ing to hinder, suppress or eliminate competition between or among distributors or between or among retailers handling Coors beer.

It is further ordered, That respondent corporation shall forthwith distribute of copy of this order to each of its operating divisions, to its present and future sales representatives, to its present and future distributors.

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

In the event that respondent proposes a change in the corporate respondent, as set forth above, respondent shall require said successor or transferee to file, with the Commission, at the time of respondent's notification, a written agreement to be bound by the terms of this order; *Provided*, That if respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, respondent shall submit to the Commission a written statement setting forth said reasons at least sixty (60) days prior to the consummation of said succession or transfer.

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 in which it has complied with this order.

Commissioner Thompson did not participate.

IN THE MATTER OF

SIR CARPET, INC., ET AL.

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

Docket 8981. Complaint, July 8, 1974 - Decision, Feb. 6, 1975

Order requiring a Takoma Park, Md., carpet retailer and installer, among other things to cease using bait and switch tactics and other deceptive sales practices.

Appearances

For the Commission: *Everette E. Thomas, Alice C. Kelleher* and *Gary M. Laden.*

For the respondents: *John H. Harman, Coggins, Fireison & Harman,* Wash. D. C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virture of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sir Carpet, Inc., a corporation and Bennett Weiner, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sir Carpet, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 6836 New Hampshire Ave., Takoma Park, Md.

Respondent Bennett Weiner 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 some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings 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 merchandise, when sold, to be shipped from their place of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of respondents' salesmen to prospective purchasers with respect to their products and services.

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

QUALITY WALL-TO-WALL	3 Rooms
100% NYLON PILE CARPET	$109

includes carpet, bonded
padding and installation
up to 270 sq. feet

* * * * * * *

FREE VACUUM CLEANER
with the purchase of
Our Deluxe 501
36 sq. yd. minimum

* * * * * * *

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, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing directly or by implication, that:

1. Respondents are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements.

2. Purchasers of the said Dupont 501 Carpet receive a "free" vacuum cleaner.

PAR. 6. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents' salesmen, who make no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondents' salesmen attempt to sell and frequently do sell the higher priced carpeting.

2. Purchasers of respondents' Dupont 501 Carpet do not receive a free vacuum cleaner. To the contrary, the cost of the "free" gift is added to and regularly included in the selling price of the merchandise sold to the customer.

Therefore, the statements and representations as set forth in

Paragraphs Four and Five hereof were and are false, misleading and deceptive.

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

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six above, respondents or their representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

Therefore, the acts and practices as set forth in Paragraph Seven hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 8. In the further course and conduct of their aforesaid business, and in connection with the representations set forth in Paragraph Four above, respondents offer carpet with padding and installation included at a price based upon specified areas of coverage. In making such offer, respondents have failed to disclose the material fact that the prices stated for such specified areas of coverage are not applied at the same rate for additional quantities of carpet needed, but are priced substantially higher.

The aforesaid failure of respondents to disclose said material facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the prices charged for quantities of carpet needed in excess of the specified areas of coverage will not be substantially higher than the rate indicated by the initial offer.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

PAR. 9. In the further course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents use the term "up to 270 sq. ft." to indicate the quantity of carpeting available at the advertised price.

PAR. 10. The unit of measurement usually and customarily employed in the retail advertising of carpet is square yards. Consumers are accustomed to comparing the price of carpet in terms of price per square yard, therefore respondents' use of the square foot unit of measurement confuses consumers who compare respondents' prices with competitors' prices advertised on a square yard basis.

Furthermore, respondents' use of square foot measurements exag-

gerates the size or quantity of carpeting being offered, and therefore has the capacity and tendency to mislead consumers into the mistaken belief they are being offered a greater quantity of carpet than is the fact.

Therefore, the acts and practices as set forth in Paragraph Nine hereof were and are unfair, false, misleading and deceptive.

PAR. 11. In the further 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 and distribution of rugs, carpeting and floor coverings and services of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, 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 complete and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and consitututed, 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.

INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE LAW JUDGE

NOVEMBER 12, 1974

PRELIMINARY STATEMENT

In a complaint issued on July 8, 1974, in accord with its Rule 3.11, the Federal Trade Commission instituted a proceeding charging respondents with unfair and deceptive representations and unfair acts and practices. Specifically, respondents were charged with advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45). Prior to issuance of the formal complaint, unsuccessful attempts to settle the matter were made.

In their answer to complaint, respondents admitted each material allegation, count and paragraph in the complaint, without prejudice.

They specifically objected to those provisions in the proposed order accompanying the complaint calling for the inclusion in each advertisement by respondents of a notice set off from the text by a black border which would read as follows:

The Federal Trade Commission has found that we engage in bait and switch advertising; that is, the salesman makes it difficult to buy the advertised product and he attempts to switch you to a higher priced item.

Below, this is referred to as the black border provision.

Commission Rule 3.12(b)(2) provides that when respondent's answer contains an admission of the allegations made in the complaint, the answer constitutes a waiver of hearings. The rule permits respondents to submit proposed findings, conclusions and order, together with reasons therefor and supporting briefs, in accord with Rule 3.46.

Pursuant to these rules, the undersigned ordered both parties to submit such proposed findings of fact, conclusions of law and order, together with reasons and briefs. In their submittal, respondents again admitted the material allegations of the complaint but took exception to the black border provision in the proposed order.

THE BLACK BORDER PROVISION

The provision appears to the undersigned to be more a punishment of respondents than an action oriented toward putting a stop to and preventing recurrence in the future of acts and practices violative of Section 5 of the Federal Trade Commission Act. Rather than being corrective in the traditional sense or calling for affirmative disclosure related to the carpeting sold, the black border provision smacks of a personal requirement that a scarlet letter is to be worn on respondents' chests or that a tattooed number is to be placed on their arms or that a placard is to be hung about their necks proclaiming their having been found guilty of a "crime." To my way of thinking, a requirement of this sort is more a punishment than a corrective action and it is well settled that the Commission may not punish respondents. *Coro, Inc., et al.* v. *Federal Trade Commission*, 338 F.2d 149, 153 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965). The purpose of the Federal Trade Commission Act is protection of the public, not punishment of a wrongdoer. *Gimbel Bros. Inc.* v. *Federal Trade Commission.* 116 F.2d 578 (2d Cir. 1941).

It also is well settled, however, that the Commission may order both affirmative acts and affirmative disclosures and that it has broad discretion in determining the type of order necessary to insure discontinuance of the unlawful practices found. The basic requirement is that the corrective action ordered must be reasonably related to the

unlawful practices found to exist. "*Corrective Advertising Orders of the Federal Trade Commission*," 85 Harvard Law Review 477, 498.

There are many decisions by the courts in which Commission orders calling for mandatory acts or disclosures by respondents were upheld. But, in each I have read, the orders were designed to bring an end to the offensive practice directly or to apprise consumers of factual information regarding a product, rather than by requiring respondents to publicize the fact in all of their advertisements that they have been found to have engaged in bait and switch tactics or some other specific unlawful trade practice. Some examples of the typical "corrective" order cases are: mandatory patent licensing under Section 5 of the F.T.C. Act. *American Cyanamid Co.* v. *Federal Trade Commission*, 363 F.2d 757 (6th Cir. 1966); requiring a disclosure that most states do not accept correspondence courses for admission to the bar. *La Salle Extension University*, 78 F.T.C. 1272 (1971), *aff'd.* No. 71-1648 (7th Cir. Oct. 23, 1973 (unreported)); requiring the makers of "Geritol" to disclose that most persons do not have deficiencies in vitamins the product contains. *The J. B. Williams Co., Inc. and Parkson Advertising Agency, Inc.* v. *Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967); requiring a disclosure that eating thinly sliced "Profile" bread is not as effective as represented for weight reduction, *ITT Continental Baking Co.*, Docket No. C-2015. 79 F.T.C. 248 (1971); requiring a disclosure that most baldness is of the male pattern type which is not helped by administering respondents' preparation, *Keele Hair & Scalp Specialists, Inc., et al.* v. *Federal Trade Commission*, 275 F.2d 18 (5th Cir. 1960), and numerous others.

Going beyond such requirements are those in which the Commission has required respondents to post a cease and desist order in their place of business and to furnish a copy of the order to consumers on request or to media in which respondents advertise. *Arthur Murray Studio of Washington, Inc., et al.* v. *Federal Trade Commission*, 458 F.2d 622 (5th Cir. 1972), 78 F.T.C. 401 (1971); *Robert W. Ricklefs, t/a Cortland Music Co.*, F.T.C. File No. 702 3348, 1970-1973 Transfer Binder, Trade Reg. Rep., ¶19,632 at p. 21681 (1971); *Nelson James Inc., et al.*, File No. 712 3184, 1970-1973 Transfer Binder, Trade Reg. Rep. ¶19,629, at p. 21681 (1971). The requirements of the orders in the Arthur Murray, Ricklefs, and James cases, however, were the genesis of the add-to-the-contract-and-provide-the-order-to-consumers-on-request provision added to the order herein in substitution for the black border provision (Par. 16, order below).

There has been a consent order recently accepted by the Commission in which respondents agreed to a consent order containing a black border provision. *William D. Campbell, Jr. and Jack S. Owens,*

individually, trading and doing business as Rhode Island Carpets, Docket No 8946, Oct. 1, 1974 [84 F.T.C. 555]. Most recently, however, the Commission, in otherwise affirming the administrative law judges' initial decisions, deleted black border provisions from cease and desist orders in the matters of *Wilbanks Carpet Specialists, et al.*, Docket No. 8933 (Sept. 24, 1974 [84 F.T.C. 510]) and *Tri-State Carpets, Inc., et al.*, Docket No. 8945 (Oct. 15, 1974 [84 F.T.C. 1078]). Both of those matters were litigated.

In my view, the black border provision called for in the proposed order does not bear a reasonable relationship to the unlawful practices admitted by respondents. Those practices are addressed in other provisions of the proposed order in that it contains anti-bait and switch provisions, cancellation provisions, a requirement that copies of the order are to be sent to the advertising media which respondents use and to sales personnel, etc. *Niresk Industries, Inc., et al.* v. *Federal Trade Commission*, 278 F.2d 337 (7th Cir. 1960); *Federal Trade Commission* v. *National Lead Co. et al.*, 352 U.S. 419 (1957); *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470 (1952).

These order provisions should bring an end to the bait and switch tactics in which respondents have been engaging and should provide for "* * * disclosure of informative facts in the interest of truth." *Maurice J. Feil, et al., trading as Enurtone Company* v. *Federal Trade Commission*, 285 F.2d 879, 899 (9th Cir. 1960). If they do not and respondents persist in their unlawful practices, they will be risking a District Court awarding $10,000 per violation as a penalty for each violation of the final order (15 U.S.C. §45(1)).

Therefore, having reviewed the complaint, answer, and the briefs submitted, the undersigned, in accord with Commission Rule 3.12(b)(2), makes the following findings of fact, conclusions and order comprising his initial decision.

Findings of Fact

1. Respondent Sir Carpet, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 6836 New Hampshire Ave., Takoma Park, Md.

Respondent Bennett Weiner 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.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

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

4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor covering, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of respondents' salesmen to prospective purchasers with respect to their products and services.

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

QUALITY WALL-TO-WALL
100% NYLON PILE CARPET
includes carpet, bonded
padding and installation
up to 270 sq. feet

3 Rooms
$109

* * * * * * *

FREE VACUUM CLEANER
with the purchase of
Our Deluxe 501
36 sq. yd. minimum

* * * * * * *

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, separately and in connection with the oral statements and representation of respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing directly or by implication, that:

a. Respondents are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements.

b. Purchasers of the said Dupont 501 Carpet received a "free" vacuum cleaner.

6. In truth and in fact:

a. Respondents' offers are not bona fide offers to sell carpeting and floor coverings at the price and on the terms and conditions stated in

the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents' salesmen, who make no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondents' salesmen attempt to sell and frequently do sell the higher priced carpeting.

b. Purchasers of respondents' Dupont 501 Carpet do not receive a free vacuum cleaner. To the contrary, the cost of the "free" gift is added to and regularly included in the selling price of the merchandise sold to the customer.

Therefore, the statements and representations as set forth in Paragraphs 4 and 5 hereof were and are false, misleading and deceptive.

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

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs 4 through 6 above, respondents or their representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

Therefore, the acts and practices as set forth in Paragraph 7 hereof were and are unfair and false, misleading and deceptive acts and practices.

8. In the further course and conduct of their aforesaid business, and in connection with the representations set forth in Paragraph 4 above, respondents offer carpet with padding and installation included at a price based upon specified areas of coverage. In making such offer, respondents have failed to disclose the material fact that the prices stated for such specified areas of coverage are not applied at the same rate for additional quantities of carpet needed, but are priced substantially higher.

The aforesaid failure of respondents to disclose said material facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief

that the prices charged for quantities of carpet needed in excess of the specified areas of coverage will not be substantially higher than the rate indicated by the initial offer.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

9. In the further course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents use the term "up to 270 sq. ft." to indicate the quantity of carpeting available at the advertised price.

10. The unit of measurement usually and customarily employed in the retail advertising of carpet is square yards. Consumers are accustomed to comparing the price of carpet in terms of price per square yard, therefore respondents' use of the square foot unit of measurement confuses consumers who compare respondents' prices with competitors' prices advertised on a square yard basis.

Furthermore, respondents' use of square foot measurements exaggerates the size or quantity of carpeting being offered, and therefore has the capacity and tendency to mislead consumers into the mistaken belief they are being offered a greater quantity of carpet than is the fact.

