alone, formulated, directed and controlled the acts and practices of the corporate respondent; and that he was responsi-

ble for, familiar with, and personally participated in, the specific acts and practices which are challenged in this proceeding. Furthermore, it is the opinion of the hearing examiner that without including the respondent, Wendell Coker, in his individual capacity, there is a possibility that the order will be evaded.

ORDER

It is ordered, That respondents Universal Electronics Corporation, a corporation, and its officers, and Wendell Coker, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of radio and television tube testing devices and the tubes, supplies or equipment for use in connection therewith, or of any other products or of any franchises or dealerships in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Persons investing in respondents' products, franchises or dealerships will receive any stated amount of income or gross or net profits or other earnings.

(b) Any stated sums of money are past earnings of investors or purchasers of respondents' products unless in fact the past earnings represented are those of a substantial number of purchasers and accurately reflect the average earnings of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

(c) Persons investing in respondents' franchises, dealerships or products will receive discounts from respondents on repeat business which assures them of an exceptional or profitable income, or are assured of an exceptional or profitable income from franchises, dealerships or products for any other reason.

(d) Persons, investing in respondents' franchises, dealerships or products can expect an average sale of a certain specified number of tubes per day, or any other period of time, for each machine so purchased from respondents unless in fact the average number of tube sales during the time period as represented is that of a substantial number of franchisees, dealers, or purchas-

ers under circumstances similar to those of persons to whom the representation is made.

(e) Respondents, their agents, representatives or employees will obtain satisfactory or profitable locations for the machines purchased from them: *Provided, however*, That nothing herein shall be construed to prohibit respondents from truthfully and non-deceptively representing that they have obtained locations or assisted in obtaining locations if respondents clearly and conspicuously disclose, in immediate conjunction therewith, the average net or gross earnings realized by a substantial number of purchasers from machines in location obtained by respondents or through their assistance under circumstances similar to those of the purchaser to whom the representation is made.

(f) Persons investing in respondents' franchises, dealerships, machines or other products will receive training, or other advice and assistance, in the operation of and the methods to be used in servicing respondents' said machines or any other products unless in fact the respondents afforded training, advice and assistance in the operation of and the methods to be used in servicing respondents' machines or other products to each purchaser to the extent of and in conformity with the representations being made to the investor or purchaser.

(g) Selling, soliciting or experience is not required to establish, operate or maintain a route of respondents' machines, or other products; or misrepresenting in any manner, the amount of selling, soliciting or experience required to establish and operate or maintain the route.

(h) Respondents or their representatives will accept return of, or will obtain or assist in obtaining a purchaser for, or will assist in the resale of machines or other products sold by them.

(i) Persons investing in respondents' franchises, dealerships, machines or other products will receive the return of their investments in nine months, one year or any other specified period of time.

(j) Persons investing in respondents' franchises, dealerships, machines or other products will be granted an exclusive territory in which to locate machines and sell products purchased from respondents unless respondents provide in all contracts or purchase agreements with dealers, franchi-

sees or purchasers of respondents' tube testing machines, tubes and other products, to whom such exclusive territories have been granted, a description of the size and limits of the territories, and a statement that no other investor, dealer, franchisee or purchaser of the same machines or products has been, or will be granted the same territory or any part thereof and respondents in all instances abide by such provisions.

2. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, franchises or dealerships and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

3. Failing, after the acceptance by the Commission of respondents' initial report of compliance, to submit to the Commission on June 1st of each of the succeeding three years a report: (1) describing every complaint involving the acts and practices prohibited by this order received by respondents and their licensees or franchisees from or on behalf of their customers during the 12 months preceding the date of the report; (2) setting forth the facts uncovered by respondents or their licensees or franchisees in connection with the investigation made of each such complaint; and (3) stating the action taken by respondents or their licensees or franchisees with respect to each such complaint.

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

It is further ordered, That respondents

a. Inform orally all prospective customers and provide in writing in all contracts that (1) the contract may be cancelled for any reason by notification to respondents in writing within three days from the date of execution and (2) that the contract is not final and binding until respondents have completely performed their obligations thereunder by placing the vending machines in locations satisfactory to the customer and said customer has thereafter signed a statement indicating his satisfaction.

b. Refund immediately all monies to (1) customers who have requested contract cancellation in writing within three days from the execution thereof, (2) customers who have refused to sign statements indicating satisfaction with respondents' place-

ment of the machines, and (3) customers showing that respondents' contract, solicitations or performance were attended by or involved violations of any of the provisions of this order.

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

It is further ordered, That 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.

Final Order

By its order of December 29, 1970, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission having concluded that said initial decision, filed on November 6, 1970, holding that respondents had violated Section 5 of the Federal Trade Commission Act as charged, is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Universal Electronics Corporation and Wendell Coker, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

In the Matter of

FINE ARTS STERLING SILVER COMPANY, ET AL.

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

Docket C-1858. Complaint, Feb. 1, 1971—Decision, Feb. 1, 1971

Consent order requiring a Jenkintown, Pennsylvania, seller and distributor of sterling silver tableware to cease violating the Truth in Lending Act by failing to print more conspicuously the terms "annual percentage rate"

and "finance charge," failing to use the term "periodic rate" where required, failing to disclose the annual percentage rate when imposing a minimum finance charge which exceeds 50 cents per month, failing to use the terms "previous balance," "payments" and "finance charge" when billing its debtors, and failing to properly use the term "new balance" to indicate the date on which payments must be made to avoid additional charges.

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 Fine Arts Sterling Silver Company, a corporation, and Jerry N. Ashway, 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 Fine Arts Sterling Silver Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in Jenkintown, Pennsylvania.

Respondent Jerry N. Ashway is an officer of the corporate respondent. He formulates, directs, and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of sterling silver tableware and other merchandise to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time last past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in the aforesaid Regulation Z, have caused and are causing their customers to enter into an open end agreement, hereinafter referred to as "the agreement." The

agreement provides for the extension of open end credit, as "open end credit" is defined in Regulation Z. By and through the use of the agreement, respondents:

1. Fail to employ the term "finance charge," as required by Section 226.7(a) of Regulation Z, and also thereby fail to print this term more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

2. Fail to print the term "annual percentage rate" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

3. Fail to disclose each periodic rate that may be used to compute the finance charge; the range of balances to which each rate is applicable; and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year, as required by Section 226.7(a)(4) of Regulation Z.

4. Fail to disclose the annual percentage rate accurately to the nearest quarter of one percent when imposing a minimum finance charge which exceeds 50 cents per month and is not determined by application of a periodic rate, as required by Section 226.5(a)(3)(i) of Regulation Z.

5. Fail to disclose the method of determining the balance upon which a finance charge may be imposed, as required by Section 226.7(a)(2) of Regulation Z.

6. Fail to disclose the minimum periodic payment required, as required by Section 226.7(a)(8) of Regulation Z.

7. Fail to make all disclosures required by Section 226.7(a) clearly, conspicuously and in meaningful sequence, as required by Section 226.6(a) of Regulation Z.

PAR. 5. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have sent and are sending to customers periodic statements, as "periodic statements" are described in Sections 226.7(b) and (c) of Regulation Z. By and through the use of the periodic statements respondents:

1. Fail to employ the term "previous balance" to describe the outstanding balance in the account at the beginning of the billing cycle, as required by Section 226.7(b)(1) of Regulation Z.

2. Fail to employ the term "payments" to describe the amounts credited to the account during the billing cycle for payments, as required by Section 226.7(b)(3) of Regulation Z.

3. Fail to employ the term "finance charge" to describe the amount of any finance charge debited to the account during the bill-

ing cycle, as required by Section 226.7(b)(4) of Regulation Z, and thereby fail to print the term "finance charge" more conspicuously than other required terminology as required by Section 226.6(a) of Regulation Z.

4. Fail to disclose accurately the periodic rate (or rates) that may be used to compute the finance charge (whether or not applied during the billing cycle), as required by Section 226.7(b)(5) of Regulation Z.

5. Fail to print the term "annual percentage rate" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

6. Fail to disclose the balance on which the finance charge was computed, as required by Section 226.7(b)(8) of Regulation Z.

7. Fail to disclose the outstanding balance in the account on the closing date of the billing cycle, using the term "new balance," and to accompany the amount of the "new balance" by statement of the date by which, or the period, if any, within which, payment must be made to avoid additional finance charges, as required by Section 226.7(b)(9) of Regulation Z.

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

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents

have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedures prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Fine Arts Sterling Silver Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in Jenkintown, Pennsylvania.

Respondent Jerry N. Ashway, is an officer of the corporate respondent. He formulates, directs, and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

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 Fine Arts Sterling Silver Company, a corporation, and its officers, and Jerry N. Ashway, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with any consumer credit sale of sterling silver tableware or any other merchandise or service, as "credit sale" is defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*) do forthwith cease and desist from:

1. Failing to print the terms "annual percentage rate" and "finance charge," where required by Regulation Z to be used, more conspicuously than other required terminology, as set forth in Section 226.6(a) of Regulation Z.

2. Failing to disclose, where one or more periodic rates may be used to compute the finance charge, each such rate, using the term "periodic rate" (or "rates"), the range of balances to which each rate is applicable, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year, as required by Section 226.7(a)(4) of Regulation Z.

3. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent when imposing a minimum finance charge which exceeds 50 cents per month and is not determined by application of a periodic rate, as required by Section 226.5(a)(3)(i) of Regulation Z.

4. Failing to disclose the method of determining the balance upon which a finance charge may be imposed, as required by Section 226.7(a)(2) of Regulation Z.

5. Failing to disclose the minimum periodic payment required, as required by Section 226.7(a)(8) of Regulation Z.

6. Failing to make all disclosures required by Section 226.7(a) clearly, conspicuously and in meaningful sequence, as required by Section 226.6(a) of Regulation Z.

7. Failing to employ the term "previous balance" to describe the outstanding balance in the customer's account at the beginning of the billing cycle, as required by Section 226.7(b)(1) of Regulation Z.

8. Failing to employ the term "payments" to describe the amounts credited to the customer's account during the billing cycle for payments, as required by Section 226.7(b)(3) of Regulation Z.

9. Failing to employ the term "finance charge" to describe the amount of any finance charge debited to the account during the billing cycle, as required by Section 226.7(b)(4) of Regulation Z.