Therefore, the acts and practices as set forth in Paragraph 9 hereof were and are unfair, false, misleading and deceptive.

11. In the further 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 and distribution of rugs, carpeting and floor coverings and services of the same general kind and nature as those sold by respondents.

12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, 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 complete and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

13. The aforesaid acts and practices of respondents 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.

CONCLUSIONS

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

2. The Complaint herein states a cause of action, and this proceeding is in the public interest.

3. Respondents have committed unfair and deceptive acts and practices in commerce and have engaged in unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Sir Carpet, Inc., a corporation, its successors and assigns, and its officers, and Bennett Weiner, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of carpeting or other merchandise or services.

2. Making representations, directly or indirectly, orally or in writing, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Disparaging in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

4. Representing, directly or indirectly, orally or in writing, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Failing to maintain and produce for inspection and copying for a period of three years following the date of publication of any advertisement, adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

a. the cost of publishing each advertisement including the preparation and dissemination thereof;

b. the volume of sales made of the advertised product or service at the advertised price; and

c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

6. Representing, directly or indirectly, orally or in writing, that any price amount is respondents' regular price for any article of merchandise or service unless said amount is the price at which such merchandise or service has been sold or offered for sale by respondents for a reasonably substantial period of time in the recent, regular course of their business and not for the purpose of establishing fictitious higher prices upon which a deceptive comparison or a "free" or similar offer might be based.

7. Representing, directly or indirectly, orally or in writing, that a purchaser of respondents' merchandise or services will receive a "free" vacuum cleaner or any other "free" merchandise, service, prize or award unless all conditions, obligations, or other prerequisites to the receipt and retention of such merchandise, services, gifts, prizes or awards are clearly and conspicuously disclosed at the outset in close conjunction with the word "free" wherever it first appears in each advertisement or offer.

8. Representing, directly or indirectly, orally or in writing, that any merchandise or service is furnished "free" or at no cost to the purchaser of advertised merchandise or services, when, in fact, the cost of such merchandise or service is regularly included in the selling price of the advertised merchandise or service.

9. Representing, directly or indirectly, orally or in writing, that a "free" offer is being made in connection with the introduction of new merchandise or services offered for sale at a specified price unless the respondents expect, in good faith, to discontinue the offer after a limited time and commence selling such merchandise or service, separately, at the same price at which it was sold with a "free" offer.

10. Representing, directly or indirectly, orally or in writing, that merchandise or service is being offered "free" with the sale of merchandise or service which is usually sold at a price arrived at through bargaining, rather than at a regular price, or where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

11. Representing, directly or indirectly, orally or in writing, that a "free" offer is available in a trade area for more than six (6) months in any twelve (12) month period. At least thirty (30) days shall elapse before another such "free" offer is made in the same trade area. No more than three such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondents' sale in that area of the product or service in the amount, size or quality promoted with the "free" offer shall not exceed 50 percent of the total volume of

its sales of the product or service, in the same amount, size or quality, in the area.

12. Representing, directly or indirectly, orally or in writing, that a product or service is being offered as a "gift," "without charge," "bonus," or by other words or terms which tend to convey the impression to the consuming public that the article of merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

13. Advertising the price of carpet, either separately or with padding and installation included, for specified areas of coverage without disclosing in immediate conjunction and with equal prominence the square yard price for additional quantities of such carpet with padding and installation needed.

14. Advertising any carpeting or floor covering using a unit of measurement not usually and customarily employed in the retail advertising of carpet or which tends to exaggerate the size or quantity of carpeting or floor covering being offered at the advertised price.

15. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

16. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT. ALSO, SINCE WE ARE SUBJECT TO A CEASE AND DESIST ORDER OF THE FEDERAL TRADE COMMISSION IN DOCKET NO. 8981 FOR HAVING ENGAGED IN BAIT AND SWITCH TACTICS, YOU MAY EXAMINE OR HAVE A COPY OF THE COMPLAINT AND ORDER BY ASKING THE SALESMAN SERVING YOU TO PROVIDE IT.

17. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face

type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[*enter date of transaction*]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [*Name of seller*], AT [*address of seller's place of business*], NOT LATER THAN MIDNIGHT OF (*date*).

I HEREBY CANCEL THIS TRANSACTION.

_____

(*Date*)

_____

(*Buyer's signature*)

18. Failing before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

19. Including in any sales contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

20. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

21. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

22. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

23. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

24. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor coverings and other merchandise.

It is further ordered, That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale of any product, consummation of

any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

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

It is further ordered, That the said 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.

ORDER PLACING MATTER ON DOCKET FOR REVIEW AND FINAL ORDER

An initial decision by the administrative law judge having been issued in this matter on Nov. 13, 1974, containing a provision that would require respondents' contracts to include a statement that they are subject to a cease and desist order of the Federal Trade Commission "for having engaged in bait and switch tactics" and that the consumer can examine a copy of the complaint and order on request;

And the Commission having determined that this initial decision should be placed on its own docket for review *sua sponte* pursuant to Section 3.53 of its Rules of Practice and modified in accordance with its decision in *Wilbanks Carpet Specialists, Inc.*, Docket 8933 (Sept. 24, 1974) [84 F.T.C. 670], and *Tri-State Carpets Inc.*, Docket 8945 (Oct. 15, 1974) [84 F.T.C. 1078];

Now therefore it is ordered, That the initial decision in this matter be, and it hereby is, placed on the Commission's docket for review; and

It is further ordered, That the said initial decision be, and it hereby is, modified by deleting the portion of the initial decision under the caption "The Black Border Provision" and by striking from paragraph 16 of the order the following sentence: "Also, since we are subject to a cease and desist order of the Federal Trade Commission in Docket No. 8981 for

having engaged in bait and switch tactics, you may examine or have a copy of the complaint and order by asking the salesman serving you to provide it;" and

It is further ordered, That, as so modified, the initial decision and order be, and they hereby are, adopted as the decision and order of the Commission.

IN THE MATTER OF

DUOFOLD, INC.

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

Docket C-2632. Complaint, Feb. 10, 1975 - Decision, Feb. 10, 1975

Consent order requiring a Mohawk, N.Y., manufacturer and distributor of 2-layer underwear, regular or quilted underwear, sportswear, pajamas, parkas, and related items, among other thing to cease establishing or enforcing resale prices; threatening to terminate dealers who fail to observe suggested resale prices; suggesting resale prices to dealers not lawfully under respondent's control; and publishing price lists, etc., which indicate resale prices without stating on each page that such prices are suggested or approximate.

Appearances

For the Commission; *David DiNardi.*
For the respondent: *Evans, Pirnie & Burdick*, Utica, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Duofold, Inc., a corporation, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. §45), 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 with respect thereto as follows:

PARAGRAPH 1. Respondent Duofold, Inc. 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 on Canal St., Mohawk, N.Y.

PAR. 2. Respondent has been and is now engaged in the manufacture,

sale and distribution of 2-layer underwear, regular or quilted underwear, sportswear, pajamas, parkas, tenniswear, golf shirts, turtlenecks and related items, hereafter referred to as said products. Respondent distributes and sells said products to authorized dealers throughout the United States for resale to the general public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that respondent has sold and caused and now causes said products to be shipped from the state in which they are manufactured or warehoused to other States of the United States for resale and distribution through it authorized dealers.

PAR. 4. Except to the extent that competition has been hampered or restrained as set forth in this complaint, respondent has been and is now in competition with other persons, firms and corporations engaged in the manufacture, sale and distribution of 2-layer underwear, regular or quilted underwear, sportswear, pajamas, parkas, tenniswear, golf shirts, turtlenecks and related items.

PAR. 5. Respondent, in combination, agreement, understanding and conspiracy with some of its authorized dealers, or with the cooperation or acquiesence of other of its authorized dealers, has for the last several years been engaged in a planned course of action to fix, establish and maintain certain specified uniform prices at which said products are resold. In furtherance of said planned course of action, respondent has for the past several years engaged in the following acts and practices, among others:

(a) Regularly furnishing all of its dealers with price lists and necessary supplements thereto containing the established resale prices;

(b) Establishing agreements, understandings and arrangements with its dealers, some of whom are located in states which do not have fair trade laws, as a condition precedent to the granting of a dealership, that such dealers will maintain its resale prices;

(c) Informing its dealers, by direct and indirect means, that it expects and requires all of its dealers to maintain and enforce its established resale prices, or such dealerships will be terminated;

(d) Permitting its dealers a maximum deviation of five cents from the established resale price on each item without conflicting with respondent's existing policies;

(e) Requiring its dealers to agree not to sell or otherwise supply or furnish said products to anyone who is not an authorized dealer of the respondent;

(f) Soliciting and obtaining from its dealers cooperation and assistance in identifying and reporting dealers who advertise, offer to

sell or sell said products at prices lower than the established resale prices, or the maximum five cents deviation;

(g) Directing its salesmen, representatives and other employees to secure and report information identifying any dealer who fails to adhere to and maintain its established resale prices, or the maximum five cents deviation; and

(h) In certain instances threatening to terminate and terminating dealers who fail or refuse to observe, maintain or advertise respondent's established resale prices, or the maximum five cents deviation.

PAR. 6. By means of the aforesaid acts and practices, and more, respondent, in combination, agreement, understanding and conspiracy with certain of its authorized dealers and with the acquiesence of other of its authorized dealers, has established, maintained and pursued a planned course of action to fix and maintain certain specified uniform prices at which said products will be resold.

PAR. 7. The aforesaid acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of said products, and, thus, are to the prejudice and injury of the public, constitute unfair methods of competition in commerce or unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Exhibit A

(Letterhead of Duofold, Inc.)

Dear Dealer:

Duofold, Inc. has entered into an agreement with the Federal Trade Commission relating to the distributional activities and pricing policy of Duofold, Inc. A copy of the consent order entered into pursuant to that agreement is enclosed herewith.

Duofold, Inc. has entered into this agreement solely for the purpose of settling a dispute with the Commission and the agreement and consent order is not to be construed as an admission by Duofold, Inc. that it has violated any of the laws administered by the Commission, or that any of the allegations in the complaint are true and correct. Instead, the order merely relates to the activities of Duofold, Inc. in the future.

In order that you may readily understand the terms of the consent order, we have set forth the essentials of the agreement with the Commission, although you must realize that the consent order itself is controlling rather than the following explanation of its provisions:

(1) Our dealers in your area are free to set their own retail or resale prices for said products.

(2) Duofold, Inc. will not solicit, invite or encourage dealers, or any other persons to report any dealer in your area not following any retail or resale price for any of said products, and, furthermore, will not act on any such reports sent to it.

(3) Duofold, Inc. will not require or induce its dealers in your area to refrain from advertising said products at any price or from selling or offering said products at any price to any person.

Sincerely yours,

/s/ Thompson H. Billington,
President

Enclosure

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 Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney 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 any other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said act, and that complaint should issue stating its charges in that respect, having thereupon accepted the executed consent agreement and place such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Duofold, Inc. 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 on Canal St., Mohawk, N.Y.

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

ORDER

I

It is ordered, That respondent Duofold, Inc., a corporation, its subsidiaries, successors and assigns, and its officers and directors, and

respondent's agents, representatives and employees, individually or in concert, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, distribution, offering for sale or sale of 2-layer underwear, regular or quilted underwear, sportswear, pajamas, parkas, tenniswear, golf shirts, turtlenecks and related items or any other products (hereinafter referred to in this order as "said products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing with any dealer any contract, agreement, understanding or arrangement fixing, establishing, maintaining, controlling, influencing or enforcing in any way or to any extent, directly or indirectly, the price at which any of said products is advertised, sold or offered for sale at retail.

B. Requiring any dealer or prospective dealer to enter into an oral or written agreement or understanding that such dealer or prospective dealer will maintain any resale price for any of said products as a condition of buying any of said products.

C. Requesting or requiring any dealer or prospective dealer, either directly or indirectly, to report any dealer, person or firm who does not adhere to any resale price for any of said products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

D. Directing or requiring respondent's salesmen, or any other agent, representative or employee, directly or indirectly, to report any dealer who does not adhere to any resale price for any of said products, or to act on such reports by refusing or threatening to refuse sales to any dealer so reported.

E. Threatening to terminate and terminating, either directly or indirectly, dealers who fail to observe, maintain or advertise the respondent's suggested resale prices.

F. Suggesting, for three (3) years from the date on which this order becomes final, to any reseller whose resale prices are not or cannot lawfully be controlled by respondent in the manner prescribed by law and this order any resale price whatsoever to be charged by such reseller for said products, by price list, discount schedule, invoicing procedure, pre-pricing of commodities or their containers, or by any other means.

G. Requiring from any dealer charged with price cutting or failure to adhere to any suggested resale price, a promise or assurance to adhere to any resale price for any of said products as a condition precedent to any future sales to said dealer.

H. Publishing, disseminating or circulating any price list, price book, price tag, advertising or promotional material, or other document

indicating any resale price without stating on each page of such price list, price book, price tag, advertising or promotional material, or other document that the price is suggested or approximate.

I. Requiring or inducing by any means any dealer or prospective dealer to refrain, or to agree to refrain from reselling any of said products to any other dealer or distributor.

Provided, however, Nothing hereinabove shall be construed to waive, limit or otherwise affect the right of respondent to enter into, establish, maintain and enforce in any lawful manner any price maintenance agreement excepted from the provisions of Section 5 of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act.

II. *It is further ordered,* That the respondent herein shall within sixty (60) days after service upon it of this order, mail a copy of this order to each of its dealers in the States of Alabama, Alaska, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, Rhode Island, Texas, Utah, Vermont, Wyoming, and the Commonwealth of Puerto Rico and the District of Columbia, and, during the five (5) year period of time following the date of service of this order, to all future dealers in these jurisdictions at the time said dealers are opened as accounts, under cover of the letter annexed hereto as Exhibit A, and furnish the Commission proof of the mailing thereof.

III. *It is further ordered,* That the respondent herein shall forthwith distribute a copy of this order to each of its operating divisions and to all of its sales personnel and shall instruct each salesperson employed by it now or in the future to read this order and to be familiar with its provisions.

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

V. *It is further ordered,* That the respondent herein for a period of five (5) years from the date of this signing establish and maintain a file of all records referring or relating to respondent's refusal to sell said products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of five (5) years from the date thereof, submit a report to the Commission's Boston Regional Office listing the names of all dealers with whom respondent has

refused to deal over the preceding year, a description of the reason for the refusal and the date of the refusal.

VI. *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

W. M. BARR & COMPANY

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

Docket C-2633. Complaint, Feb. 10, 1975 - Decision, Feb. 10, 1975

Consent order requiring a Memphis, Tenn., manufacturer and seller of paint removers and chemical specialties for the paint industry, among other things to cease misrepresenting the safety of its products; using the word "safe" in any advertisements regarding its products; and making any representations which contradict or are inconsistent with warnings on product labels.

Appearances

For the Commission: *Miriam A. Bender.*
For the respondent: *Pro se.*

COMPLAINT

Pursuant to the Federal Trade Commision Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that W. M. Barr & Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent W. M. Barr & Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 2336 So. Lauderdale, Memphis, Tenn. Its mailing address is P.O. Box 1879, Memphis, Tenn.

PAR. 2. Respondent is now, and for some time last past has been engaged in the manufacture and sale of paint removers and chemical specialties for the paint industry.

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

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its paint removers, respondent has made, and is now making, numerous statements and representations in advertising printed in various journals and in other promotional materials concerning the safety and efficacy of these products.

PAR. 5. Typical and illustrative of the statements and representations in said advertising and promotional materials disseminated as aforesaid, but not all inclusive thereof, are the following:

Are you selling the SAFER REMOVER? Is it NON-POISONOUS? Is it FIRE-PROOF? HEAVY-BODIED KLEAN-STRIP "IS" SAFER!

[Klean Strip's] non-poisonous formula makes it safer to have in the home * * *. Non-flammable, non-explosive formula is safer for anywhere.

Klean Strip * * * The Safer Remover.

PAR. 6. Through the use of the aforesaid statements, respondent has represented, directly or by implication, that their Klean-Strip Paint Removers are safe, non-toxic or hazard-free products.

PAR. 7. In truth and in fact the aforesaid product is not safe, non-toxic or hazard-free. Labels affixed to these products specifically warn users that the product is harmful if swallowed, may cause skin irritation, and should not be taken internally, that inhalation of its vapors should be avoided, and that the product should be kept out of the reach of children.

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

PAR. 8. By advertising Klean-Strip Paint Remover in a manner which substantially varies from and disregards warnings and instructions for use found on the labels of such products, respondent negates the import and detracts from the effectiveness of such warnings and instructions.

Therefore, by disseminating advertising and other promotional material referred to in Paragraph Eight above, respondent has committed unfair or deceptive acts or practices.

PAR. 9. The use of safety claims regarding products which are required to carry precautionary labeling is in itself unfair and has the capacity and tendency to mislead and deceive users of such products into the erroneous and mistaken belief that they are handling safe products.

Therefore, by disseminating advertising and other promotional materials with safety claims for such products, respondent has committed unfair or deceptive acts or practices.

PAR. 10. In the course and conduct of its business as aforesaid and at all times mentioned herein respondent has been in substantial competition, in commerce, with corporations, firms and individuals, in the sale of paint removers and chemical speciality products of the same general kind and nature as that sold by respondents.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and respondent's competitors, and constitute unfair or deceptive acts or practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent W. M. Barr & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 2336 So. Lauderdale, Memphis, Tenn.

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

ORDER

It is ordered, That respondent, W. M. Barr & Company, a corporation, its successors and assigns, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any of its products with precautionary labeling, (sometimes referred to hereinafter as "such products") do forthwith cease and desist from:

I

A. Representing, directly or by implication, orally or in writing, that Klean-Strip Paint Remover, or any other such products, are safe, non-toxic, non-injurious, non-poisonous, non-hazardous.

B. Using the word safe, or any form thereof, in any advertisement, promotional material or other representation regarding such products.

C. Making any representation, directly or by implication, orally or in writing, which contradicts, is inconsistent with or detracts from the effectiveness of any warning, caution or direction for use required to be set forth on the label or labeling of such product.

II

It is further ordered, That respondent forthwith distribute a copy of this order to each of its operating divisions engaged in the manufacture, sale, promotion, advertising or distribution of products subject to this order, and to all present and future employees or respondent engaged in the advertising, promotion, sale or distribution of such products.

III

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.

IV

It is further ordered, That respondent corporation 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 provisions of this order.

IN THE MATTER OF

MEN'S MARKET SERVICE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(C) OF THE CLAYTON ACT

Docket C-2634. Complaint, Feb. 11, 1975 - Decision, Feb. 11, 1975

Consent order requiring a New York City manufacturer and seller of men's clothing and its affiliated merchandising service, among other things to cease inducing discriminatory price reductions or advertising allowances from suppliers.

Appearances

For the Commission: *Paul N. Kane.*

For the respondents: *Charles L. Stewart* for *Hart, Schaffner & Marx,* Chicago, Ill. and *Lee N. Abrams, Mayer, Brown & Platt,* Chicago, Ill.

COMPLAINT

The Federal Trade Commission having reason to believe that Men's Market Service, Inc. and Hart Schaffner & Marx, each of which is named in the caption hereof and is hereinafter more particularly described and referred to as a respondent, having violated the provisions of Section 2 of the Clayton Act, as amended (15 U.S.C. §13) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), as hereinafter more particularly designated and described, 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 respect thereto as follows:

PARAGRAPH 1. Respondent Men's Market Service, Inc., hereinafter MMS, 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 place of business located at Suite 1304, 1290 Avenue of the Americas, N. Y., N. Y. MMS is a wholly-owned subsidiary of Wallach's, Inc., a New York corporation which is a wholly-owned subsidiary of respondent Hart

Schaffner & Marx, hereinafter HSM. The HSM menswear stores purchase a wide variety of merchandise. MMS selects a small portion of the total and recommends it to executives of HSM menswear stores for purchase by their stores. MMS represents HSM menswear stores in negotiations with suppliers of such merchandise, concerning patterns, styles, specifications, delivery dates, delivery places, prices and other terms and conditions of purchase by HSM menswear stores of the items of merchandise recommended by MMS.

PAR. 2. Respondent Hart Schaffner & Marx is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its main office and principal place of business located at 36 S. Franklin St., Chicago, Ill. HSM also maintains an office and showroom in Suite 2014, 1290 Avenue of the Americas, New York, N.Y.

HSM through various subsidiaries is engaged in the manufacture of apparel products (including, *inter alia*, men's tailored clothing, men's raincoats, women's and children's jeans and men's jackets and active sportswear), the sale of such products to chain and independent retail apparel and department stores throughout the United States, and the operation, through wholly-owned subsidiaries, of 234 retail mens' specialty stores, herein sometimes referred to as HSM menswear stores, in 67 metropolitan areas throughout most of the United States.

Brands under which respondent HSM and its subsidiaries and divisions market one or more of the above kinds of products include Hart Schaffner & Marx, Hickey-Freeman, Society Brand, Johnny Carson, Austin Reed of Regent Street, Jaymar, Gleneagles, and California Sportswear. The HSM retail stores include such groups of HSM menswear stores as Wallach's, Inc., F. R. Tripler & Co., and Field Bros. in the New York metropolitan area, Baskin and Capper & Capper in the Chicago metropolitan area, F. B. Silverwood in the Los Angeles metropolitan area, Jack Henry Clothing Co. in the Kansas City metropolitan area, Hastings in the San Francisco and Sacramento metropolitan areas, and Klopfenstein's Inc. and Littler's, Inc. in the Seattle metropolitan area, as well as similar menswear store groups in other metropolitan areas.

Sales of said 234 HSM menswear stores during the fiscal year ended Jan. 31, 1974 were in excess of $235,000,000.

PAR. 3. The HSM menswear stores are among the menswear specialty stores which emphasize quality and fashion and in which a substantial percentage of the items sold has a relatively high value. The HSM menswear stores sell men's tailored clothing (suits, sport coats, slacks, formal wear and outerwear) as well as men's furnishings (men's shirts, sweaters, neckties, scarves, mufflers, robes, pajamas, under-

wear, socks, handkerchiefs, belts, wallets, toiletries, gift items and various other items of merchandise). The men's tailored clothing and the men's furnishings so sold are procured in part from the manufacturing divisions of respondent HSM and in part from other vendors selected upon a basis of quality materials, styles and patterns.

PAR. 4. MMS employs experienced buyers of men's furnishings to shop markets in the United States and abroad for dependable sources of supply, sometimes hereinafter referred to as suppliers, for men's furnishings suitable in quality and fashion for resale by HSM menswear stores. These MMS buyers also receive advice and recommendations from experienced buyers employed by some of the larger groups of HSM menswear stores. When the MMS shoppers find a suitable item from a dependable supplier, the supplier is permitted to display samples of the products, chosen by said shoppers, in the MMS office or the HSM office and showroom at 1290 Avenue of the Americas in New York City. MMS recommends to the HSM menswear stores that they purchase such selected products and MMS designates each such supplier a "preferred resource." Periodically MMS furnishes the HSM menswear stores a list of such "preferred resources." Purchases are made for the HSM menswear stores by their respective buyers or other officers who periodically visit the aforesaid MMS office and HSM office and showroom, examine the samples on display, and write purchase orders for their respective store or group of stores. Purchase orders are sent to the supplier involved either directly or indirectly through MMS. Whether an order is submitted directly or indirectly, a copy is furnished to MMS for accounting purposes. Thereafter the supplier bills and ships the merchandise directly to the ordering store or group of stores.

After selecting an item to recommend for purchase by HSM menswear stores, MMS has sought to ascertain from the supplier thereof the nature and amount of cost savings which such supplier expected to derive as a result of the advance ordering, large cumulative total quantities and manner of purchasing of that item by HSM menswear stores. Based upon such information MMS has solicited, from vendors who expected to derive such cost savings percentage rebates representing all or a portion of such cost savings, such rebates to be paid to MMS at the end of a season or at the end of a year, for distribution by MMS among the HSM menswear stores in proportion to the purchases by the respective store or group of stores of the specific items purchased by said store or group of stores during a season or a year. The majority of the "preferred resources" do not grant or pay such rebates. Prior to 1970, MMS solicited and received from some of such "preferred resources" percentage rebates based in part on cost

savings derived by said suppliers from their elimination of, or reduction in, their salesmen's commissions.

The rebates received by MMS, for distribution to HSM menswear stores totaled $205,120.00 in the fiscal year ended Jan. 31, 1969. In the fiscal year ended Jan. 31, 1974, the volume of these rebates was $102,936.46. The number of suppliers paying such rebates declined in the same period from 25 to 9.

PAR. 5. In the course and conduct of their business, MMS and HSM are now and at all times herein mentioned have been engaged in "commerce" as that term is defined in the Clayton and Federal Trade Commission Acts, as amended, in that men's furnishings and other products of suppliers manufacturing them in different states or countries are purchased by and delivered to HSM menswear stores in states other than states or countries of production or origin of shipment, by means of transactions herein alleged.

COUNT I

PAR. 6. Paragraphs One through Five are hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. 7. In the course and conduct of their business in commerce, as aforesaid, and in connection with MMS's inducement and receipt, or receipt, of rebates on purchases from acceding suppliers, respondent MMS during 1969 and prior years received and accepted amounts which in whole or in part acceding suppliers normally paid as commissions to their salesmen.

Typically, such suppliers reduced their salesmen's commissions by amounts which represented at least one-half the amount of the rebate granted to respondent MMS.

PAR. 8. The acts and practices of respondents in receiving and accepting amounts of money, which reflected in whole or in part amounts normally paid as commissions to suppliers' salesmen, constituted violations of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 9. Paragraphs One through Five are hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. 10. In the course of its business in commerce, as aforesaid, respondent HSM through its menswear stores, is now and has been in active competition with other corporations, firms and individuals also engaged in the purchase for resale, sale and distribution within the United States, of various products, including men's furnishings.

PAR. 11. In the further course and conduct of its business in commerce, respondent MMS and the HSM menswear stores have induced the receipt of advertising allowances from suppliers to help defray the cost of advertising their products in seasonal catalogs distributed by the HSM menswear stores to their customers. Respondent HSM prepares and distributes to the HSM menswear stores an annual seasonal catalog which advertises men's furnishings among other products. Respondents MMS and HSM negotiate with suppliers of items which will be advertised therein to contribute to the cost of the catalog. Contributions so induced to this program by participating suppliers in 1972 totalled $72,000. The advertising allowances granted by such suppliers prior to 1973 were dependent upon the cumulative total of items advertised in the catalog which were purchased by all HSM menswear stores combined. Prior to 1973, respondents did not make arrangements to assure that every such contributing supplier had made a cooperative advertising plan available whereby all of the contributing suppliers' customers competing with HSM menswear stores could receive proportionally equal advertising allowances. Respondents knew or should have known that some of said suppliers were selling goods to customers who were competing with some of the HSM menswear stores and that they were inducing and receiving, or were receiving, from suppliers, payments or allowances for advertising in the seasonal catalogs which some of said suppliers were not offering or otherwise making available on proportionally equal terms to other customers who were competing with HSM menswear stores in the sale and distribution of said suppliers' products.