10. Failing to disclose accurately the periodic rate (or rates) that may be used to compute the finance charge (whether or not applied during the billing cycle), as required by Section 226.7(b)(5) of Regulation Z.

11. Failing to disclose the balance on which the finance charge was computed, as required by Section 226.7(b)(8) of Regulation Z.

12. Failing to employ the term "new balance" to describe the outstanding balance in the account on the closing date of the billing cycle, and to accompany the amount of the "new balance" by statement of the date by which, or the period, if any, within which, payment must be made to avoid additional finance charges, as required by Section 226.7(b)(9) of Regulation Z.

13. Engaging in any consumer credit transaction or disseminating any advertisement within the meaning of Regulation Z of the Truth in Lending Act without making all disclosures that are required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10

of Regulation Z in the amount, manner and form therein specified.

It is further ordered, That respondent 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 respondent secure a signed statement acknowledging receipt of said order from each such person.

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

IN THE MATTER OF

LEON WOLFF TRADING AS LINCOLN SCHOOL OF PRACTICAL NURSING

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

Docket C-1859. Complaint, Feb. 1, 1971—Decision, Feb. 1, 1971

Consent order requiring a Los Angeles, California, individual selling a correspondence course of instruction in practical nursing to cease misrepresenting that completion of respondent's course will qualify a person to perform the functions of, or be qualified for employment as, a practical nurse, misrepresenting the training afforded or the type of employment for which a trainee will qualify, using the words "practical nursing" in any of his promotional material, and failing to clearly disclose in such material that persons completing the course need properly supervised experience.

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 Leon Wolff, an individual, trading and doing business as Lincoln School of Practical Nursing, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Leon Wolff is an individual trading and doing business as Lincoln School of Practical Nursing with his office

and principal place of business located at 805 Larrabee Street, in the city of Los Angeles, State of California.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of a correspondence course of instruction in practical nursing.

PAR. 3. In the course and conduct of his said business, respondent now causes, and for some time last past has caused, his said correspondence courses, when sold to be shipped from his place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said correspondence courses in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, and at all times mentioned herein, the respondent has been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of study and instruction.

PAR. 5. In the course and conduct of his business, respondent has disseminated, and caused the dissemination of, advertisements and other promotional material describing his said course of instruction, by the United States mails and by various other means, including but not limited to advertisements inserted in nationally circulated magazines and in brochures, circulars and form letters, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of his said course of instruction.

PAR. 6. By means of statements contained in said advertisements and promotional material, disseminated as aforesaid, and by use of the words "Practical Nursing" as a part of his trade name respondent represents and has represented, directly or by implication, that:

1. Persons completing respondent's course of instruction will thereby have become and will be proficient and competent in the performance of the duties and functions of a practical nurse.

2. Persons completing respondent's course of instruction will thereby have become and will thereby be a practical nurse.

3. Persons completing respondent's course of instruction will thereby become and will thereby be qualified for employment as a practical nurse on general or special duty in hospitals, clinics, nursing homes and other institutions or in private homes.

PAR. 7. In truth and in fact:

1. Persons who complete said course will not thereby have become and will not thereby be proficient and competent in the performance of the duties and functions of a practical nurse. Nursing consists of

manual and technical skills performed for the safety and welfare of patients. To properly teach nursing duties and functions, it is necessary to instruct, demonstrate, have return demonstration, and, if necessary, corrections and demonstrations. Clinical experience is also necessary. Respondent's course of instruction consists only of text material and simple written examinations and therefore is not adequate to properly teach the duties and functions of a practical nurse.

2. Persons completing respondent's course of instruction will not thereby have become and will not thereby be a practical nurse.

3. Persons completing respondent's course of instruction will not thereby become and will not thereby be qualified for employment as a practical nurse on general or special duty in hospitals, clinics, nursing homes and other similar or related institutions or in private homes.

Therefore, the statements and representations referred to in Paragraph Six hereof were, and are, false, misleading and deceptive.

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

PAR. 9. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Leon Wolff is an individual trading and doing business as Lincoln School of Practical Nursing with his principal office and place of business located at 805 Larrabee Street, Los Angeles, California.

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

ORDER

It is ordered, That respondent Leon Wolff, an individual trading and doing business as Lincoln School of Practical Nursing or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of courses of instruction in nursing or any other subject, trade or vocation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Persons completing respondent's course of instruction in practical nursing will, by virtue of having completed said course, have become and will thereby be proficient and competent in the performance of the duties and functions of a practical nurse;

2. Persons completing respondent's course of instruction in practical nursing will, by virtue of having completed said course, have become and will thereby be a practical nurse;

3. Persons completing respondent's course of instruction in practical nursing will, by virtue of having completed said course, have become and will thereby be qualified for employment as a practical nurse.

B. Misrepresenting, in any manner:

1. The training afforded by any of respondent's courses;

2. The nature or type of employment for which persons completing any of respondent's courses of instruction will thereby be qualified.

C. Using the words "practical nursing" or any other words or terms of similar import or meaning as a part of a trade or corporate name, or in advertising and promotional material, form letters or other printed or written material; misrepresenting in any other manner that respondent is engaged in training persons to be practical nurses: *Provided, however*, That nothing herein shall be deemed to prevent respondent from using the terms "nurse's aide" or "nursing attendant" in a truthful and nondeceptive manner.

It is further ordered, That, in any advertisement seeking leads to prospective purchasers of his course in practical nursing, the respondent herein shall disclose clearly, and in type no smaller than the largest size type used in the body copy of the advertisement, that persons completing said course cannot consider themselves competent in the performance of nursing skills until they have had properly supervised experience, in addition to respondent's course: *Provided*, That nothing herein shall be deemed to prevent respondent from making truthful and nondeceptive representations as to the nature of such training as may be provided by his course.

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

IN THE MATTER OF

BLACKSTONE SCHOOL OF LAW, INC., ET AL.[1]

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

Docket 5906. Complaint, July 18, 1951—Decision, Feb. 10, 1971[2]

Order modifying an order of June 29, 1954, 50 F.T.C. 1070, which required a Chicago, Illinois, correspondence school of law to cease misrepresenting that its degrees in law qualified holders to take a State's bar examination without more preparation, by further requiring it to cease failing to disclose that its courses will not qualify a student to take the bar examination unless additional educational requirements are met, using the word

[1] Formerly Blackstone College of Law, Inc.

[2] Modified by Commission's order of August 23, 1971, by setting aside Paragraph (3) of the order, 79 F.T.C. 285.

"college" without disclosing that the enterprise is a correspondence institution, and offering to confer any standard law degree. Enforcement of the last provision is stayed until the Commission rules on a similar question *In the Matter of LaSalle Extension University,* Docket No. 5907.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission, on January 19, 1970, issued an order against respondents, Blackstone College of Law, Inc., and Harold R. Lister, individually and as an officer of said corporation, to show cause why a prior Commission order to cease and desist, issued against respondents on June 29, 1954 [50 F.T.C. 1070], should not be modified. Respondents filed an answer raising substantial factual issues, and the Commission, on July 30, 1970, issued a further order reopening the proceeding and directing hearings for the receipt of evidence and the filing of an initial decision as to whether the Commission's order to cease and desist herein should be modified.

On September 22, 1970, corporate respondent submitted an offer of settlement and moved that it be certified to the Commission. Submitted therewith was an affidavit of corporate respondent's vice president wherein he averred that respondent Harold R. Lister is now deceased. In a paper filed by counsel supporting the complaint, the averments set out in the affidavit were said to be true and correct insofar as they were known by complaint counsel. Respondent's offer of settlement was not opposed by complaint counsel, but the hearing examiner believed that certain portions of the proposed settlement order required explanation and accordingly issued an order directing the parties to file appropriate memoranda addressed to those portions. Instead, respondent filed, on October 27, 1970, an amendment to its earlier settlement order. Complaint counsel, in their memorandum to the examiner, stated that they believed that the amended order met the examiner's questions concerning the original settlement offer. No hearings were held and so the examiner did not recommend findings, conclusions or an order. He certified respondent's proposed settlement order, with comments respecting the variations between it and the proposed order in the Order to Show Cause and the Commission's 1954 order.

Because respondent's proposed settlement order differed in substance from the order proposed in the Order to Show Cause, and because it was not known whether those differences could be supported by findings of fact, the Commission issued, on November 19, 1970, an order rejecting respondent's offer of settlement.

The Commission further ordered that the matter be remanded to the hearing examiner for hearings, or for settlement without hear-

ings, provided such settlement did not differ from the proposed settlement in the Order to Show Cause, issued on January 19, 1970. The Commission order did provide, however, that a settlement order could include a provision that enforcement of Paragraph 3 of said proposed order would be stayed unless and until the Commission disposes of the Order to Show Cause proceeding *In the Matter of LaSalle Extension University*, Docket 5907 [p. 1272 herein], by a modified order containing a substantially similar proscription to that of Paragraph 3, or in the event that the order issued in Docket 5907 with respect to Paragraph 3 is less strict, corporate respondent herein would be bound by a similar provision in substantially the same form.

The hearing examiner certified, on December 9, 1970, respondent's amended offer of settlement. It is identical to the proposed settlement in the aforesaid Order to Show Cause, except that it provides that Paragraph 3 of the proposed settlement order shall be stayed and become operative in the manner provided by the Commission's November 19, 1970, order.

The Commission is of the opinion that the public interest requires, for the reasons set forth in its Order to Show Cause, dated January 19, 1970, that the order entered on June 29, 1954, be modified. Accordingly,

It is ordered, That the Commission order of June 29, 1954 [50 F.T.C. 1070], be, and it hereby is, modified to read as follows:

It is ordered, That the respondent Blackstone School of Law, Inc., a corporation, formerly Blackstone College of Law, Inc., and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from:

(1) Failing, in connection with respondent's courses of study in law, clearly and conspicuously to disclose; (a) in any advertisement or offer to sell; (b) on each page of any promotional material or descriptive brochure; (c) in each enrollment form, application form, sales contract or similar document, in type as large as the largest type appearing thereon; that said courses are not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States of the United States or the District of Columbia: *Provided, That*, respondent may qualify such disclosure by listing those States which will accept said courses if additional education and legal training re-

quirements are met: *And provided further*, That respondent clearly and conspicuously and in immediate conjunction thereto disclose all such additional requirements.