PAR. 12. In the further course of their business in commerce, rebates and advertising allowances were received from preferred resources, even though such rebates and allowances granted by such suppliers were dependent upon the cumulative total of purchases made by all HSM menswear stores although separate delivery must be made to separate groups of stores.

PAR. 13. The capacity, tendency and effect of respondents' acts and practices has been, and if allowed to continue may be, to:

(a) Obtain cooperative advertising allowances from suppliers to help defray the costs of advertising such suppliers' products in a seasonal catalog distributed by HSM menswear stores regardless of whether proportionally equal advertising allowances are available from such suppliers to all customers competing with one or more HSM menswear stores.

(b) Gain preferential treatment from suppliers, solely on the basis of the anticipated substantiality of the aggregate purchases of HSM menswear stores, and

(c) Injure competition with the HSM menswear stores in the resale of products so purchased and so advertised.

PAR. 14. The aforesaid acts and practices of respondents constitute unfair methods of competition and unfair acts or practices in commerce within the intent and meaning, and in violation, of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 2 of the Clayton Act, as amended and Section 5 of the Federal Trade Commission Act, as amended.

Respondents 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 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 respondents have violated the said acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Sec. 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Men's Market Service, Inc. 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 Suite 1304, 1290 Avenue of the Americas, N. Y., N.Y.

2. Respondent Hart Schaffner & Marx 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 36 S. Franklin St., Chicago, Ill.

3. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

I

It is ordered, That the respondent corporations, Men's Market Service, Inc. and Hart Schaffner & Marx, their respective successors, assigns, officers, agents, representatives, and employees, in connection with the centralized selection, recommendation and negotiation of net prices for the purchase for resale by Hart Schaffner & Marx menswear stores of any product in commerce, as "commerce" is defined in the Clayton Act, shall not receive or accept, or arrange directly or indirectly for any subsidiary operating HSM menswear stores to receive or accept, from any supplier or from anyone acting for or in behalf of or who is subject to the direct or indirect control of such supplier, any rebate or discount in lieu of brokerage, by purchasing products from such supplier at net prices reflecting a reduction from the net prices at which sales of such products of like grade and quality are being effected by such supplier to competing purchasers, where such reduction in net price exceeds the cost savings derived by said supplier in manufacture, sale or delivery to HSM menswear stores; provided that said cost savings derived by any such supplier shall not include savings derived from a reduction in the regular rate of commission, brokerage or other compensation currently being paid by said supplier for sales services.

II

It is further ordered, That respondents Men's Market Service, Inc. and Hart Schaffner & Marx, their respective successors, assigns, officers, agents, representatives, employees, and subsidiaries operating HSM menswear stores, in connection with the purchase for resale by said HSM menswear stores in competition with other purchasers from the same suppliers of goods of like grade and quality, of any product in commerce, as "commerce" is defined in the Clayton Act, shall not:

(a) Induce suppliers to grant discriminatory discounts, rebates or other reductions in net prices to or for the benefit of HSM menswear stores, except to meet the lawful net prices offered by a competitor, where such reduction in net price exceeds the cost savings derived by said supplier in manufacture, sale or delivery to HSM menswear stores.

(b) Induce suppliers to grant catalog advertising allowances or other advertising allowances directly or indirectly to HSM menswear stores, unless such allowances are available on proportionally equal terms to all

competitors of such HSM menswear stores purchasing from said suppliers' products of like grade and quality.

For the purpose of determining "net price" under the terms of Paragraphs I and II of this order, there shall be taken into account all discounts and rebates or other terms and conditions of sale by which net prices are affected.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in either 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 its compliance obligations arising out of this order.

It is further ordered, That respondents furnish a copy of this order to all suppliers of merchandise purchased for resale by HSM menswear stores who, currently and during the five years preceding the date of this order, are and were designated "preferred resources" and to all future such suppliers of such merchandise for a ten year period following the date of this order, and respondent HSM shall also furnish a copy of this order to each of its subsidiaries operating menswear stores.

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

IN THE MATTER OF

AUTOMATED BUILDING COMPONENTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket C-2635. Complaint, Feb. 13, 1975 - Decision, Feb. 13, 1975

Consent order requiring a Miami, Fla., manufacturer and distributor of truss fabricating equipment and truss connecting plates, among other things to cease tying the sale of wood roof truss connecting plates and/or engineering services to the sale, lease or license of fabricating equipment.

Appearances

For the Commission: *Michael H. Abrams* and *Duncan J. Farmer.*

For the respondent: *Robert M. Goolrick, Steptoe & Johnson,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. §41, *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Automated Building Components, Inc., a corporation, sometimes referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and Section 3 of the Clayton Act (15 U.S.C. §14), and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint stating the following:

PARAGRAPH 1. Respondent Automated Building Components, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida with its principal place of business located at 7525 N.W. 37th Ave., Miami, Fla.

PAR. 2. Respondent Automated Building Components, Inc., is now, and for some time last past has been engaged in the manufacture and distribution (by sale, lease and/or license) of truss fabricating equipment; the manufacture and sale of truss connecting plates; and the design and sale of engineering services in connection therewith.

PAR. 3. In the course and conduct of its business, respondent Automated Building Components, Inc., now causes, and has caused in the past, its products, when sold, leased, and/or licensed, to be shipped from its place of business in the State of Florida to purchasers, lessees and/or licensees thereof in other states, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that actual and potential competition has been lessened, restricted and restrained by reason of the practices hereinafter alleged, respondent Automated Building Components, Inc., has been and is now engaged in competition with firms, partnerships, and corporations engaged in the manufacture and distribution of truss fabricating equipment, the manufacture and sale of truss connecting plates, and the design and sale of engineering services.

PAR. 5. In the course and conduct of its business as described above, respondent Automated Building Components, Inc., has offered, entered into and enforced agreements with purchasers, lessees and/or licensees of its truss fabricating equipment which require such purchasers, lessees and/or licensees, as a condition to the purchase, lease or license of truss fabricating equipment from said respondent, to purchase truss connecting plates and/or engineering services from said respondent.

PAR. 6. The effect of the aforesaid agreements has been and may be to substantially lessen competition in the manufacture and sale of truss connecting plates and the design and sale of engineering services.

PAR. 7. The acts, practices and methods of competition alleged herein constitute tying agreements or practices by respondent in violation of Section 3 of the Clayton Act and/or Section 5 of the Federal Trade Commission Act.

PAR. 8. The acts, practices and methods of competition alleged herein constitute unfair methods of competition or unfair acts or practices by respondent 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 hereto with violation of Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton 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 consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Automated Building Components, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 7525 N.W. 37th Ave., Miami, Fla.

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

ORDER

I

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

A. The term "respondent" refers to Automated Building Components, Inc., a corporation, and its subsidiaries, affiliates, successors, assigns, officers, agents, representatives and employees.

B. The term "truss fabricating equipment" refers to all machinery and equipment sold, leased, or licensed by respondent to be used in the assembly, production and construction of wood roof trusses used in the construction of residences, multiple dwellings, commercial or industrial buildings and farm structures.

C. The term "truss connecting plates" refers to all metal plates bearing any number of nails or other sharp devices used to permanently connect the joints of wood roof trusses used in the construction of residences, multiple dwellings, commercial or industrial buildings and farm structures.

D. The term "engineering services" refers to design specification services provided by respondent in connection with the assembly, production and construction of wood roof trusses, and the selection and designation of truss connecting plates deemed necessary for the proper support of said trusses.

II

It is ordered, That respondent, directly or indirectly through any corporate or other device, in connection with the sale, lease or license of truss fabricating equipment, truss connecting plates and/or engineering services in the United States shall, within thirty (30) days after entry of this order, cease and desist from:

1. Offering, entering into or enforcing any agreement or provision of any agreement, express or implied, which in any way requires or obligates any purchaser, lessee or licensee of respondent's truss fabricating equipment, as a condition to the execution or continuation of a purchase, lease or license agreement with respect to such equipment, to purchase or agree to purchase all or any part of such purchaser's, lessee's or licensee's requirements of truss connecting plates and/or engineering services from respondent or from any source designated by respondent.

2. Offering, allowing or granting a price discount, rental or royalty reduction, rebate, or other valuable consideration on or with respect to the sale, lease or license of respondent's truss fabricating equipment which is in any way based upon purchases of truss connecting plates

and/or engineering services from respondent or from any source designated by respondent.

3. Requiring any of its purchasers, lessees or licensees of truss fabricating equipment to purchase truss connecting plates and any other products from respondent or from any source designated by respondent.

III

It is further ordered, That respondent shall:

1. Within thirty (30) days after entry of this order, mail a letter on its stationery, signed by the officers of the respondent and enclosing a copy of this order, to all of its purchasers, lessees, and/or licensees of truss fabricating equipment who have purchased truss connecting plates from it during the twenty-four (24) months preceding entry of this order which informs each such purchaser, lessee or licensee of the prohibitive terms of this order.

2. Notify, during the five (5) year period after entry of this order, each new prospective purchaser, lessee or licensee of its truss fabricating equipment (excluding replacement parts) of the prohibitive terms of this order on its first written proposal to each such new prospective purchaser, lessee or licensee.

3. Within ten (10) days after entry of this order, provide a copy of this order to each of its salesmen, sales agents and sales representatives.

4. Within thirty (30) days after entry of this order, and continuing thereafter, make available its manuals concerning its standard wood roof truss designs, including updated standard wood roof truss designs, to any truss fabricator desiring such manuals; nothing contained in this order shall prohibit respondent from charging a reasonable fee for such manuals.

5. Within sixty (60) days after entry 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.

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

IN THE MATTER OF

HYDRO-AIR ENGINEERING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket C-2636. Complaint, Feb. 13, 1975 - Decision, Feb. 13, 1975

Consent order requiring a St. Louis, Mo., manufacturer and distributor of truss fabricating equipment and truss connecting plates, among other things to cease tying the sale of wood roof truss connecting plates and/or engineering services to the sale, lease or license of fabricating equipment.

Appearances

For the Commission: *Duncan J. Farmer.*
For the respondent: *Miles W. Kirkpatrick*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. §41, *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Hydro-Air Engineering, Inc., a corporation, sometimes referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and Section 3 of the Clayton Act, as amended (15 U.S.C. §14), and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint stating the following:

PARAGRAPH 1. Respondent Hydro-Air Engineering, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 1201 S. Vandeventer Ave., St. Louis, Mo.

PAR. 2. Respondent Hydro-Air Engineering, Inc., is now, and for some time last past has been engaged in the manufacture and distribution (by sale, lease and/or license) of truss fabricating equipment; the manufacture and sale of truss connecting plates; and the design and sale of engineering services in connection therewith.

PAR. 3. In the course and conduct of its business, respondent Hydro-Air Engineering, Inc., now causes, and has caused in the past, its products, when sold, leased, and/or licensed, to be shipped from its place of business in the State of Missouri to purchasers, lessees and/or licensees thereof in other states, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said

products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that actual and potential competition has been lessened, restricted and restrained by reason of the practices hereinafter alleged, respondent Hydro-Air Engineering, Inc., has been and is now engaged in competition with firms, partnerships, and corporations engaged in the manufacture and distribution of truss fabricating equipment, the manufacture and sale of truss connecting plates, and the design and sale of engineering services.

PAR. 5. In the course and conduct of its business as described above, respondent Hydro-Air Engineering, Inc., has offered, entered into and enforced agreements with purchasers, lessees and/or licensees of its truss fabricating equipment which require such purchasers, lessees and/or licensees, as a condition to the purchase, lease or license of truss fabricating equipment from said respondent, to purchase truss connecting plates and/or engineering services from said respondent.

PAR. 6. The effect of the aforesaid agreements has been and may be to substantially lessen competition in the manufacture and sale of truss connecting plates and the design and sale of engineering services.

PAR. 7. The acts, practices and methods of competition alleged herein constitute tying agreements or practices by respondent in violation of Section 3 of the Clayton Act and/or Section 5 of the Federal Trade Commission Act.

PAR. 8. The acts, practices and methods of competition alleged herein constitute unfair methods of competition or unfair acts or practices by respondent 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 hereto with violation of Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton 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 consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hydro-Air Engineering, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 1210 S. Vandeventer Ave., St. Louis, Mo.

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

ORDER

I

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

A. The term "respondent" refers to Hydro-Air Engineering, Inc., a corporation, and its subsidiaries, affiliates, successors, assigns, officers, agents, representatives and employees.

B. The term "truss fabricating equipment" refers to all machinery and equipment sold, leased, or licensed by respondent to be used in the assembly, production and construction of wood roof trusses used in the construction of residences, multiple dwellings, commercial or industrial buildings and farm structures.

C. The term "truss connecting plates" refers to all metal plates bearing any number of nails or other sharp devices used to permanently connect the joints of wood roof trusses used in the construction of residences, multiple dwellings, commercial or industrial buildings and farm structures.

D. The term "engineering services" refers to design specification services provided by respondent in connection with the assembly, production and construction of wood roof trusses, and the selection and designation of truss connecting plates deemed necessary for the proper support of said trusses.

II

It is ordered, That respondent, directly or indirectly through any corporate or other device, in connection with the sale, lease or license of truss fabricating equipment, truss connecting plates and/or engineering

services in the United States shall, within thirty (30) days after entry of this order, cease and desist from:

1. Offering, entering into or enforcing any agreement or provision of any agreement, express or implied, which in any way requires or obligates any purchaser, lessee or licensee of respondent's truss fabricating equipment, as a condition to the execution or continuation of a purchase, lease or license agreement with respect to such equipment, to purchase or agree to purchase all or any part of such purchaser's, lessee's or licensee's requirements of truss connecting plates and/or engineering services from respondent or from any source designated by respondent.

2. Offering, allowing or granting a price discount, rental or royalty reduction, rebate, or other valuable consideration on or with respect to the sale, lease or license of respondent's truss fabricating equipment which is in any way based upon purchases of truss connecting plates and/or engineering services from respondent or from any source designated by respondent.

3. Requiring any of its purchasers, lessees or licensees of truss fabricating equipment to purchase truss connecting plates and any other products from respondent or from any source designated by respondent.

III

It is further ordered, That respondent shall:

1. Within thirty (30) days after entry of this order, mail a letter on its stationery, signed by the officers of the respondent and enclosing a copy of this order, to all of its purchasers, lessees, and/or licensees of truss fabricating equipment who have purchased truss connecting plates from it during the twenty-four (24) months preceding entry of this order which informs each such purchaser, lessee or licensee of the prohibitive terms of this order.

2. Notify, during the five (5) year period after entry of this order, each new prospective purchaser, lessee or licensee of its truss fabricating equipment (excluding replacement parts) of the prohibitive terms of this order on its first written proposal to each such new prospective purchaser, lessee or licensee.

3. Within ten (10) days after entry of this order, provide a copy of this order to each of its salesmen, sales agents and sales representatives.

4. Within thirty (30) days after entry of this order, and continuing thereafter, make available its manuals concerning its standard wood roof truss designs, including updated standard wood roof truss designs, to any truss fabricator desiring such manuals; nothing contained in this

order shall prohibit respondent from charging a reasonable fee for such manuals.

5. Within sixty (60) days after entry 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.

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

IN THE MATTER OF

J. D. ADAMS COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket C-2637. Complaint, Feb. 13, 1975 - Decision, Feb. 13, 1975

Consent order requiring a Colorado Springs, Colo., manufacturer and distributor of truss fabricating equipment and truss connecting plates, among other things to cease tying the sale of wood roof truss connecting plates and/or engineering services to the sale, lease or license of fabricating equipment.

Appearances

For the Commission: *Michael H. Abrams* and *Duncan J. Farmer.*
For the respondent: *Ronald F. Lipps*, Chicago, Ill.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41, *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that J. D. Adams Company, a corporation, sometimes referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and Section 3 of the Clayton Act (15 U.S.C. 14), and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint stating the following:

PARAGRAPH 1. Respondent J. D. Adams Company is a corporation organized, existing, and doing business under and by virtue of the laws

of the State of Colorado, with its principal place of business located at 4045 Sinton Rd., P. O. Box 7462, Colorado Springs, Colo.

PAR. 2. Respondent J. D. Adams Company is now, and for some time last past has been engaged in the manufacture and distribution (by sale, lease and/or license) of truss fabricating equipment; the manufacture and sale of truss connecting plates; and the design and sale of engineering services in connection therewith.

PAR. 3. In the course and conduct of its business, respondent J. D. Adams Company now causes, and has caused in the past, its products, when sold, leased, and/or licensed, to be shipped from its place of business in the State of Colorado to purchasers, lessees and/or licensees thereof in other states, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that actual and potential competition has been lessened, restricted and restrained by reason of the practices hereinafter alleged, respondent J. D. Adams Company has been and is now engaged in competition with firms, partnerships, and corporations engaged in the manufacture and distribution of truss fabricating equipment, the manufacture and sale of truss connecting plates, and the design and sale of engineering services.

PAR. 5. In the course and conduct of its business as described above, respondent J. D. Adams Company has offered, entered into and enforced agreements with purchasers, lessees and/or licensees of its truss fabricating equipment which require such purchasers, lessees and/or licensees, as a condition to the purchase, lease or license of truss fabricating equipment from said respondent, to purchase truss connecting plates and/or engineering services from said respondent.

PAR. 6. The effect of the aforesaid agreements has been and may be to substantially lessen competition in the manufacture and sale of truss connecting plates and the design and sale of engineering services.

PAR. 7. The acts, practices and methods of competition alleged herein constitute tying agreements or practices by respondent in violation of Section 3 of the Clayton Act and/or Section 5 of the Federal Trade Commission Act.

PAR. 8. The acts, practices and methods of competition alleged herein constitute unfair methods of competition or unfair acts or practices by respondent 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 hereto with violation of Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton 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 consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent J.D. Adams Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 4045 Sinton Rd., P.O. Box 7462, Colorado Springs, Colo.

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

I

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

A. The term "respondent" refers to J. D. Adams Company, a corporation, and its subsidiaries, affiliates, successors, assigns, officers, agents, representatives and employees.

B. The term "truss fabricating equipment" refers to all machinery and equipment sold, leased, or licensed by respondent to be used in the assembly, production and construction of wood roof trusses used in the construction of residences, multiple dwellings, commercial or industrial buildings and farm structures.

C. The term "truss connecting plates" refers to all metal plates bearing any number of nails or other sharp devices used to permanently connect the joints of wood roof trusses used in the construction of

residences, multiple dwellings, commercial or industrial buildings and farm structures.

D. The term "engineering services" refers to design specification services provided by respondent in connection with the assembly, production and construction of wood roof trusses, and the selection and designation of truss connecting plates deemed necessary for the proper support of said trusses.

II

It is ordered, That respondent, directly or indirectly through any corporate or other device, in connection with the sale, lease or license of truss fabricating equipment, truss connecting plates and/or engineering services in the United States shall, within thirty (30) days after entry of this order, cease and desist from:

1. Offering, entering into or enforcing any agreement or provision of any agreement, express or implied, which in any way requires or obligates any purchaser, lessee or licensee of respondent's truss fabricating equipment, as a condition to the execution or continuation of a purchase, lease or license agreement with respect to such equipment, to purchase or agree to purchase all or any part of such purchaser's, lessee's or licensee's requirements of truss connecting plates and/or engineering services from respondent or from any source designated by respondent.

2. Offering, allowing or granting a price discount, rental or royalty reduction, rebate, or other valuable consideration on or with respect to the sale, lease or license of respondent's truss fabricating equipment which is in any way based upon purchases of truss connecting plates and/or engineering services from respondent or from any source designated by respondent.

3. Requiring any of its purchasers, lessees or licensees of truss fabricating equipment to purchase truss connecting plates and any other products from respondent or from any source designated by respondent.

III

It is further ordered, That respondent shall:

1. Within thirty (30) days after entry of this order, mail a letter on its stationery, signed by the officers of the respondent and enclosing a copy of this order, to all of its purchasers, lessees, and/or licensees of truss fabricating equipment who have purchased truss connecting plates from it during the twenty-four (24) months preceding entry of

this order which informs each such purchaser, lessee or licensee of the prohibitive terms of this order.

2. Notify, during the the five (5) year period after entry of this order, each new prospective purchaser, lessee or licensee of its truss fabricating equipment (excluding replacement parts) of the prohibitive terms of this order on its first written proposal to each such new prospective purchaser, lessee or licensee.

3. Within ten (10) days after entry of this order, provide a copy of this order to each of its salesmen, sales agents and sales representatives.

4. Within thirty (30) days after entry of this order, and continuing thereafter, make available its manuals concerning its standard wood roof truss designs, including updated standard wood roof truss designs, to any truss fabricator desiring such manuals; nothing contained in this order shall prohibit respondent from charging a reasonable fee for such manuals.

5. Within sixty (60) days after entry 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.

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

IN THE MATTER OF

WEAVER AIRLINE PERSONNEL SCHOOL, INC., ET AL.

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

Docket C-2638. Complaint, Feb. 13, 1975 - Decision, Feb. 13, 1975

Consent order requiring a Kansas City, Mo., airline school and its parent corporation located in Los Angeles, Calif., among other things to cease misrepresenting the degree of industry demand for its graduates, its selectivity in accepting enrollees, the availability of jobs, and the nature and effectiveness of its placement service. Further, the order requires pro-rata refunds be paid to recent eligible enrollees.

Appearances

For the Commission: *Keith Q. Hayes* and *Charles B. Wesonig.*

For the respondents: *Roger S. Fine, Cahill, Gordon & Reindel*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Weaver Airline Personnel School, Inc. and General Educational Services Corporation, corporations, sometimes hereinafter jointly 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 Weaver Airline Personnel School, Inc., (hereinafter sometimes referred to as respondent Weaver), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. It maintains its principal office and place of business at 3521 Broadway, in the city of Kansas City, State of Missouri. Respondent Weaver is a wholly-owned subsidiary of respondent General Educational Services Corporation. Respondent Weaver is now, and for some time last past has been, engaged in the formulation, development, offering for sale, sale and distribution of course(s) of instruction intended to prepare graduates thereof for entry level employment in the airline industry as reservation agents, communication agents, ticket agents, operations (transportation, ramp) agents and air freight sales agents.

Respondent General Educational Services Corporation, (hereinafter sometimes referred to as respondent GES), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. It maintains its principal office and place of business at 1880 Century Park East, in the city of Los Angeles, State of California. Respondent GES owns all of the stock of respondent Weaver Airline Personnel School, Inc. It dominates and controls the business acts and practices of respondent Weaver Airline Personnel School, Inc., and further accepts the pecuniary and other benefits flowing from the acts and practices hereinafter set forth of respondent Weaver Airline Personnel School, Inc.

PAR. 2. Respondents, in the course and conduct of their business as aforesaid, have caused respondent Weaver's airline training course(s) of instruction to be advertised, sold and financed to purchasers thereof located in the various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of

trade in said airline training course(s), in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of its aforesaid business, respondent Weaver, for the purpose of obtaining leads to prospective purchasers and inducing the purchase of its course(s) of instruction, related products, and services by members of the public, has made numerous statements and representations in advertisements inserted in newspapers, magazines and in direct mail pieces of general interstate circulation, without disclosing that persons who respond to such advertisements will be called upon by respondent Weaver's salesmen. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

AIRLINES NEED
Young Men and Women

For glamorous public contact positions as Reservationist, Passenger or Ticket Agent, Communicationist * * *. For full information phone ————, or mail coupon to ————.

* * * * * * *

AIRLINES GIRLS HAVE
EXCITING FUTURES

START YOUR
AIRLINE
CAREER
THE WEAVER WAY

Jet-age expansion is creating many new positions with the airlines. Young women (and men, too.) are needed in reservations, communications ticketing and passenger service* * *.

* * *If you are a high school graduate, send coupon today to learn if you can qualify.

* * * * * * *

let your future soar!

GET INTO AN AIRLINE CAREER!

* * * * * * *

This coupon brings you free facts about Weaver Airline training. . . .

* * * * * * *

COMMERCIAL AIRLINES URGENTLY NEED YOUNG MEN AND WOMEN BETWEEN THE AGES OF 17 AND 28.

* * * * * * *

PAR. 4. Through the use of the statements and representations set

forth above, and others similar thereto, but not specifically set out herein, and through other statements made orally and in writing by respondent Weaver, its employees, agents and representatives, respondent has represented, directly or by implication, to the purchasing public that:

1. Airlines hire almost all of respondent Weaver's students while they are attending residence training or upon completion of the course.

2. Airlines need substantial numbers of new men and women employees in 1970, 1971 and 1972.

3. Respondent Weaver is selective and limits the number of prospective purchasers it will enroll in its course(s) in airline training.

4. Most of respondent Weaver's students will be interviewed by various airlines during residence training.

5. Respondent Weaver operates an effective placement service which is successful in obtaining employment in the airline industry for most of the students who attend residence training or complete its airline training course(s).

6. Persons graduating from respondent Weaver's course(s) in airline training can usually obtain employment in the airline industry in the geographic area of their choice.

PAR. 5. In truth and in fact:

1. Most of the students who attended residence training, or completed respondent Weaver's course(s) in airline training in 1970, 1971 and 1972, were not employed by the airline industry.

2. During the calendar years of 1970, 1971 and 1972, the airline industry did not need substantial numbers of new men and women.

3. Respondent Weaver is not selective and does not limit the number of prospective purchasers that its salesmen can enroll in its course(s) of airline training.

4. Few, if any, of respondent Weaver's students are interviewed by an airline while attending residence training.

5. Respondent Weaver's placement service was unable to obtain employment in the airline industry for most of respondent Weaver's students in 1970, 1971 and 1972.

6. Most of respondent Weaver's graduates have been unable to obtain employment in the airline industry in the geographic area of their choice in 1970, 1971 and 1972.

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

PAR. 6. Respondent Weaver has offered for sale, course(s) of instruction intended to prepare graduates thereof for entry level

employment in the airline industry, without disclosing in advertising or through its sales representatives:

1. That most persons enrolling in respondent Weaver's course(s) of airline instruction do not complete such course(s) of instruction.

2. That most persons who do complete respondent Weaver's course(s) in airline training do not obtain employment in the airline industry.

3. The number of its graduates who were able to obtain the employment for which they were trained, in relation to the number of persons enrolled, and the number of persons graduated for such period(s) of time.

4. That most airlines train those persons whom they employ, and the training offered by respondent Weaver is not necessary to obtain entry level employment in the airline industry, or any other industry. Knowledge of such facts would indicate the possibility of securing future employment as a result of enrolling in respondent Weaver's course(s) of airline training. Thus, respondent Weaver has failed to disclose material facts, which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such course(s) of instruction.