(2) Using the word "college" or any word or words of similar import or meaning in the corporate name or in any other manner to designate or refer to respondent's school, unless, in bulletins, lesson material, textbooks, diplomas and other promotional material, and sales presentations whenever used, it is clearly and conspicuously stated in immediate conjunction with such word or words that respondent's enterprise is a correspondence school without resident facilities or that it is "a correspondence institution" or "an institution for correspondence students."

(3) Conferring or offering to confer an LL.B., LL.M., J.D., S.J.D. or any other degree in the field of law upon purchasers of respondent's courses of study and instruction in law.

It is further ordered, That enforcement of Paragraph 3 of the above modified order be stayed unless and until the Commission disposes of the Order to Show Cause proceeding in Docket 5907 [p. 1272 herein] by a modified order containing a substantially similar proscription, or in the event that the order issued in Docket 5907 has a less strict proscription than Paragraph 3, respondent herein will be bound by a similar provision in substantially the same form.

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

It is further ordered, That the June 29, 1954, order be vacated as to respondent Harold R. Lister, individually and as an officer of respondent corporation.

IN THE MATTER OF

UNITED INDUSTRIAL SYNDICATE, INC.

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

Docket C-1860. Complaint, Feb. 12, 1971—Decision, Feb. 12, 1971

Consent order requiring a New York City manufacturer of automotive fuel pumps to divest within one year the fuel pump business of an acquired competitor located in Fon du Lac, Wisc., to an FTC approved firm, and refrain from acquiring any other fuel pump business for a period of ten years without Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that United Industrial Syndicate, Inc. has violated the provisions of Section 7 of the Clayton Act, as amended, (15 U.S.C. Section 18), through its acquisition of Wells Mfg. Corporation, hereby issues this Complaint pursuant to Section 11 of said Act (15 U.S.C. Section 21) chaging as follows:

I. Definition

1. Wherever the term "fuel pumps" is used in this complaint, such term is defined to mean automotive fuel pumps, is limited solely to mechanical fuel pumps and does not include electrical fuel pumps.

II. United Industrial Syndicate, Inc.

2. Respondent United Industrial Syndicate, Inc. (herein "UIS"), is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 45 Rockefeller Plaza, New York, New York.

3. Respondent UIS is a diversified corporation engaged, through its divisions and subsidiaries, in manufacturing and/or distributing a variety of products including, *inter alia*, automotive replacement parts, machinery and metal products, motion picture projector equipment, textiles, yarns, fabrics, furniture and wood products, glass products, and confectionary products. UIS's 1969 consolidated net sales were approximately $100,000,000.

4. In the automotive replacement parts field, UIS presently manufactures and sells fuel pumps (both new and rebuilt), water pumps, hydraulics, hydraulic brake parts, water outlets, PCV valves, front end suspension and steering parts, ignition parts, and carburetor repair kits.

5. UIS's 1967 sales of automotive replacement parts were in excess of $13,380,000. UIS's 1967 sales of fuel pumps for replacement use, made through its Airtex Division located at Fairfield, Illinois, were approximately $5,900,000.

6. At all times relevant herein, UIS has sold and shipped, and is now selling and shipping its products throughout the United States in interstate commerce, as "commerce" is defined in the Clayton Act.

III. Wells Mfg. Corporation

7. Prior to its acquisition by USI on December 20, 1967, Wells Mfg. Corporation (herein "Wells") was a corporation organized and existing under the laws of the State of Delaware with its principal

office and place of business at 2–26 South Brooke Street, Fond du Lac, Wisconsin.

8. At the time of its acquisition, Wells was engaged principally in the manufacture and sale of ignition parts and fuel pumps (both new and rebuilt) for replacement use.

9. Wells' total 1967 sales were approximately $10,420,00, of which replacement fuel pump sales accounted for approximately $3,535,000.

10. At all times relevant herein, Wells sold and shipped its products throughout the United States in interstate commerce, as "commerce" is defined in the Clayton Act.

IV. Trade and Commerce

11. The relevant geographical market involved in this complaint is the United States as a whole.

12. Manufacturers of fuel pumps for replacement use sell to wholesalers, tire companies, oil companies, replacement parts divisions of the vehicle manufacturers, and direct to certain retailers such as mass merchandisers. These customers in turn supply the repair shops, service stations, vehicle dealers, and other automotive parts retailers, which serve the ultimate consumer (*i.e.*, the vehicle owner).

13. Fuel pumps for replacement use may be either new or rebuilt. The relevant product markets involved in this complaint consist of: (1) the manufacture and sale of new and rebuilt fuel pumps for replacement use, and (2) the manufacture and sale of new fuel pumps for replacement use.

14. Total U.S. combined sales of new and rebuilt fuel pumps for replacement use were approximately $42,000,000 in 1967. In that year, prior to the UIS-Wells acquisition, the four leading manufacturers accounted for approximately 60 percent of total sales; and the eight leading manufacturers accounted for approximately 73 percent of total sales. In 1967, UIS (through its Airtex Division) ranked second and Wells ranked third, approximately, in combined sales of new and rebuilt fuel pumps for replacement use.

15. Total U.S. sales of new fuel pumps for replacement use were approximately $26,00,000 in 1967. Such new fuel pumps have been in recent years manufactured and sold by six companies. The four leading manufacturers accounted for approximately 88 percent of total sales in this market in 1967, prior to the challenged acquisition. UIS (Airtex Division) ranked second and Wells fourth, approximately, in this market in 1967.

16. At the time of UIS's acquisition of Wells, UIS and Wells were actual competitors in the manufacture and sale of new and rebuilt fuel pumps for replacement use, as well as new fuel pumps for replacement use.

V. The Acquisition

17. On or about December 20, 1967, UIS purchased all the assets and business of Wells for $4,490,000 in cash.

18. As a result of UIS's acquisition of Wells, UIS strengthened its position as the second ranking manufacturer and seller of new and rebuilt fuel pumps for replacement use, as well as new fuel pumps for replacement use, and increased its percentage shares of both markets.

VI. Violation

19. The effect of the acquisition of Wells by UIS has been or may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of new and rebuilt fuel pumps for replacement use, as well as new fuel pumps for replacement use, in the United States in the following ways, among others:

(a) Actual competition between UIS and Wells has been eliminated;

(b) Concentration has been increased;

(c) Barriers to the entry of new competitors have been, or may be, increased.

20. The acquisition of Wells by UIS, as alleged above, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

Decision and Order

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a settlement 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it has 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 provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having received and duly considered comments from interested members of the public, 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 45 Rockefeller Plaza, New York, New York.

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

ORDER

For the purposes of this Order, "respondent" shall mean United Industrial Syndicate, Inc. and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns.

I

It is ordered, That respondent within twelve (12) months from the effective date of this order, shall divest, subject to the approval of the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible, of Wells Mfg. Corp. (formerly Wells Mfg. Corporation) relating to the manufacture and sale of fuel pumps. Among other things such divestiture shall include:

(a) All the equipment and machinery relating to the manufacture and sale of fuel pumps;

(b) At the option of the acquirer, Plant No. 3, located at 305 Taylor Street, Fond du Lac, Wisconsin, said plant to be outfitted with the aforesaid equipment and machinery promptly after acquirer has signed a contract of acquisition and in substantial conformity with plant layout blueprints submitted with respondent's settlement proposal, dated October 16, 1970: *Provided*, The Commission may determine that an acquirer's decision to not acquire Plant No. 3 would adversely affect the competitive viability and effectiveness of the business to be divested;

(c) All inventories, customer lists, trademarks and trade names, including "Capac" and "AMPCO," it being understood that a license to use "AMPCO" in connection with ignition parts will be reserved by respondent, and that respondent will make accessible to the acquirer such records and its employed personnel as may facilitate the acquirer's initial operations of the acquired operations.

II

It is further ordered, That respondent will do all in its power to assure that the business operations to be divested will be properly staffed and, in particular, that all available means will be employed by respondent to assist the acquirer in retaining present management, personnel, and sales representatives of Wells Mfg. Corp. whom the acquirer wishes to employ and engage and that respondent will terminate its own employment of any such persons at the earliest date permitted by any employment contract in effect July 24, 1970, and will refrain from inducing such persons to leave the acquired operations for employment with respondent. The foregoing divestiture shall be achieved in a manner insuring the operation of the divested business by the acquirer as a going concern in the manufacture and sale of fuel pumps.

III

It is further ordered, That such divestiture shall be made to an acquirer approved in advance by the Federal Trade Commission, and in any event shall not be made directly or indirectly: (a) to any concern engaged in the manufacture, sale or distribution of new automotive fuel pumps; or (b) to any concern whose new automotive parts aftermarket sales (excluding sales to the automotive vehicle manufacturers) exceeded $20,000,000 in 1967; or (c) to any person who is at the time of the divestiture or has been at any time during the one-year period preceding the effective date of this order, an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliate corporations, or anyone who owns or controls, or has owned or controlled, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of respondent.

IV

It is further ordered, That pending divestiture, respondent shall not make or permit any deterioration in any of the plants, machin-

ery, buildings, equipment or other property or assets of the company to be divested which may impair their present capacity or market value.

V

It is further ordered, That commencing on the effective date of this order and continuing for a period of ten (10) years from and after the date of completing the divestiture required by this order, respondent shall cease and desist from entering into any arrangement by which respondent acquires, directly or indirectly, through subsidiaries, joint ventures or otherwise, without prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern engaged in the manufacture, sale or distribution of automotive fuel pumps, nor shall respondent enter into any arrangement with any such concern by which respondent obtains the market share, in whole or in part, of such concern in the above-mentioned product line (a) through such concern discontinuing the manufacturing, distribution or sale of automotive fuel pumps under its own trade name or labels and thereafter distributing such products under respondent's trade name or labels or (b) by reasons of such concern discontinuing the manufacture, distribution or sale of such products and thereafter transferring to respondent customer lists or in any other way making available to respondent access to customers or customer accounts, or (c) by any other means.