Therefore, The aforesaid acts and practices were and are false, misleading and deceptive or unfair acts and practices.

PAR. 7. Respondent Weaver has used the aforesaid false, misleading, deceptive or unfair acts and practices which, under all of the facts and circumstances, respondents should have known were false, misleading, deceptive and unfair, to induce persons to pay or to contract to pay substantial sums of money for respondent Weaver's course(s) of instruction which, in connection with said purchasers' future employment and careers, were, and are, without substantial value to many enrollees of said courses. Respondents have received the said sums and have failed to offer refunds, or refund such sums, to a substantial number of enrollees and participants in such courses who were unable to secure employment in the positions and fields for which they have been purportedly trained by respondents.

The use by respondent Weaver of the aforesaid acts and practices and respondents' continued retention of said sums of money, as aforesaid, were, are are, unfair acts and practices.

PAR. 8. The use by respondents of false, misleading, deceptive and unfair statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, has had a capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of said respondents' course(s) in airline

training and related products and services, by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the 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 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 sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Weaver Airline Personnel School, Inc. 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 3521 Broadway, Kansas City, Mo.

Respondent General Educational Services 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 1880 Century Park E., Los Angeles, Calif.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Weaver Airline Personnel School, Inc., a corporation, and respondent General Educational Services Corporation, a corporation, their successors and assigns, and their officers, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with advertising, offering for sale, sale or distribution of courses of study, training, or instruction in the field of airline training, do forthwith cease and desist from:

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

(a) The airline industry has employed or will employ enrollees or graduates of any such course(s), without furnishing the information specified in Paragraph 5(b)(3) of this order.

(b) The airline industry needs men and/or women, without furnishing the information specified in Paragraph 5(b)(3) of this order.

(c) Respondents are selective or limit the number of prospective purchasers whom they will enroll in any such course(s).

(d) Representatives of the airline industry come to respondents' place of business, or any other place, to hire graduates of any such course(s) of instruction, without furnishing the information specified in Paragraph 5(b)(3) of this order.

(e) Any placement service has or will assist enrollees or graduates of any such course(s) in any manner, without furnishing the information specified in Paragraph 5(b)(3) of this order.

(f) Persons who enroll in any such course(s) of instruction offered by respondents can obtain employment in or near any geographic location.

2. Failing to disclose, clearly and conspicuously, in advertisements for any such course(s) that inquirers will be visited by sales representatives, unless consent to such visits is first obtained by mail or telephone.

3. Using, orally, in writing, or in any other manner, at any time, statistical data or numerical estimates, derived from any source whatsoever, respecting present or future occupational demand or the growth of employment in the airline industry, without furnishing the information specified in Paragraph 5(b)(1), (2), (3) of this order.

4. Failing to keep adequate records which may be inspected by the Commission staff members upon reasonable notice:

(a) Which disclose the facts upon which any placement statistics or

claims or other representations of the type described in Paragraph 5(b)(1), (2), (3) of this order are based, and

(b) From which the validity of any placement statistics described in Paragraph 5(b)(3) of this order can be determined,

for so long as such statistics, claims or other representations are disseminated, made or authorized by respondents, or are required to be disclosed hereunder and for a further period of three (3) years after respondents' termination of dissemination, use, authorization or disclosure of such statistics, claims or representations, (whichever period is the longer).

5. Failing to send by certified mail, return receipt requested, to each person that shall contract for the sale of any such course of instruction, a notice, in a form approved by the Commission which shall disclose the following information and none other:

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

(b) A paragraph reciting the following affirmative disclosures:

(1) A statement disclosing the total number of students who have enrolled in each such course of instruction offered by respondents for each of the three preceding calendar years.

(2) A statement disclosing the total number of students who have graduated from each such course of instruction offered by respondents for each of the three preceding calendar years.

(3) A statement disclosing the total number of students who have obtained employment through respondents' placement service each year for the three preceding calendar years in the airline industry.

(4) A statement which shall read as follows:

Most airlines train those persons whom they employ and the training offered by proprietary vocational training schools, which are not affiliated with the airlines, is not necessary to obtain entry level employment with such airlines. Where other factors are equal, airlines may give preference in employment to persons having such training.

(5) An explanation of the cancellation procedure provided in this order, namely, that any contract or other agreement may be cancelled within three (3) days after receipt by the customer, via the U.S. mails, of this notice.

(6) Said notice shall contain a detachable form which the person may use as a notice of cancellation, which indicates the proper address for accomplishing any such cancellation.

(7) The said notice shall be sent by respondents no sooner than the next day after the person shall have executed a contract for the sale of any such course of instruction.

6. Contracting for any sale of any such course of instruction in the form of a sales contract or other agreement which shall become binding

prior to the end of the third day after the day of receipt by the customer of the form of notice provided in Paragraph 5 of this order.

7. *It is further ordered*, That respondents, in connection with the sale or offering for sale of any such course, training, or instruction:

(a) Inform orally all prospective purchasers to whom solicitations are made, and provide, in writing, in all applications and contracts, in at least ten-point bold type, that the application or contract may be cancelled for any reason by notification to respondents, in writing, within three (3) days from the date of receipt of the form of notice provided in Paragraph 5 of this order.

(b) Refund immediately all monies to all purchasers who have requested cancellation of the application or contract within three (3) days from the date of receipt of the form of notice provided in Paragraph 5 of this order.

8. *It is further ordered*, That:

(a) Respondents herein deliver a copy of the decision and order in this matter to each of their present and future employees, salesmen, agents, solicitors, independent contractors, or to any other person, who promotes, offers for sale, sells or distributes any course of instruction included in this order.

(b) Respondents herein provide each person so described in Paragraph 8(a) above with a form, returnable to the respondents, clearly stating his intention to be bound by and to conform his business practices to the requirements of this order; retain said statement during the period said person is so engaged; and make said statement available to the Commission's staff for inspection and copying purposes upon request.

(c) Respondents herein inform each person so described in Paragraph 8(a) above that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he will be bound by provisions contained in this order.

(d) If such party as described in Paragraph 8(a) above will not agree to so file the notice set forth in Paragraph 8(b) above with the respondents and be bound by the provisions of the order, the respondents will not use or engage or continue the use or engagement of such party to promote, offer for sale, sell or distribute any course of instruction included in this order.

(e) Respondents herein inform the persons described in Paragraph 8(a) above that the respondents are obligated by this order to discontinue dealing with, or to terminate the use or engagement of persons who continue on their own the deceptive acts or practices prohibited by this order.

(f) Respondents herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person described in Paragraph 8(a) above conform to the requirements of this order.

(g) Respondents herein discontinue dealing with or terminate the use or engagement of any person described in Paragraph 8(a) above, as revealed by the aforesaid program of surveillance, who continues on his own any act or practice prohibited by this order.

9. *It is further ordered*, That respondents shall forthwith distribute a copy of this order to each of their operating divisions or subsidiaries in the field of airline training or any other field.

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

11. *It is further ordered*, That respondent Weaver Airline Personnel School, Inc. shall notify in writing, at the last known address, within thirty (30) days after the date this order becomes final, all students who enrolled in any of the courses offered by respondent Weaver Airline Personnel School, Inc. on or after Jan. 1, 1972, and who paid in full for such course on or before the date this order becomes final, by certified mail, return receipt requested of their right to present claims for restitution according to the following terms and conditions:

Students shall be informed that in order to be entitled to restitution they must submit to respondent Weaver Airline Personnel School, Inc. a notarized affidavit containing details of the following affirmations:

(a) That the student enrolled in any course(s) of instruction offered by respondent Weaver Airline Personnel School, Inc. on or after Jan. 1, 1972.

(b) That the student paid the full amount required by respondents for tuition for any course(s) of instruction offered by respondent Weaver Airline Personnel School, Inc. on or after Jan. 1, 1972.

(c) That the student attempted to procure employment in the field for which he or she took training from respondent Weaver Airline Personnel School, Inc. and was unsuccessful in obtaining employment within six months after completion or termination by the student of his or her course(s).

(d) That the student agrees that in consideration of his receipt of a pro-rata share of cash restitution as provided for in this order such student releases respondents from any and all further claims such student might have, whether known or unknown, with respect to or

arising out of his or her agreement with or course of study at Weaver Airline Personnel School, Inc.

Failure to seek or obtain restitution pursuant to this order shall not preclude any student from pursuing any other remedy under law.

Provided, however, That no such notice need be sent to any such students with respect to whom respondent Weaver Airline Personnel School, Inc. certifies to the staff of the Commission that it placed in employment in the airline or travel-related field together with such details of such placements as the staff may reasonably require.

Respondent Weaver Airline Personnel School, Inc. shall make restitution to any student submitting a sworn affidavit complying with the provisions of Sections (a) through (d) of this paragraph, pursuant to the following procedure:

(1) Students seeking restitution must submit proper affidavits within seventeen (17) months after receiving proper notice as to their right to such restitution.

(2) Respondent Weaver Airline Personnel School, Inc. shall make pro-rata payments, in amounts to each student no greater than that student's total tuition payment, to each student seeking and qualifying for restitution under the terms of this order. *Provided, however*, That the total sum to be paid in restitution under Paragraph 11 of this order shall not be greater than two hundred and forty-nine thousand dollars ($249,000). Said payments shall be made no later than thirty (30) days after the final date established for submission of student requests for restitution.

Provided further, That in the event the amount required to be paid in restitution to those students who enrolled on or after Jan. 1, 1972 is less than two hundred and forty-nine thousand dollars ($249,000), respondent Weaver Airline Personnel School, Inc. shall notify all students who enrolled on or after Jan. 1, 1971, but not later than Dec. 31, 1971, and who paid in full, of their right to restitution, in the same manner as provided in this Paragraph for those students who enrolled on or after Jan. 1, 1972, except that such notice shall be sent within thirty (30) days after the final date upon which the initial restitution payments shall be due. Said students seeking restitution must then submit affidavits, as provided in Sections (a) through (d) of this paragraph (modified as to date of enrollment in subparagraph (a)) within ninety (90) days after receipt of said notice. Weaver Airline Personnel School, Inc. shall then make pro-rata refunds, in the same manner as provided in Section (2) of this paragraph. *Provided, however*, That the total sum to be paid under this paragraph shall not exceed two hundred and forty-nine thousand dollars ($249,000) when combined with the total restitution paid to those students who enrolled on or after Jan. 1, 1972. In the

event the amount required to be paid still does not exceed two hundred forty-nine thousand dollars ($249,000) then the same procedure set forth in this paragraph shall be followed with respect to all students who enrolled on or after Jan. 1, 1970 but not later than Dec. 31, 1970 and who paid in full.

12. *It is further ordered*, That all sums collected or received by Weaver Airline Personnel School, Inc. on or after May 20, 1974 on obligations of students shall be distributed as follows:

1. The first three hundred thousand dollars ($300,000) so collected or received shall be the property of respondent Weaver Airline Personnel School, Inc.

2. All sums so collected in excess of three hundred thousand dollars ($300,000) shall be kept in a special escrow account (said excess sums are hereinafter referred to as the "Escrow Funds"). Respondent Weaver Airline Personnel School, Inc. shall notify in writing, at the last known address, twelve (12) months after the date this order becomes final, all students who enrolled in any of the courses offered by respondent Weaver Airline Personnel School, Inc. and whose accounts receivable are outstanding, in whole or in part, as of the date this order becomes final, by ordinary mail, of their right to present claims for restitution according to the following terms and conditions:

(a) Respondent Weaver Airline Personnel School, Inc. shall make restitution to any student submitting a notarized affidavit containing details of the following affirmations:

(1) That the student enrolled in any course(s) of instruction offered by respondent Weaver Airline Personnel School, Inc.

(2) That the student paid the full amount required by respondents for tuition for any course(s) of instruction offered by respondent Weaver Airline Personnel School, Inc. on or after the date this order becomes final. (Respondents shall, in the notice to said students of their right to restitution, set forth the date this order becomes final.)

(3) That the student attempted to procure employment in the field for which he or she took training from respondent Weaver Airline Personnel School, Inc. and was unsuccessful in obtaining employment within six (6) months after completion or termination by the student of his or her course(s), or as of the date the student files his or her affidavit requesting restitution pursuant to this order, whichever date is earlier.

(4) That the student agrees that in consideration of his receipt of a pro-rata share of cash restitution as provided for in this order such student releases respondents from any and all further claims such student might have, whether known or unknown, with respect to or

arising out of his agreement with or course of study at Weaver Airline Personnel School, Inc.

(b) Students seeking restitution must submit proper affidavits within six (6) months after receiving proper notice as to their right to such restitution.

(c) Respondent Weaver Airline Personnel School, Inc. shall then make pro-rata payments, in amounts to each student no greater than that student's total tuition payment, to each student seeking and qualifying for restitution under the terms of this order. *Provided, however*, That the total sum to be paid in restitution under Paragraph 12 of this order shall not be greater than the principal amount of the escrow funds as of the final date by which such students are required to submit requests for restitution under this paragraph. Said payments shall be made no later than thirty (30) days after the final date established for submission of student requests for restitution under this Paragraph.

(d) Sums collected after the final date established for submission of student requests for restitution under this Paragraph, and any interest earned on the escrow funds, shall be the property of respondent Weaver Airline Personnel School, Inc.

Provided, however, That nothing in this order shall be deemed as abrogating any defense any student may have with respect to any claim by respondents for all or part of any unpaid tuition fees allegedly due or owing from any student enrolled in any course(s) of instruction offered by respondent Weaver Airline Personnel School, Inc.