VI

It is further ordered, That regarding Paragraphs I–IV of this order, respondent shall periodically, within sixty (60) days from the effective date of this order and every sixty (60) days thereafter until respondent has fully complied with the provisions of this order, submit to the Federal Trade Commission a detailed written report of its actions, plans and progress in complying with the provisions of this order and fulfilling its objectives, including such documentation as may be required. Regarding Paragraph V of this order, respondent shall file a report of compliance within sixty (60) days after the effective date of this order and annually thereafter on the anniversary date of this order.

VII

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, assignement or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any change in the corporation which may effect compliance obligations arising out of the order.

VIII

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

IN THE MATTER OF

WHITE INDUSTRIES, INC., TRADING AS QUAINT SHOP FOLKS, ETC.

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

Docket C-1861. Complaint, Feb. 16, 1971—Decision, Feb. 16, 1971

Consent order requiring a Westfield, Massachusetts, mail-order seller of greeting cards and stationery to cease using order forms with spaces for making checks to automatically request forwarding of further merchandise, using order forms which purport to be effective prior to being signed by purchaser, using such forms unless they have separate paragraphs setting forth that future shipments are authorized and describing the merchandise to be sent, shipping merchandise without disclosing that it is sent unsolicited and may be treated as a gift, seeking to collect for such shipments, except that the last two provisions of this order shall not be effective until six months after the date of the order.

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 White Industries, Inc., a corporation, and Arthur T. White and K. Stanley Zolyn, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent White Industries, Inc., t/a "Quaint Shop Folks," "White Quaint Shop," "White, The Magazine Bargain Man", "Thomas Terry Studios" and "Friendlycraft Studios," is a

corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located in the city of Westfield, State of Massachusetts.

Respondents Arthur T. White and K. Stanley Zolyn are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of magazine subscriptions, greeting cards, stationery and home accessories to the public.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States, and maintain, and at all time mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents now use, and for some time last past have used, a form of order, wherein by the checking of a single block or box a prospective customer not only indicated he is ordering present merchandise, the nature of which is generally known to him, but he is also unknowingly or unwittingly requesting the forwarding of merchandise, the nature of which is unknown to him at a later date "for advance preview with never any obligation to buy."

Typical and illustrative, but not all inclusive of such forms are the following:

1. ☐ Yes, I want to see the complete 50-piece Stationery Ensemble with my initial in genuine raised golden printing. Send it at once for free inspection and next season send your new offerings for advance preview with never any obligation to buy. . . .

2. ☐ Also rush the order below. I am including $1 payment for exclusive Quaint Shop Greetings sent to me for examination, as a see-before-you-buy special service to regular customers. Next season send your new offerings for advance preview and keep me on your list for this service which I may discontinue at any time.

When payment for, or return of the future "advance preview" merchandise is not forthcoming, the respondents cause letters to be sent to the recipient of said merchandise for the purpose of inducing

payment or the return of the merchandise. The payment form attached to these letters also contains a single block or box, which when checked not only indicates payment for the merchandise but also requests the forwarding of unknown merchandise at a future date.

Typical and illustrative, but not all inclusive of such payment forms is the following:

☐ Here is my $1 payment for exclusive Quaint Shop Christmas Cards sent me for preview examination as a "see-before-you-buy" special service to regular customers. Next season send your new offerings for advance examination and keep me on your list for this service which I may discontinue at any time.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning, but not expressly set forth herein, and by means of the manner and method by which these statements and representations are repeatedly made to the recipient of unknown or unwittingly requested advance preview merchandise, the respondents have represented, and are now representing, directly or by implication that:

1. Money is due and owing for merchandise, which the recipient was unknowingly or unwittingly duped into requesting.

2. The recipient of such merchandise is under an obligation to pay for or return such merchandise.

PAR. 6. In truth and in fact:

1. Money is not due and owing for merchandise, the requesting of which was obtained by deception because such merchandise is the same as unsolicited or unordered merchandise.

2. The recipient of such merchandise is not under any obligation to pay for or return such merchandise.

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

PAR. 7. Furthermore, it was an unfair practice and a false, misleading and deceptive act and practice for the respondents to seek to elicit orders or payments in the manner aforesaid and to fail to disclose clearly and conspicuously that the said order or payment also contained a request to forward unknown merchandise at a future date for advance preview or for any other reason.

In the absence of such a disclosure prospective purchasers would have no reason to suspect that the respondents would use their order or payment in the above described manner.

Therefore, the aforesaid forms, acts and practices were, and are unfair, false, misleading and deceptive.

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

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

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof 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 accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 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 White Industries, Inc., t/a "Quaint Shop Folks," "White's Quaint Shop," "White, The Magazine Bargain Man," "Thomas Terry Studios" and "Friendlycraft Studios," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located in the city of Westfield, State of Massachusetts.

Respondents Arthur T. White and K. Stanley Zolyn are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents White Industries, Inc., a corporation, t/a "Quaint Shop Folks," "White's Quaint Shop," "White, The Magazine Bargain Man," "Thomas Terry Studios," and "Friendlycraft Studios," or under any other name or names, and its officers, and Arthur T. White and K. Stanley Zolyn, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of greeting cards or other products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any kind of order or payment form, wherein by the making of a single check or other mark indicating the placing of an order or the making of a payment for present known merchandise, a purchaser simultaneously or automatically makes a request for the forwarding of merchandise at a later date for "advance examination," "advance preview" or for any other reason.

2. Using any form of communication by which purchasers authorize or purport to authorize respondent to send merchandise at a future date which purports to be effective prior to being signed and returned by the recipient.

3. Using any such form of authorization set forth in Paragraph Two unless such authorization is set forth in a completely separate and distinct paragraph (or, at respondents' option, a completely separate and distinct document) which separate par-

agraph (or separate document) contains no words, statement, or information not necessary to such authorization and which does not clearly and conspicuously state the following:

a. That the document is an authorization for respondents to send merchandise at a future date; and

b. The period of time for which the authorization will be operative shall not exceed one year, or one offering whichever is less; and

c. The description of the merchandise contemplated by the authorization form.

4. Misrepresenting, directly or by implication, the legal relationship or legal obligation, if any, that exists between respondents and the mailees to whom respondents send merchandise.

5. Shipping merchandise without a prior express written authorization as described in Paragraphs Two and Three above, unless attached to said merchandise there is a clear and conspicuous statement informing the recipient of the following:

a. That the merchandise is being sent to the recipient unsolicited; and

b. That the recipient is not obligated to return the merchandise; and

c. That the recipient may treat the merchandise as a gift, that he may use, discard, or dispose of it in any manner that he sees fit without any obligation whatsoever to the sender.

6. Sending any communication, or making any demands or requests that seek to obtain payment for or the return of any merchandise sent without a prior express written authorization as described in Paragraphs Two and Three above.

Provided, however, That Paragraphs Five and Six shall not become effective until six (6) months after the Commission's entry of this order to cease and desist.

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 respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

IRMA SHORELL, INC., ET AL.

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

Docket C-1862. Complaint, Feb. 16, 1971—Decision, Feb. 16, 1971

Consent order requiring a New York City distributor of a skin conditioning cosmetic to cease misrepresenting that its facial cream will rejuvenate and restore youth to the skin, is equivalent to and may be used instead of surgical face-lifting, and will have a permanent or lasting effect.

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 Irma Shorell, Inc., a corporation, and H. Allen Lightman, individually and as 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. Irma Shorell, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located 509 Madison Avenue, in the city of New York, State of New York.

Respondent H. Allen Lightman is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a skin preparation containing ingredients which come within the classification of cosmetics as the term "cosmetics" is defined in the Federal Trade Commission Act.

The designation used by respondents for said skin preparation and the directions for use are as follows:

Designation.—Irma Shorell Contour/35

Directions.—1. Thoroughly cleanse face and neck. Dry with soft towel or tissue.

2. Lightly massage one-half spatula of Contour/35 into face. Pat gently under eyes.

3. Apply one-half spatula to neck with light upward strokes. Nightly application of Contour/35 is a must for best results.

PAR. 3. Respondents cause the said preparation when sold, to be transported from respondents' place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of respondents' business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparation by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media, with local and national distribution, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation, and has disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly and indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

For The Woman Who Wants To Look Younger—
Is Face-lifting the Only Answer?

For the last 30 years women have felt that Cosmetic Plastic Surgery was the only way to really improve the mature skin of face and neck. For some it still is—but today tens of thousands have been prescribed Contour/35 to retain or regain a youthful appearance to old-looking skin.

PAR. 6. By and through the use of the above-quoted statements and representations, and other of similar import and meaning but

not expressly set out herein, the respondents have represented, and are now representing, directly or by implication:

1. That the facial cream CONTOUR/35 is capable of eliminating wrinkles and of restoring the youthful appearance of the skin.

2. That the product, CONTOUR/35 is a substitute for, and equivalent to surgical face-lifting.

3. That the product CONTOUR/35 will have a permanent or lasting effect.

PAR. 7. In truth and in fact:

1. The product is a moisturizer with a firming agent which is not capable of eliminating wrinkles or restoring the youthful appearance of the skin.

2. The product is not a substitute for, nor equivalent to surgical face-lifting.

3. Use of the product will have only a temporary and superficial effect, and will not provide a permanent or lasting effect.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by the respondents of the false advertisements, as foresaid, constituted and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of the draft of complaint which the Bureau of Consumer Protection propose 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 jurisdictional facts set forth of 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 has reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Irma Shorell, Inc., is a corporation with its office and principal place of business located at 509 Madison Avenue, New York, New York.

Respondent H. Allen Lightman is an individual and an officer of said corporation. 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 Irma Shorell, Inc., a corporation, and H. Allen Lightman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or any other devices in connection with the offering for sale, sale or distribution of Irma Shorell's Contour/35 or any other preparation possessing substantially similar properties. Do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing the dissemination of any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act which represents directly or by implication.

(a) That said cosmetic preparation will rejuvenate the skin of the user thereof or restore youth to the skin of the user;

(b) That said cosmetic preparation can be used in lieu of surgical face-lifting and is equivalent thereto; and,

(c) That said cosmetic preparation will have a permanent or lasting effect.

2. Disseminating, or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly the purchase of respondents' preparation in commerce as "commerce" is defined in the

Federal Trade Commission Act which contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That the 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 the order.

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

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

IN THE MATTER OF

EVEREST & JENNINGS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(a), 2(d) AND 2(e) OF THE CLAYTON ACT

Docket C-1863. Complaint, Feb. 16, 1971—Decision, Feb. 16, 1971

Consent order requiring a Los Angeles, California, manufacturer and distributor of medical and surgical apparatus to cease discriminating in price between competing customers, and failing to pay for or to make services and facilities available to all competing customers on a proportionally equal basis.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating the provisions of subsections (a), (d) and (e) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent Everest & Jennings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal

place of business located at 1803 Pontius Avenue, Los Angeles, California.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of medical and surgical apparatus. Respondent sells its said products to a large number of customers located throughout the United States purchasing such products for use, consumption, or resale therein. Respondent's sales of its products are substantial, exceeding $17,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of California to purchasers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent sells its products of like grade and quality to purchasers who are in substantial competition with each other in the resale and distribution of respondent's like products.

PAR. 5. In the course and conduct of its business in commerce, respondent has been, and is now discriminating in price between different purchasers of its products of like grade and quality by selling said products to some purchasers at higher and less favorable prices than the prices charged competing purchasers for such products of like grade and quality.

PAR 6. The effect of such discriminations in price made by respondent in the sale of its products, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the favored purchasers from respondent are engaged, or to injure, destroy or prevent competition with the favored purchasers from respondent who receive the discriminatory lower prices.

PAR. 7. The discriminations in price made by respondent in the sale of its products, as hereinbefore alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Count II

PAR. 8. Paragraphs One through Four of Count I hereof are hereby set forth by reference and made a part of this Count II as fully and with the same effect as if quoted here verbatim.

PAR. 9. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value

to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 10. The acts and practices of respondent, as alleged herein, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Count III

PAR. 11. Paragraphs One through Four of Count I hereof are hereby set forth by reference and made a part of this Count III as fully and with the same effect as if quoted here verbatim.

PAR. 12. In the course and conduct of its business in commerce, respondent has discriminated in favor of certain of its purchasers buying its products by contracting to furnish, or furnishing, or by contributing to the furnishing of such favored purchasers services or facilities connected with the handling, sale, or offering for sale of such products so purchased while not according such services or facilities to all other competing purchasers on proportionally equal terms.

PAR. 13. The acts and practices of respondent, as alleged herein, are in violation of subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of subsections (a), (d) and (e) of Section 2 of the Clayton Act, as amended; and

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

plaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 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 Everest & Jennings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1803 Pontius Avenue, Los Angeles, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Everest & Jennings, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser who competes in the resale or distribution of such products with the purchaser paying the higher price.

It is further ordered, That respondent Everest & Jennings, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of respondent's products, unless such payment or consideration is made available on pro-

portionally equal terms to all other customers competing in the distribution of such products;

2. Furnishing, contracting to furnish, or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondent's products to any purchaser from respondent of such products bought for resale, when such services or facilities are not accorded on proportionally equal terms to all other purchasers from respondent who resell such products in competition with such purchasers who receive such services or facilities.

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

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

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

IN THE MATTER OF

METROMEDIA, INC.

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

Docket C-1864. Complaint, Feb. 17, 1971—Decision, Feb. 17, 1971

Consent order requiring a New York City compiler of mailing lists used by direct-mail advertisers and merchandisers to cease misrepresenting the purpose or use of information sought by its questionnaire, offering for sale or using its "Metromail Elites" mailing list or other list derived therefrom, provided that the term "questionnaire" as used herein shall mean any solicitation of information to be used in a mailing list.

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 Metromedia, 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:

PARAGRAPH 1. Respondent Metromedia, 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 at 277 Park Avenue, New York, New York.

O. E. McIntyre, Inc., was a corporation initially incorporated, existed and did business under the laws of the State of New York with its principal office and place of business located at 1199 Prospect Avenue, Westbury, New York. On or about February 25, 1966, said corporation was acquired by the corporate respondent as a subsidiary thereof. On or about September 29, 1967, said subsidiary corporation was merged into the corporate respondent and became a division thereof. At all times mentioned herein, the corporate respondent has been responsible for and has formulated, directed and controlled the acts and practices of said O. E. McIntyre both as a subsidiary corporation and as a division of said corporate respondent.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of constructing, developing and maintaining mailing lists of varied and diverse composition and purpose; and in the advertising, offering for sale, sale and distribution of such mailing lists to distributors, jobbers, wholesalers, retailers and to other merchandisers engaged in direct-mail advertising and selling; and in the sale of its services in the promotion of the merchandise and services of others; and in the use of such mailing lists in the advertising, offering for sale, sale and distribution of merchandise and services, produced by respondent, to distributors, jobbers, wholesalers, retailers or directly to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused its mailing list construction, development and maintenance activity, including survey questionnaires and other updating mailings, to be sent by United States mail from its place of business in the State of New York to persons located in various other States of the United States, and at all times relevant hereto has maintained substantial and extensive commercial intercourse in connection with its numerous and various products and services among and between the several States of the United States, and maintains, and at all times

mentioned herein has maintained, a substantial course of trade in such mailing lists, products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of compiling and constructing its so-called "Metromail Elites" list, respondent devised and mailed to approximately four million persons a form letter and questionnaire as follows:

O. E. MCINTYRE, INC.,
A METROMEDIA COMPANY,
Westbury, N.Y., March 10, 1967.

Here is an opportunity for you to win fabulous gifts—holiday vacations in London or Paris, new cars, color TV sets, and Polaroid cameras—a total of 1,111 gifts in all!

All you have to do is to send in this questionnaire in the enclosed postage paid envelope—nothing else is needed. The questionnaire is short and easy to fill out. There is *nothing to buy*, and we assure you that no salesman will call on you.

This questionnaire is being sent to a number of people in your area to obtain information about habits and characteristics of people living in different sections of the country. You have been selected as one of the people in your community to participate in this project. And, as an expression of our thanks for your cooperation, you will have the opportunity to win one of these 1,111 magnificent gifts:

1 1967 Coupe DeVille Cadillac
2 1967 Ford Mustangs
10 Round-Trip Flights For Two From New York To Paris With a Room For Two Weeks At The Famed Grand Hotel
10 Round-Trip Flights For Two From New York To London With A Room For Two Weeks At The Famed Hotel Cavandish
10 Color Television Console Sets
Over 1,000 Polaroid Color Cameras (In The $40 To $60 Range)

To be eligible to win one of these prizes, *all you have to do is to send in this questionnaire in the enclosed envelope—nothing else is needed. Not all questions on the questionnaire need be answered,* but we must have your questionnaire if you want to be included in the drawing for these gifts. All questionnaires postmarked on or before May 1, 1967, and received by May 10, 1967 will be included in the drawing.

On May 25, 1967, the lucky winners will be selected at random from the names of all those who returned a questionnaire. We hope you will be one of them!

We know you will want to participate. We hope you will want to complete the questionnaire, and we think you will find it interesting. But make sure you are eligible for the drawing by mailing back the questionnaire as soon as possible. No postage is needed on the envelope—merely seal it and drop it in a mail box.

Thanks again for your assistance and good luck!

Cordially,

LORENCE E. MOORE,
Executive Vice-President.

O. E. McINTYRE, Inc.
Westbury, New York

PLEASE CHECK OR WRITE IN AN ANSWER TO EACH QUESTION. YOUR COOPERATION IS APPRECIATE

1a. Do you have a color TV set? YES ☐ 9-1 NO ☐ -2

b. Is there a phonograph, hi-fi or stereo set in your home?
YES ☐ 9-4 NO ☐ -5

2a. Do you or anyone else in your family have any hotel, restaurant, gasoline or other credit cards?
YES ☐ 10- NO ☐ -5 (IF NO, PLEASE SKIP TO Q. 3a)

b. (IF YES): Please name the credit cards:

YOURSELF: _____ _____ _____ _____

OTHER FAMILY MEMBERS: _____ _____ _____ _____

3a. Do you or anyone else in your family have charge accounts in department or apparel stores?
YES ☐ 10-7 NO ☐ -0 (IF NO, PLEASE SKIP TO Q. 4a)

b. (IF YES): Please tell me in which stores:

YOURSELF: _____ _____ _____ _____

OTHER FAMILY MEMBERS: _____ _____ _____ _____

4a. Do you or other family members subscribe to any magazines?
YES ☐ 11-2 NO ☐ -0 (IF NO, PLEASE SKIP TO Q. 4c)

b. Which magazines are received in your home by subscription? (PLEASE WRITE THEIR NAMES)

_____ _____ _____

_____ _____ _____

c. Which magazines, if any, are purchased regularly at a newsstand? NONE ☐ 12-0

_____ _____ _____

_____ _____ _____

5. Does your family have a dog or cat? HAVE DOG ☐ 13-1 HAVE CAT ☐ -2 BOTH ☐ -3 DON'T HAVE EITHER ☐ -0

6. Which, if any, of the following appliances are used in your household? (PLEASE CHECK THOSE USED IN COLUMN A)

	A. USE THIS APPLIANCE	B. How old is this particular appliance? (CHECK ONE BOX) 5 YEARS OR LESS	OVER 5 YEARS	C. What Mak Is This Appliance?
AUTOMATIC WASHING MACHINE	☐ 14-1	☐ 15-1	☐ 16-1	_____
AUTOMATIC CLOTHES DRYER	☐ 14-2	☐ 15-2	☐ 16-2	_____
AUTOMATIC DISHWASHER	☐ 14-3	☐ 15-3	☐ 16-3	_____
HOME FREEZER UNIT	☐ 14-4	☐ 15-4	☐ 16-4	_____
REFRIGERATOR	☐ 14-5	☐ 15-5	☐ 16-5	_____
WINDOW AIR CONDITIONER	☐ 14-6	☐ 15-6	☐ 16-6	_____
CENTRAL AIR CONDITIONING	☐ 14-7	☐ 15-7	☐ 16-7	_____
NONE OF ABOVE	☐ 14-Y			

7a. Do you or any member of this household own a car?

YES ☐ 24-X (PLEASE FILL IN Q. 7b AND QUESTION 8) NO ☐ -Y (IF NO, PLEASE GO TO QUESTION

b. How many cars does the family own? 24-

8. INFORMATION ON AUTOS OWNED BY FAMILY. PLEASE ENTER INFORMATION FOR EACH CAR WHICH IN THE FAMILY OWNS. PLEASE INCLUDE THOSE WHICH MAY BE OWNED BY TEEN-AGERS OR YOUN LIVING AT HOME.