Provided further, That in the event respondents negotiate or otherwise transfer to any third party, during the period ending with the last date by which students may seek restitution under this paragraph of this order, any of the accounts receivable representing tuition payments allegedly due and owing from enrollees in any course(s) of instruction offered by respondent Weaver Airline Personnel School, Inc., its successors or assigns, said transfer or negotiation shall be accompanied by an explicit written agreement that the transferee or purchaser of said account receivable shall be subject to the terms and conditions of Paragraph 12 of this order.

13. *It is further ordered*, That the obligation of respondent Weaver Airline Personnel School, Inc. to make restitution as set forth in this order shall be and hereby is guaranteed by respondent General Educational Services Corporation.

14. *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 the order.

IN THE MATTER OF

J. M. SANDERS T/A J. M. SANDERS JEWELRY COMPANY

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

Docket 8977. Complaint, July 1, 1974 - Decision, Feb. 18, 1975

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

Appearances

For the Commission: *Edward J. Carnot, W. Roland Campbell,* and *Barbara S. Schanker.*

For the respondent: *Glen Copeland, Roberts, Weill, Ellis & Copeland,* Chattanooga, Tenn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that J. M. Sanders, an individual trading and doing business as J. M. Sanders Jewelry Company, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending 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 J. M. Sanders is an individual trading and doing business as J. M. Sanders Jewelry Company, under and by virtue of the laws of the State of Tennessee, with his principal office and place of business located at 1431 Market St., in the city of Chattanooga, State of Tennessee.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of jewelry, small appliances, and other types of merchandise to the public.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly extends consumer credit and arranges for the extension of consumer credit, as "consumer credit" and "arrange for the extension of credit" are defined in Regulation Z, the

implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of his business as aforesaid, and in connection with his credit sales, as "credit sale" is defined in Regulation Z, respondent has caused and is causing his customers to enter into contracts for the sale of respondent's goods. On these contracts, hereinafter referred to as "the contract," respondent provides certain consumer credit cost information. Respondent does not provide these customers with any other consumer credit cost disclosures.

By and through use of the contract, in many instances, respondent:

1. Fails to use the term "cash price" to describe the price at which respondent offers, in the regular course of business, to sell for cash the property or services which are the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z.

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

3. Fails to disclose the downpayment in property made in connection with the credit sale, and to describe that amount as the "trade-in," as required by Section 226.8(c)(2) of Regulation Z.

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

5. Fails 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.

6. Fails to disclose the sum of the unpaid balance of cash price and all other charges which are included in the amount financed but which are not part of the finance charge, and to describe that sum as the "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.

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

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

9. Fails 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. Fails 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. Fails to disclose the number of payments scheduled to repay the indebtedness as required by Section 226.8(b)(3) of Regulation Z.

12. Fails to disclose accurately 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. Sets forth a ten percent (10%) national and railroad collecting fee and other percentage fees which tend to mislead and confuse the customer about the actual cost of credit extended, in violation of Section 226.6(c) of Regulation Z.

PAR. 5. In the ordinary course of business as aforesaid, respondent causes to be published advertisement of goods, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods. By and through the use of the advertisements, respondent:

States that no downpayment is required, in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

(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 payment schedule 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.

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

INITIAL DECISION BY WILLIAM K. JACKSON, ADMINISTRATIVE LAW JUDGE

DECEMBER 31, 1974

Preliminary Statement

The Federal Trade Commission, on July 1, 1974, issued its complaint in this proceeding charging respondent J. M. Sanders, an individual

trading and doing business as J. M. Sanders Jewelry Company, hereinafter referred to as the respondent, with failure to comply with the provisions of Regulation Z,[1] the implementing regulation of the Truth in Lending Act,[2] duly promulgated by the Board of Governors of the Federal Reserve System and, pursuant to Section 108(c) of said Act (15 U.S.C. § 1607(c)), with having violated the Federal Trade Commission Act.[3] Specifically, respondent is charged with 13 specific violations[4] of Section 226.8 of Regulation Z (12 C.F.R. § 226.8) in connection with "credit sale" contracts in the sale and distribution of jewelry, small appliances, and other types of merchandise by him to the public by failing to disclose certain consumer credit cost information on said contracts. In addition, the complaint alleges that certain advertisements which aid, promote or assist, directly or indirectly, extension of consumer credit in connection with the sale of respondent's goods, fail to set forth certain prescribed information required by Sections 226.8 and 226.10(d)(2) of Regulation Z.

After being served on July 17, 1974 with the complaint, respondent appeared by counsel and filed, on Aug. 19, 1974, his answer to the complaint denying, in substance, the allegations of the complaint, but admitting certain jurisdictional facts. Thereafter, pursuant to order dated Aug. 20, 1974, the parties were directed to exchange lists of witnesses, documents and other physical exhibits and to complete certain other pretrial matters.

Pursuant to order dated Aug. 30, 1974, evidentiary hearings in this matter were held in Chattanooga, Tenn., on Oct. 2 and 3, 1974, during which complaint counsel adduced the testimony of three of respondent's customers (Halter, Sticher and Gibson), one of respondent's former employees (Tuder) and Mrs. Barbara Schanker, a Consumer Protection Specialist of the Federal Trade Commission's Atlanta Regional Office, to explain the Truth in Lending Act's prescribed computations. Respondent Sanders was the only witness called in his defense. Complaint counsel submitted 75 exhibits and respondent had no exhibits. The record was closed on Oct. 3, 1974, and the parties, at the undersigned's direction, thereafter filed proposed findings of fact, conclusions of law, and briefs.

Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of this initial decision, are hereby denied.

This proceeding is before the undersigned upon the complaint, answer, testimony and other evidence, proposed findings of fact and

[1] 12 C.F.R. § 226, *et seq.*; 15 U.S.C. p. 615.

[2] Truth in Lending Act, § 101, *et seq.*; 15 U.S.C. §§ 1601-1665.

[3] 15 U.S.C. §§ 41, 45.

[4] See Findings 7-20, *infra*.

conclusions of law, and briefs filed by counsel supporting the complaint and by counsel for respondent. The proposed findings of fact, conclusions of law, and briefs in support thereof submitted by the parties have been carefully considered, and those findings not adopted either in the form proposed or in substance are rejected as not supported by the evidence or as involving immaterial matter.

Having heard and observed the witnesses, and after having carefully reviewed the entire record in this proceeding together with the proposed findings, conclusions and briefs submitted by the parties, as well as replies, the undersigned makes the following:

FINDINGS OF FACT

1. Respondent J. M. Sanders is an individual trading and doing business as J. M. Sanders Jewelry Company, under and by virtue of the laws of the State of Tennessee, with his principal office and place of business located at 1431 Market St., in the city of Chattanooga, State of Tennessee (Answer).

2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of jewelry, small appliances, and other types of merchandise to the public (Answer) since 1959 (Sanders 212).[5] During 1971, respondent's gross sales reached nearly $400,000 (CX 63C).

3. In the ordinary course and conduct of his business as aforesaid, respondent regularly extends consumer credit and arranges for the extension of consumer credit, as "consumer credit" and "arrange for the extension of credit" are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System (Answer).

4. Miss Ruby Tuder, an employee who had worked in respondent's jewelry store and had accompanied him also on "road jobs" had worked for individual respondent Sanders during the past ten (10) years ending on June 14, 1974. She had been employed at first only as a sales clerk and then later as both sales clerk and bookkeeper (Tuder 64-65; Sanders 189). According to Miss Tuder, respondent's *modus operandi* is as follows:

Sanders had placed the store's advertisement (CX 55-CX 59) and had dictated the terminology contained therein (Tuder 78-79); he had ordered the matches (CX 51A-B; CX 52A-B) and directed the

[5] References to the record are made in parentheses and certain abbreviations as hereafter set forth are used:
CX - Commission's Exhibit
RX - Respondent's Exhibit
RAR - Respondent's answer to complaint counsel's request for admissions
The transcript of the testimony is referred to with either the last name of the witness and the page number or numbers upon which the testimony appears or with the abbreviation Tr. and the page.

terminology on these match covers (Tuder 79-80) and had ordered pens (CX 61; CX 62) and had directed the terminology to be engraved on these pens (Tuder 80-82). These matches and pens, respectively, have been used for advertising purposes by J. M. Sanders Jewelry Company for dissemination to the public since 1968 until at least through June 14, 1974 (Tuder 80, 81, 84, 94).

Respondent consummated sales both at his store and "on the road" (Tuder 68-70). To record these transactions, whether they be cash or credit sales, respondent has, since 1968, used a "folio" (CX 1) on which individual respondent Sanders directed the terminology (Tuder 80). In the latter part of 1973, respondent began using both CX 65 and the folio (CX 1) to record retail installment contracts (Tuder 107; RAR 73). Both the folio (CX 1) and the retail installment contract (CX 65) have a space for the customer's signature.

A customer making a credit purchase from late 1973 on was supposed to receive a copy of both the folio and the retail installment contract (Tuder 82, 108). In all instances, the customer was asked to sign the folio first (Tuder 82) because respondent Sanders felt that said folio was a contract which would be enforceable in court in case of the customer's default (Tuder 69).

Respondent, when making sales, would accept trade-ins, cash downpayments or no downpayments (Tuder 68).

On installment sales to railroad employees, J. M. Sanders would charge the purchaser a 10 percent collecting fee, *i.e.*, the amount the railroads charge respondent Sanders for withholding from the railroad employees' pay checks money to pay J. M. Sanders for their purchases. On sales and credit balances over $225, respondent made an additional 1 1/2 percent monthly finance charge (Tuder 83-85; Schanker 148).

J. M. Sanders also sold merchandise to railroad employees who lived and worked outside of the Chattanooga area. These sales were referred to as "road jobs" (Tuder 69-70). In installment sales on "road jobs," the purchaser received the merchandise and Sanders' calling card, on the back of which Sanders had computed the cost to the purchaser, including the interest, finance charges and tax. Sanders would remove from the sold merchandise the identification tag on which were inscribed the stock number and the cost, insert said tag in a brown envelope and mark on the outside of said brown envelope the same information he had written on the calling card he had issued to the purchaser, including the name and address of the customer. After respondent returned from a "road trip," the customer generally would be mailed a folio as evidence of his indebtedness (Tuder 108). Within the last year, however, instead of subsequently mailing only a folio, as was respondent's practice for similar sales more than a year ago (Tuder

108), he would mail a folio and a retail installment contract (CX 65) to be signed (Tuder 90-91), or in some cases these documents were signed in blank on the road (Tuder 92). In any event, with respect to sales "on the road" made within the last year, the customer did not receive the required cost of credit disclosures either prior to or at the time the sale was consummated, as required by 12 C.F.R. §226.8(a) (15 U.S.C.A. 1638(b)); *Ratner* v. *Chemical Bank New York Trust Co.*, CCH Consumer Credit Guide, ¶ 99.456, 329 F.Supp. 270 (S.D.N.Y. 1971).

In order to collect for retail installment purchases of railroad employees, Sanders only needed the employee's social security number and a signed railroad payroll deduction authorization. The customers' signature on contracts and folios was therefore not vital (Tuder 91-92).

For credit sales at the store, individual respondent Sanders had instructed his employees on how to compute the various finance charges and applicable taxes and how to fill in the folios and contracts (Tuder 119-120).

Customers who made purchases from respondent on credit and paid their obligations directly to Sanders were not charged the 10 percent railroad deduction fee and were only charged a 1 1/2 percent monthly finance charge (Tuder 81-85).

5. Subsequent to July 1, 1969, respondent in the ordinary course and conduct of his business and in connection with his credit sales, as "credit sale" is defined in Regulation Z (§ 226.2(n), 12 C.F.R. §226.2(n)), has caused and is causing customers to enter into contracts for the sale of respondent's goods (CX 2-CX 43, CX 45, CX 69-CX 71, CX 79-CX 81, CX 84-CX 87). On these contracts, hereinafter referred to as "the contract," respondent provides certain consumer credit cost information (see CX 1). Prior to 1973, respondent did not provide the customers with any other consumer credit cost disclosures (Tuder 107-108).

6. Respondent used the folio (CX 1) to record both credit and cash transactions (Tuder 80; RAR 1, 2, 3, 4, 5, 6, 7). The folio has been in use since 1968 through at least June 14, 1974 (Tuder 80).

7. Respondent fails to use the term "cash price" to describe on the contract the price at which respondent offers, in the regular course of business, to sell for cash the property or services which are the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z (12 C.F.R. §226.8(c)(1)).

Respondent admits to using folios (such as CX 1) subsequent to July 1, 1969, to reflect financial obligations whether they be cash or credit transactions (RAR 1, 2, 3, 4, 5, 6, 7). The use of these folios to record credit transactions is verified by the testimony of respondent's customers (Halter 29-34; Stricher 38-53; Gibson 59-63) and the testimony of a former employee (Tuder 67-70).

An examination of the following exhibits, representing credit transactions, reveals respondent's failure to use the term "cash price": CX 1, CX 2-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84. See also RAR 8.

8. Respondent fails to disclose on contracts the downpayment in money made in connection with the credit sale, and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z (12 C.F.R. §226.8(c)(2)).

The uncontroverted testimony of respondent's former employee establishes that respondent did accept downpayments (Tuder 68-69). An examination of the exhibits reveals that respondent accepted downpayments but had failed to describe the amounts as "cash downpayments" (CX 10, CX 79, CX 81, CX 84. See also RAR 9).