	FIRST CAR	SECOND CAR	THIRD CAR	FOURTH CAR
MAKE:	25- 26-	31- 32-	37- 38-	.....
YEAR:	27- 28-	33- 34-	39- 40-	.....
BODY STYLE:	STATION WAGON ☐ 29-1 SEDAN ☐ -2 HARDTOP ☐ -3 OTHER (Specify):	STATION WAGON ☐ 35-1 SEDAN ☐ -2 HARDTOP ☐ -3 OTHER (Specify):	STATION WAGON ☐ 41-1 SEDAN ☐ -2 HARDTOP ☐ -3 OTHER (Specify):	STATION WAGON SEDAN HARDTO OTHER (
Was this car bought new or used?	NEW ☐ 29-0 USED ☐ -x	NEW ☐ 35-0 USED ☐ -x	NEW ☐ 41-0 USED ☐ -x	NEW USED
About how many miles is this car driven in a year? (PLEASE APPROXIMATE MILEAGE.)	 30-	 36-	 42-	.....

9a. Have you ever flown on a commercial airline?

YES ☐ 43-1 NO ☐ -2 (IF NO, PLEASE SKIP TO Q. 10a)

b. About how many airplane trips have you taken in the past 12 months? (RECORD AS ROUND TRIPS OR ONE-WAY T

ROUND TRIPS: ..... 44- ONE-WAY TRIPS: 45-

c. How many of these trips were within the United States and how many outside of continental United States?

WITHIN U.S.	OUTSIDE UNITED STATES
ROUND TRIPS:	ROUND TRIPS: .....
ONE-WAY TRIPS: 46-	ONE-WAY TRIPS: 47-

d. And, about how many airplane trips do you plan to take in the next 12 months?

ROUND TRIPS: ..... ONE-WAY TRIPS: 48-

10a. Have you or any members of your family ever requested or ordered any of the following items by mail? (PLEASE CHECK ALL ITEMS REQUESTED OR ORDERED BY MAIL)

MEMBERSHIP IN BOOK CLUBS	☐ 49-1	TRAVEL INFORMATION	☐
MEMBERSHIP IN RECORD CLUBS	☐ -2	MERCHANDISE CATALOGS	☐
MAGAZINE SUBSCRIPTIONS	☐ -3	CLOTHING	☐
HOUSEHOLD KITCHEN APPLIANCES	☐ -4	GIFT FRUIT/CHEESE OR SPECIAL FOOD PRODUCTS	☐
TREES, PLANTS, SHRUBS, BULBS FLOWER/VEGETABLE SEEDS	☐ -5	FILM PROCESSING	☐

b. Have you or any members of your family ever ordered any other items by mail?

YES ☐ 50-1 NO ☐ -0 (IF NO, PLEASE SKIP TO Q. 1

c. What were they? ....

....

11. Which sports, if any, do you personally participate in? .....

..... 52- No

12a. Including yourself, how many members in your family are living in your house at the present time? _____ 53-

b. What is the sex of each? (PLEASE CHECK UNDER b BELOW)

c. And what is the age group of each member of the family? (PLEASE CHECK CORRECT AGE GROUP FOR EACH PERSON)

b. SEX		c. AGE							
Male	Female	Under 12	12-17	18-24	25-34	35-44	45-54	55-64	65 & Over
☐ 54-1	☐ -2	☐ 54-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0
☐ 55-1	☐ -2	☐ 55-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0
☐ 56-1	☐ -2	☐ 56-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0
☐ 57-1	☐ -2	☐ 57-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0
☐ 58-1	☐ -2	☐ 58-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0
☐ 59-1	☐ -2	☐ 59-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0
☐ 60-1	☐ -2	☐ 60-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0
☐ 61-1	☐ -2	☐ 61-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0
☐ 62-1	☐ -2	☐ 62-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0
YOURSELF									
☐ 63-1	☐ -2	☐ 63-3	☐ -4	☐ -5	☐ -6	☐ -7	☐ -8	☐ -9	☐ -0

d. What was the last grade you completed in school? (CHECK ONLY ONE BOX—THE LAST GRADE COMPLETED)

GRADE SCHOOL:	0 - 4th GRADE	☐ 64-1	5 - 7th GRADE	☐ -2	FINISHED	☐ -3	
HIGH SCHOOL:	1st - 3rd YEAR	☐ -4	FINISHED	☐ -5			
COLLEGE:	1st - 3rd YEAR	☐ -6	FINISHED	☐ -7			
BEYOND COLLEGE:	1 OR MORE YEARS	☐ -8					

13a. What is the employment status of the *head of your household?*

EMPLOYED BY A COMPANY	☐ 65-1	UNEMPLOYED	☐ -4
SELF-EMPLOYED	☐ -2	RETIRED	☐ -5
EMPLOYED BY GOVERNMENT	☐ -3	HOUSEWIFE	☐ -6

(PLEASE ANSWER Q. 13b, c, d) (PLEASE SKIP TO Q. 14)

b. What type of company, organization or institution does the head of your household work for—that is, what does this company make or do?

_____ 66-
_____ 67-

c. What is the specific position or occupation of the head of your household at this company?

_____ 68-
_____ 69-

d. About how many employees are at the particular business location where the head of your household works?

UNDER 5 ☐ 70-1 5-24 ☐ -2 25-99 ☐ -3 100-999 ☐ -4 1,000 OR OVER ☐ -5

14. Please give me your best estimate of the total income of your family for the year 1966. (In addition to salaries, include all sources, i.e., interest, dividends, etc.) (PLEASE CHECK ONE)

UNDER $5,000	☐ 71-1	$10,000 - $14,999	☐ -4
$5,000 - $7,999	☐ -2	$15,000 - $24,999	☐ -5
$8,000 - $9,999	☐ -3	$25,000 & OVER	☐ -6

15a. Do you own or rent your home? OWN ☐ 72-1 RENT ☐ -2 (IF RENT, PLEASE SKIP TO Q. 16a)

b. Is it a multi unit or a single unit house? MULTI ☐ 72-4 SINGLE ☐ -5

c. How old is this house—that is, about how long ago was it built? _____ YEARS 73-

d. Is *most* or *all* of this house made of brick or stone? YES ☐ 74-1 NO ☐ -2

e. How is your house heated—by hot air, hot water or steam, or other?

HOT AIR ☐ 75-1 HOT WATER OR STEAM ☐ -2 OTHER ☐ -3

f. What type of fuel do you use in your home—oil, gas, electric, coal or other?

OIL ☐ 75-6 GAS ☐ -7 ELECTRIC ☐ -8 COAL ☐ -9 OTHER ☐ -0

g. And, about what would you say is the approximate size of your lot?

less than ¼ ACRE ☐ 76-1 ¼ to ½ ACRE ☐ -2 ½ to 1 ACRE ☐ -3 over 1 ACRE ☐ -4

16a. In the past 10 years how many times, if any, have you and your family moved?

_____ 77- (NUMBER OF TIMES) NOT AT ALL ☐ -X (PLEASE SKIP Q. 16b)

b. When did you move most recently? _____ 78-
(PLEASE SPECIFY YEAR)

THANKS VERY MUCH FOR YOUR COOPERATION!
DON'T FORGET—PLEASE MAIL THIS BACK TO US BEFORE MAY 1, 1967
AND YOU MAY BE ONE OF THE LUCKY 1,111 WINNERS!

Is the name and address on the label correct? If not, please PRINT IN your correct name and address below:

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PAR. 5. By and through the use of the form letter and questionnaire hereinabove reproduced and set forth in its entirety, and with particular reference to that portion of said form letter which reads:

All you have to do is to send in this questionnaire in the enclosed postage paid envelope—nothing else is needed. The questionnaire is short and easy to fill out. There is *nothing to buy,* and we assure you that no salesman will call on you.

respondent represented, directly or by implication, that the response thereto and the information sought by said questionnaire was for a purpose other than the sale of merchandise or services and that the addressee would not be importuned to purchase merchandise and services.

PAR. 6. In truth and in fact, the responses to and the information sought by said questionnaire were for the express purpose of compiling mailing lists to be used for selling merchandise and services to those persons who responded to said questionnaire and those who responded were, and are, importuned to purchase merchandise and services.

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

PAR. 7. Furthermore, it was an unfair practice and a false, misleading and deceptive act and practice for respondent to seek to elicit responses in the manner aforesaid and to fail to disclose clearly and conspicuously the purpose for which the information contained on said questionnaire was being requested, and to fail to disclose that it was in the business of compiling mailing lists which are for sale or rent to mail-order advertisers and sellers of merchandise and services, and that the information requested would be used, together with the name and address of the addressee in the compiling of such lists.

In the absence of such disclosure, addressees would have no reason to suspect that respondent would use their responses in the above-described manner. A substantial portion of the purchasing public has a preference that their names not appear on mailing lists. This preference arises out of various individual and personal reasons such as, but not limited to, the unauthorized invasion of personal privacy; being subjected to the repeated importuning of promoters, advertisers and sellers of merchandise, services and schemes; and being exploited by respondent and the users of said "Metromail Elites" mailing list.

Therefore, the aforesaid statements, representations, acts and practices were, and are, unfair, false, misleading and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondent has been and is now in substantial competition, in commerce, with corporations, firms and individuals engaged in the compilation, use and sale of mailing lists and in the direct-mail advertising business of the same general kind and nature as the respondent.

PAR. 9. The use by respondent of the aforesaid unfair acts and false, misleading and deceptive statements, representations and practices, and the failure of respondent to disclose the true nature, purpose and use of the information sought by the survey questionnaire has had, and now has the tendency and capacity to mislead members of the public being surveyed by like or similar survey questionnaires, and to inconvenience, importune and harass persons who may not wish to have their names used and to be exploited thereby.

PAR. 10. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in such Rule, 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 Metromedia, 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 277 Park Avenue, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Metromedia, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the construction, development, maintenance, advertising, offering for sale, sale or use of respondent's "Metromail Elites" mailing list, or any other of respondent's mailing lists, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any information sought by respondent by any questionnaire, in connection with the compilation or construction of mailing lists used by respondent in connection with the advertising or sale of merchandise or services is for any purpose other than the compilation of mailing lists to be so used; or misrepresenting, in any manner, the purpose or intent or the use of any information sought by any questionnaire.

2. Falsely representing that addressees of any questionnaire will not be importuned to purchase merchandise or services.

3. Failing, clearly and conspicuously, and at the outset, to state in each oral or written questionnaire of respondent to persons who are or may be prospective addressees for inclusion on or in any mailing list or other compilation of addressees, the following:

> "We are in the business of compiling mailing lists which we may use ourselves, or which may be used by direct mail advertisers. The information which you furnish us by filling out this questionnaire may be used, together with your name and address, in compiling such lists."

4. Advertising, offering for sale, sale or use by respondent or others of respondent's "Metromail Elites" mailing list, or any other mailing list derived directly therefrom.

Provided, however, That the term "questionnaire," as used in this order, shall mean any inquiry for or solicitation of information, whether written, oral or by any other means, from addressees or prospective addressees for inclusion on or in any mailing lists or other compilation of addressees, by any division or subsidiary of respondent which is, or hereafter may be, in the business of compiling mailing lists for direct-mail advertisers, for the purpose or with the result of constructing or developing for respondent any mailing list or other compilation of addressees.

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 this order.

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

IN THE MATTER OF

SEATTLE MOBILE HOMES, INC., DOING BUSINESS AS PACIFIC MOBILE HOMES, ETC.

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

Docket C-1865. Complaint, Feb. 18, 1971—Decision, Feb. 18, 1971

Consent order requiring two sellers of mobile homes with headquarters in Edmonds, Washington, and Portland, Oregon, to cease violating the Truth in Lending Act by failing to disclose to their credit customers the cash price, downpayment, value of trade-in, unpaid balance of cash price, unpaid balance, amount financed, finance charge, deferred finance charge, and number of payments; respondents have also failed to disclose the method of computing penalties for default, the type of security interest held to secure credit, and engaging in consumer credit transactions without making all disclosures required by said Act.

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 Seattle Mobile Homes, Inc., doing business as Pacific Mobile Homes, and Cost Trailer Sales Co., doing business as Cost Mobile Homes, corporations, and Felix V. Costanzo, individually and as an officer of Pacific Mobile Homes, Inc., and Cost Trailer Sales Co., 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 Seattle Mobile Homes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located in Edmonds, Washington. Seattle Mobile Homes, Inc., does business in the name and style of Pacific Mobile Homes.

Respondent Cost Trailer Sales Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located in Portland, Oregon. Cost Trailer Sales Co. does business in the name and style of Cost Mobile Homes.

Respondent Seattle Mobile Homes, Inc., is a wholly owned subsidiary of respondent Cost Trailer Sales Co.

Respondent Felix V. Costanzo is an individual and is the president of Seattle Mobile Homes, Inc., and the president and general manager of Cost Trailer Sales Co. Respondent Costanzo owns a majority of the stock in Cost Trailer Sales Co. and he directs, formulates and controls the acts and practices of the respondent corporations including the acts and practices hereinafter set forth.

PAR. 2. The above respondents are now, and for some time last past have been, engaged in the sale and offering for sale of mobile homes to the public and have engaged in the advertising of mobile homes in various media.

PAR. 3. In the ordinary course of thier business as aforesaid, the corporate respondents regularly extend, and for some time last past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in

Lending Act duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequently to July 1, 1969, in the ordinary course and conduct of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in the aforesaid Regulation Z, respondents have entered into consumer credit transactions with purchasers of mobile homes. In connection with these transactions, respondents have timely provided certain limited consumer credit cost information, but have not, prior to the consummation of the transaction, provided these customers with other consumer credit disclosures.

More particularly respondents have:

(1) Failed to disclose accurately the price at which respondents, in the regular course of business, offered to sell for cash the property or services which are the subject of the credit sale as defined in Section 226.2(i) of Regulation Z, and to describe that price as the "cash price, as required by Section 226.8(c)(1) of Regulation Z.

(2) Failed to disclose the amount of downpayments in money made in connection with credit sales, and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

(3) Failed to describe the sum of the "cash downpayment" and the "trade-in" as the "total downpayment," as required by Section 226.8(c)(2) of Regulation Z.

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

(5) Failed to disclose all charges which are not part of the "cash price" or the "finance charge" but are included in the amount financed, and to itemize each such charge individually as required by Section 226.8(c)(4) of Regulation Z.

(6) Failed to disclose the sum of the charges referred to in Paragraph (5) above and the "unpaid balance of cash price" and to described that sum as the "unpaid balance," as required by Section 226.8 (c)(5) of Regulation Z.

(7) Failed to disclose the amount of credit extended, and to describe that amount as the "amount financed" as required by Section 226.8(c) (7) of Regulation Z.

(8) Failed to disclose the sum of all charges made to the customer, including the charges for insurance required by respondents to be purchased in connection with the credit sale, which are re-

quired by Section 226.4 of Regulation Z to be included in the finance charge, and to describe that sum as the "finance charge," as required by Section 226.8(c)(i) of Regulation Z.

(9) Failed to disclose accurately 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.

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

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

(12) Failed to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

(13) Failed to disclose the amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments as required by Section 226.8(b)(4) of Regulation Z.

(14) Retained a security interest in property in connection with the credit sale and failed to identify the type of that security interest as required by Section 226.8(b)(5) of Regulation Z.

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

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

DECISION AND ORDER

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

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

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

1. Respondent Seattle Mobile Homes, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located in Edmonds, Washington. Seattle Mobile Homes, Inc., does business in the name and style of Pacific Mobile Homes.

Respondent Cost Trailer Sales Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located in Portland, Oregon. Cost Trailer Sales Co. does business in the name and style of Cost Mobile Homes.

Respondent Felix V. Costanzo is an individual and is president of Seattle Mobile Homes, Inc., and is the president and general manager of Cost Trailer Sales Co. He directs, formulates and controls the acts and practices of the respondent corporations including the acts and practices under investigation.

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 Seattle Mobile Homes, Inc., and Cost Trailer Sales Co., corporations, and their officers, and Felix V. Costanzo, individually and as an officer of Seattle Mobile Homes, Inc., and Cost Trailer Sales Co., and respondents' agents, representatives and employees, directly or through any corporate or other de-

vice, in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

(1) Failing in any credit sale to disclose accurately the price at which respondents, in the regular course of business, offer to sell for cash the property or services which are the subject of the credit sale, and to describe that price as the "cash price," as required by Section 226.8(c)(1) of Regulation Z.

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

(3) Failing to describe the sum of the "cash downpayment" and the "trade-in" made in connection with any credit sale as the "total downpayment," as required by Section 226.8(c)(2) Regulation Z.

(4) Failing in any credit sale to disclose the difference between the "cash price" and the "total downpayment," and to describe that difference as the "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.

(5) Failing in any credit sale to disclose all charges which are not part of the "cash price" or the "finance charge" but are included in the amount financed, and to itemize each such charge individually as required by Section 226.8(c)(4) of Regulation Z.

(6) Failing to disclose the sum of the charges referred to in Paragraph (5) above and the "unpaid balance of cash price" and to describe that sum as the "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.

(7) Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed" as required by Section 226.8(c)(7) of Regulation Z.

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

(9) Failing in any credit sale to disclose accurately 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 pay-

ment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

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

(11) Failing to disclose the number, amount, and due dates or period of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

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

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

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

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

(16) Engaging in a consumer credit transaction or disseminating any advertising within the meaning of Regulation Z of the Truth in Lending Act without making all disclosures that are required by Sections 226.6, 226.8 and 226.10 of Regulation Z in the amount, manner and form specified therein.

It is further ordered, That respondent 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 respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale, resultant 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 report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

IN THE MATTER OF

CHRYSLER CORPORATION, ET AL.

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

Docket C-1866. Complaint, Feb. 19, 1971—Decision, Feb. 19, 1971

Consent order requiring a major automobile corporation with headquarters in Highland Park, Michigan, and its New York City advertising agency to cease violating the Truth in Lending Act by misrepresenting in advertisements that a specific installment payment can be arranged in the credit sale of its automobiles; misrepresenting the amount of the downpayment or that no downpayment is required, the amount of the installment payment, the dollar amount of any finance charge, the number of installments or period of repayment, or that there is no charge for credit, unless the terminology of Regulation Z is used; and publishing any consumer credit advertising without making all disclosures required by Regulation Z.

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 Chrysler Corporation, Chrysler Motors Corporation and Young & Rubicam, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulations, 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 Chrysler 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 341 Massachusetts Avenue, Highland Park, Michigan.

Respondent Chrysler Motors 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 26311 Lawrence, Centerline, Michigan. Respondent Chrysler Motors Corporation is a wholly-owned subsidiary of respondent Chrysler Corporation.

Respondent Young & Rubicam, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 285 Madison Avenue, New York, New York.

PAR. 2. Respondent Chrysler Corporation is now and for some time last past has been engaged in the manufacture and distribution of automobiles for ultimate sale to the public under various trade names, including but not limited to "Chrysler," "Sunbeam" and "Simca."

Respondent Chrysler Motors Corporation, as agent for respondent Chrysler Corporation which has ultimate responsibility for its acts, is now and for some time last past has been engaged in the sale and distribution of respondent Chrysler Corporation's automobiles to franchised dealers for resale to the public.

Respondent Young & Rubicam, Inc., is now and for some time last past has been an advertising agency engaged in the business of creating, producing, preparing and placing advertising for its clients, one of which is respondent Chrysler Motors Corporation.

PAR. 3. In the ordinary course and conduct of its business, as aforesaid, respondent Chrysler Motors Corporation sells automobiles to franchised dealers who in the ordinary course and conduct of their business sell such automobiles to the public. Such franchised dealers in the ordinary course and conduct of their business, in order to facilitate the sales of respondent Chrysler Corporation's automobiles, regularly extend or arrange for the extension of consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. In order to promote the sale of its Sunbeam and Simca automobiles, respondent Chrysler Corporation through its agent and subsidiary Chrysler Motors Corporation has caused advertisements to be placed in various media. Certain of these advertisements to promote, aid, or assist directly or indirectly consumer credit sales were created, prepared, produced and placed for respondents Chrysler Corporation and Chrysler Motors Corporation by respondent Young & Rubicam, Inc. Certain of these advertisements were published on July 13, 1969, and the following are typical and illustrative but not necessarily all inclusive thereof.*

*Two pictorial advertisements were omitted in printing.

PAR. 5. By and through the use of the advertisements set forth in Paragraph Four hereof, the respondents have represented, directly or by implication, that franchised Simca/Sunbeam dealers usually and customarily arrange monthly installments in the amounts represented.

PAR. 6. In truth and in fact, the franchised Simca/Sunbeam dealers do not usually and customarily arrange monthly installments in the amounts represented. Therefore, such representations violated Section 226.10(a) of Regulation Z.

PAR. 7. By and through the use of the advertisements set forth in Paragraph Four hereof, the respondents have represented in connection with an extension of consumer credit the amount of an installment payment, the number of installments and the period of repayment without disclosing all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

1 The cash price;

2. The amount of downpayment required;

3. The amount of payments scheduled to repay the indebtedness if the credit is extended;

4. The amount of the finance charge expressed as an annual percentage rate; and

5. The deferred payment price of the item advertised.

PAR. 8. By causing to be placed for publication the advertisements referred to in Paragraphs Four, Five, Six and Seven hereof, respondents failed to comply with the requirements of Regulation Z, the implementing regulations of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 105 of that Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging respondents named in the caption hereof with violation of the Federal Trade Commission Act, the Truth in Lending Act and the implementing Regulation promulgated thereunder, and 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

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and comments thereon having been received, considered, and adopted in part by the Commission, and the agreement having been placed on the public record for an additional period of thirty (30) days during which time no comments were received, now in further conformity with the procedure prescribed in § 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 Chrysler 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 341 Massachusetts Avenue, Highland Park, Michigan.

Respondent Chrysler Motors 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 26311 Lawrence, Centerline, Michigan. Respondent Chrysler Motors Corporation is a wholly owned subsidiary of respondent Chrysler Corporation.

Respondent Young & Rubicam, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 285 Madison Avenue, New York, New York.

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

ORDER

It is ordered, That respondents Chrysler Corporation and Chrysler Motors Corporation, corporations, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with any advertisement to aid, promote,

or assist directly or indirectly any extension of consumer credit in connection with the sale of automobiles, as "consumer credit" is defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Representing, directly or by implication, that a specific amount of credit or installment amount can be arranged unless such amount is usually and customarily made available to purchasers of such automobiles by a substantial number of dealers in the areas in which the advertisement is to appear. Unless it has been ascertained that all dealers in such areas arrange credit in the amount advertised, the advertisement shall indicate that the amount shown is not necessarily available from all dealers.

2. Representing, directly or by implication, the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, 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 stated in terminology prescribed under Section 226.8 of Regulation Z:

(i) The cash price;

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

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

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

(v) The deferred payment price.

3. Causing to be published any consumer credit advertisement without making all disclosures that are required by Sections 226.10(a) and (d) of Regulation Z to be made in connection with that advertisement, in the manner and form prescribed in Regulation Z.

4. Failing to deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in any aspect of preparation, creation, and placing of advertising, all persons engaged in reviewing the legal sufficiency of advertising, and all present and future agencies engaged in preparation, creation and placing of advertising on behalf of respondents, and failing to secure from each such person or agency a signed statement acknowledging receipt of said order.

It is further ordered, That respondent Young & Rubicam, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly any extension of "consumer credit" in connection with the sale of automobiles, as "consumer credit" is defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Representing, directly or by implication, that a specific amount of credit or installment amount can be arranged unless such amount is usually and customarily made available to purchasers of such automobiles by a substantial number of dealers in the areas in which the advertisement is to appear. Unless it has been ascertained that all dealers in such areas arrange credit in the amount advertised, the advertisement shall indicate that the amount shown is not necessarily available from all dealers.

2. Representing, directly or by implication, in any advertisement on behalf of any advertiser the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, 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 stated in terminology prescribed under Section 226.8 of Regulation Z:

(i) The cash price;

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

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

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

(v) The deferred payment price.

3. Creating or causing to be published any consumer credit advertisement without making all disclosures that are required by Sections 226.10(a) and (d) of Regulation Z to be made in connection with that advertisement, in the manner and form prescribed by Regulation Z.

4. Failing to deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in reviewing the legal sufficiency of advertising prepared, created, or placed on behalf of any advertiser, and failing to secure from

each such person a signed statement acknowledging receipt of said order.

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

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 corporation which may affect compliance obligations arising out of the order.

IN THE MATTER OF

MATSUSHITA ELECTRIC OF HAWAII, INC.

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

Docket C-1867. Complaint, Feb. 19, 1971—Decision, Feb. 19, 1971

Consent order requiring a Honolulu, Hawaii, seller and distributor of "Panasonic" television sets and other electronic products to cease misrepresenting that its television sets have passed tests for fire and explosion hazards and publish a retraction of such claims in the Honolulu Star-Bulletin.

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 Matsushita Electric of Hawaii, Inc., a corporation, 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 Matsushita Electric of Hawaii, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii with its office and principal place of business located at 205 Kalihi Street, Honolulu, Hawaii. It is engaged in the business of selling and distributing television sets and other electronic products under the "Panasonic" brand name.

Respondent imports merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, directly from Japan. Said products are manufactured by Matsushita Electric Industrial Co., Ltd., in Japan.

Respondent is a subsidiary of Matsushita Electric Corporation of America, a corporation organized under the laws of the State of New York with its principal place of business located at 200 Park Avenue, New York, New York.

Respondent's day to day business operations, policies and decisions are developed and conducted independently from its parent corporation. Respondent imports merchandise directly from Japan, places its own orders, has its own bank accounts and files its own United States tax returns. It develops its own advertising programs and policies independently from its parent's advertising programs, in conjunction with an independent advertising agency located in Honolulu. Respondent is not required to, and does not, seek or obtain approval for its advertising programs, policies or copy from its parent corporation.

PAR. 2. Respondent in the course and conduct of its business has been, and is now, engaged in the sale, advertising and offering for sale in commerce of merchandise it ships or causes to be shipped, when sold, to purchasers located primarily in the State of Hawaii, and maintains and has maintained a course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of business in the wholesale distribution of consumer electronic products is and has been substantial. Among such merchandise so sold and shipped are color and black and white television sets.

PAR. 3. Respondent is now, and at all times mentioned herein, has been in substantial competition in commerce with other corporations, firms and individuals engaged in the sale and distribution of color and black and white television sets.

PAR. 4. In the course and conduct of its business in commerce, and for the purpose of inducing the purchase of said color and black and white television sets respondent has made representations in a single advertisement which appeared in the *Honolulu Star-Bulletin* of January 31, 1970.

Contained in this advertisement, which had pictured and described seven models of Panasonic color and black and white television sets were the following statements:

PANASONIC PASSES "FIRE HAZARD TEST" WITH FLYING COLORS!!! The National Commission on Product Safety recently tested color television sets manufactured for explosion and fire safety. PANASONIC COLOR TV PASSED WITH FLYING COLORS! You can *trust* Panasonic.

PAR. 5. Through the use of the aforesaid statements, respondent represents and has represented, directly or by implication, that Panasonic's color and black and white television sets are superior to other television sets with respect to hazards created by fire and explosion; that the National Commission on Product Safety had established standards which must be met before a television set could be considered safe from hazards created by fire and explosion; that the National Commission on Product Safety had conducted a fire and explosion safety test on television sets; that among the television sets tested by the National Commission on Product Safety were Panasonic television sets; that Panasonic television sets passed such test with relative ease; and that Panasonic sets thus provide superior safety and protection from fire and explosion hazards.

PAR. 6. In truth and in fact, the National Commission on Product Safety neither declared nor implied that Panasonic's color and black and white television sets were superior to other television sets with respect to hazards created by fire and explosion; it had not set up any standard which would have to be met before a television set could be considered safe from hazards created by fire and explosion; it had not conducted any type of safety test on television sets to determine whether they were safe from hazards created by fire and explosion; it had not conducted any type of test on Panasonic television sets; it had not declared that Panasonic television sets had passed any test conducted by the National Commission on Product Safety; and it had not declared that Panasonic television sets provide superior safety and protection from fire and explosion hazards.

PAR. 7. That the aforesaid representations mislead prospective purchasers into the mistaken belief that Panasonic's color and black and white television sets are superior to other television sets with respect to hazards created by fire and explosion; that the National Commission on Product Safety had set up standards which would have to be met before a television set could be considered safe from hazards created by fire and explosion; that the National Commission on Product Safety had conducted tests on television sets to determine whether they were safe from hazards created by fire and explosion; that the National Commission on Product Safety had conducted tests on Panasonic television sets; that Panasonic television

sets had passed such tests; and that Panasonic television sets provide superior safety and protection from fire and explosion hazards.

PAR. 8. The use by respondent of the foregoing false, misleading and deceptive representations set forth above has had, and now has, the tendency and capacity to mislead and deceive members of the public into the purchase of said products under the erroneous and mistaken belief that such statements and representations are true.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public, unfairly divert trade from respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, and respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 accepted same, the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Matsushita Electric of Hawaii, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii with its office and principal place of business located at 205 Kalihi Street, Honolulu, Hawaii.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Matsushita Electric of Hawaii, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce of any television sets do forthwith cease and desist from representing that said product or products have been tested, and have passed such tests, for fire and explosion hazards, or for any other safety characteristic related to said product or products, or that tests have demonstrated that its products are superior to other products tested for fire and explosion hazards, or for any other safety characteristic related to said product or products, unless and in fact, tests have actually been performed and the results establish that such representations are true.

It is further ordered, That respondent shall publish a half-page retraction in the Saturday *Honolulu Star-Bulletin*, on or at approximately the same page, and in print of equal size and prominence to that of the original false, misleading and deceptive advertisement.

Said retraction shall include a statement indicating that neither Panasonic's color television sets, nor those of any other manufacturer, had been tested by The National Commission on Product Safety for fire and explosion hazards.

It is further ordered, That respondent, within sixty days after the effective date of this order, shall notify each of its customers of this cease and desist order by mailing them a copy thereof, and shall forthwith distribute a copy of this order to each of its operating divisions, if any.

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

It is further ordered, That respondent 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.