9. Respondent fails to disclose on contracts the downpayment in property made in connection with the credit sale and to describe that amount as the "trade-in," as required by Section 226.8(c)(2) of Regulation Z (12 C.F.R. §226.8(c)(2)).

Respondent's former employee testified that respondent did accept trade-ins (Tuder 68-69). The fact that respondent accepted trade-ins but had failed to describe the amounts as "trade-ins" is established by examination of the following contracts: CX 1 and CX 2. (See also RAR 10.)

10. Respondent fails to disclose on contracts the sum of the "cash downpayment" and the "trade-in," and to describe that sum as the "total downpayment," as required by Section 226.8(c)(2) of Regulation Z (12 C.F.R. §226.8(c)(2)) (see Findings Nos. 8 and 9; RAR 11; CX 69-CX 71; CX 79-CX 81; CX 84-CX 87).

11. Respondent fails to disclose on contracts 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 (12 C.F.R. §226.8(c)(3)).

Witness Schanker explained by referring to CX 81:

> The unpaid balance of the cash price is determined by subtracting from the cash price of $67.50 the down payment of $10.00 and the unpaid balance of cash price would be $57.50 * * * [which] * * * does not appear on the document. (Tr. 166)

Using the same method of calculation as on CX 81, Mrs. Schanker explained that on CX 10 the "unpaid balance of cash price" should be $1,131.36 which is determined by deducting from the cash price of $1,196.00 the downpayment of $64.64. On CX 10, this "unpaid balance of cash price" is not indicated (Schanker 166). Mrs. Schanker further indicated that neither on CX 79 nor on CX 81 does the "unpaid balance of cash price" appear (Tr. 167).

It should also be noted that on none of the folios (CX 1, *et seq.*) is the term "unpaid balance of cash price" used (see also RAR 12).

12. Respondent fails to disclose the sum of the unpaid balance of cash price and all other charges which are included in the amount financed but which are not part of the finance charge, and to describe that sum as the "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z (12 C.F.R. §226.8(c)(5)).

Mrs. Schanker testified that she computed on CX 11 the unpaid balance as follows:

I added the cash price of $102.95, less the down payment, which is equal to zero, I then added the tax of $6.55 and I came up with an unpaid balance of $109.50. (Tr. 144)

She further testified that respondent's contract does not contain a space entitled "unpaid balance" (Tr. 145).

As to CX 12, Mrs. Schanker testified as follows:

In this case the cash price is $289.95, to that you're supposed to subtract the downpayment which is zero, and you add the tax of $17.80 and you come up with an unpaid balance of $307.75. This does not appear on the document. (Tr. 145)

An examination of respondent's transactions reveals that not a single contract either shows the "unpaid balance" or has a space provided for the "unpaid balance" (see CX 1, CX 2-CX 5, CX 7-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84; RAR 13).

13. Respondent fails to disclose on contracts the "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z (12 C.F.R. §226.8(c)(7)).

Mrs. Schanker testified that on CX 35 she computed the "amount financed" as follows:

The cash price is $375.00, there is no downpayment, I added the tax of $23.64 and came up with an unpaid balance of $398.64. Since there is no prepaid finance charge, the amount financed would be the same as the unpaid balance of $398.64. (Tr. 146)

On CX 36, Mrs. Schanker calculated the "amount financed" as follows:

* * * the cash price is the sum of the three items purchased of $96.00, $299.95 and $39.95, giving a cash price of $435.90. There is no down payment, then there is a tax of $20.57, giving an unpaid balance of $456.47. Since there is no prepaid finance charge, the amount financed would be the same as the unpaid balance, which is $456.47. (Tr. 147)

An examination of the exhibits reveals that the "unpaid balance" does not appear on CX 1-CX 5, CX 7-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84. (See also Schanker 146-147; RAR 14.)

14. Respondent fails to use on contracts the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z (12 C.F.R. 226.4) to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z (12 C.F.R. §226.8(c)(8)(i)).

Respondent "had an agreement with the railroad in which he could have certain amounts taken out of the railroad people's pay checks, but this amount could not exceed - the total of the purchase, $225; therefore he charged an additional finance charge when the balance was over $225." (Schanker 148; see also Tuder 83-85).

The 10 percent rate expressed in the "National & R.R. 10% Collecting Fee" is a finance charge imposed on respondent's credit customers who are railroad employees and who authorize the railroad to withhold from their pay checks money to pay to J. M. Sanders for their purchases. Said 10 percent, however, is not imposed on cash customers or railroad employees who make their payments directly to J. M. Sanders (Tuder 83-85; Halter 29; Sticher 42, 47; Gibson 49, 63).

Mrs. Schanker testified that on CX 2 she calculated the "finance charge" as follows:

> * * * the finance charge would be the sum of the railroad 10 percent collection fee of $12.60 plus the additional 1-1/2 percent charge of $12.60, giving a finance charge of $25.20 * * * [which] * * * does not appear in the document. (Tr. 149)

An examination of respondent's transactions shows that the term "finance charge" does not appear on CX 2-CX 5, CX 7, CX 8, CX 10, CX 12, CX 26, CX 29, CX 33, CX 35, CX 36, CX 41, CX 43, CX 45, CX 69-CX 71, CX 74, CX 81, CX 84. (See also Schanker 149-150; RAR 15.)

15. Respondent fails 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 (12 C.F.R. 226.8(c)(8)(ii)).

Mrs. Schanker testified:

> On Commission Exhibit 11, the deferred payment price is the total cost of the item to a person buying on cash so it would be the cash price plus $102.95 plus a tax of $6.55 plus a finance charge of $11.80, giving a deferred payment price of $121.30 * * * [which] * * * does not appear on the document. (Tr. 160-161)

What does appear on CX 11 is $121.40 as the deferred payment price.

As to CX 29, Mrs. Schanker testified:

> * * * the deferred payment price is equal to the cash price of $548.99 with the tax of $27.40 plus a finance charge of $112.91, giving a total - a deferred payment price of $689.30 and this amount does not appear on the document. (Tr. 161)

The deferred payment price on CX 29, however, is marked as $689.20.

It is, therefore, obvious that on CX 11 and CX 29 respondent has failed to *accurately* disclose the deferred payment price.

The following additional exhibits demonstrate that using Mrs. Schanker's calculation, respondent has failed to *accurately* disclose the deferred payment price:

CX	Figures on Contract	Should Read
10	$1464.64	$1596.24
43	78.32	77.32
45	362.27	362.33
82	69.83	79.83
88	90.99	116.23

The term "deferred payment price" does not appear on the 108(c)

exhibits: CX 1-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84 (see also RAR 16).

16. Respondent fails to disclose on contracts the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z (12 C.F.R. 226.5), as required by Section 226.8(b)(2) of Regulation Z (12 C.F.R. §226.8(b)(2)).

As to CX 11, Mrs. Schanker explained the method of calculating the annual percentage rate as follows:

> In a regular transaction where you calculate an annual percentage rate, you multiply the finance charge times 100 and divide that amount by the amount financed and you come up with a ratio. Then you look in the - Volume I of the Federal Reserve Board tables and you go down to the number of monthly payments and go across to find out what the annual percentage rate is. You match up the ratio that you just computed. On Commission Exhibit 11, the finance charge of $11.80 you multiply by 100 and you divide that amount by $109.50 and you come up with a ratio of * * * 10.78 * * * you go down the table and you have four payments and you come up with an annual percentage rate of 50.75 percent. (Tr. 161-162)

No annual percentage rate, however, is disclosed on CX 11.

On CX 15, Mrs. Schanker calculated the annual percentage rate as follows:

> * * * you multiply the finance charge of $15.70 times 100 and divide that by the amount financed of $141.75 and you come up with a ratio of 11.07 with four monthly payments you have an annual percentage rate of 52 percent. (Tr. 162)

Again, nowhere on CX 15 is there an annual percentage rate disclosed.

Employing Volume I of the Federal Reserve Board's annual percentage rate tables, Mrs. Schanker computed the annual percentage rate of CX 2 to be 76.25 percent (Tr. 162) and that of CX 3 to be 94.75 percent (Tr. 163).

Neither the annual percentage rate nor the term "annual percentage rate" appears on either the aforesaid Commission Exhibits or CX 4-CX 41, CX 43, CX 45, CX 69-CX 71, CX 79, CX 81, CX 84. (See also RAR 17.)

17. Respondent fails to disclose on contracts the number of payments scheduled to repay the indebtedness as required by Section 226.8(b)(3) of Regulation Z (12 C.F.R. §226.8(b)(3)).

After examining respondent's contracts admitted into evidence, Mrs. Schanker testified (Tr. 163-164) that respondent had failed to indicate the number of payments on the following transactions: CX 3, CX 7-CX 9, CX 12, CX 13, CX 15-CX 19, CX 21-CX 28, CX 30-CX 33, CX 37-CX 39, CX 41, CX 42, CX 68.

An examination of CX 5 and CX 10 reveals that respondent had failed to *accurately* disclose the number of payments.

18. Respondent fails to disclose on contracts accurately 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 (12 C.F.R. §226.8(b)(3)).

After examining CX 43, Mrs. Schanker explained that respondent has disclosed as "total of payments" $78.32. By, however, simply adding the figures on CX 43, namely: cash price of $60.15 less downpayment (which is zero) plus a tax of $3.62 plus a finance charge of $13.55, the sum is $77.32, which is the actual "total of payments." Respondent, therefore, has failed to accurately disclose the "total of payments" (Schanker 150-151), the error being $1.00.

By using the same method of addition as on CX 43, Mrs. Schanker explained on CX 11 that respondent discloses the total of payments to be $121.40 whereas the figure should be $121.30 (to the sum of the cash price of $102.95 add a tax of $6.55 and a finance charge of $11.80, the sum of which is $121.30) (Schanker 151-152). The error, therefore, is 10 cents.

According to Mrs. Schanker's testimony, the errors appear on the subtotal, the total and the new balance on hold, the latter of which is the new total (Tr. 153).

Mrs. Schanker's calculation of the "total of payments" on CX 6 should be $90.56 (to the cash price of $81.76 add the finance charge of $8.80, which totals $90.56) although respondent's total of payments is listed as $88.15, which is an error of $2.41 (Tr. 154-155).

On CX 10, Mrs. Schanker calculated the "total of payments" to be $1,531.60 while CX 10 lists the total of payments to be $1,400.00, which is an error of $131.60. Mrs. Schanker's calculation on CX 10 is as follows:

From the cash price of $1,196.00 deduct the downpayment of $64.64, which results in an unpaid balance of cash price of $1,131.36, which respondent does not disclose. To the unpaid balance of cash price of $1,131.36 add a tax of $69.60 and the finance charge of $330.64, which results in the total of payments of $1,531.60. Respondent's total number of payments, however, add up to $1,400 (Schanker 155-156).

Using the same method of adding the charges, Mrs. Schanker testified that on CX 29 there is a 10-cent error in that respondent has disclosed the "total of payments" to be $689.20 while they should be $689.30 (Tr. 157-159).

On CX 45, Mrs. Schanker computed the "total of payments" to be $362.33 while respondent's figure on CX 45 is $362.27, an error of 6 cents (Tr. 159-160).

The following documents fail to use the term "total of payments": CX 1-CX 43, CX 45, CX 47, CX 69-CX 71, CX 79-CX 81, CX 84-CX 87 (see also RAR 18).

19. Respondent sets forth on the contract a ten percent (10%)

national and railroad collecting fee and other percentage fees which tend to mislead and confuse the customer about the actual cost of credit extended, in violation of Section 226.6(c) of Regulation Z (12 C.F.R. §226.6(c)).

The "10%" rate expressed in the "National & R.R. 10% Collecting Fee" is computed solely on the cash price and applicable taxes, without consideration of the number of payments scheduled to repay the indebtedness (RAR 22, 44; Copeland 53). Miss Tuder, a former employee of respondent, testified that the 10 percent collecting fee was computed on the total which consists of the sum of the cash price, the tax and service charge. Only after this total, to which was added the 10 percent railroad collecting fee, did respondent deduct any downpayments or trade-ins (Tuder 68-69).

It should also be noted that for other than open end credit, the type respondent extends, one ratio is used to compute the annual percentage rate because there is only one amount to be financed and only one finance charge. In addition to the folio (CX 1) respondent, since late 1973, has also used a retail installment contract (CX 65) which shows under "ANNUAL PERCENTAGE RATE" two annual percentages. This fails to comply with Section 226.6(c) of Regulation Z (12 C.F.R. §226.6(c)) (Schanker 167-168).

The testimony of respondent's customers and past employee clearly establishes that the 10 percent collecting fee was very confusing as to whether or not it was included in the annual percentage rate and whether it was computed on the cash price or deferred payment price (Halter 29-30, Sticher 42, 44; Gibson 59, 61-62; Tuder 68-69, 76, 83-84).

The term "National & R.R. 10% Collecting Fee" appears on the following contracts: CX 1-CX 43, CX 45, CX 47, CX 69-CX 71, CX 79-CX 81, CX 84-CX 87.

20. In the ordinary course of business, respondent causes to be published advertisements of goods, as "advertisement" is defined in Section 226.2(b) of Regulation Z (12 C.F.R. §226.2(b)). These advertisements aid, promote, or assist directly or indirectly in extensions of consumer credit in connection with the sale of these goods.

Respondent's former employee, Miss Tuder, testified that respondent had placed and directed the terminology of newspaper advertisements (Tuder 78-79; CX 50, CX 55-CX 59; RAR 43), that respondent had directed the terminology on the match covers (CX 51A-B, CX 52A-B; RAR 44) and the ballpoint pens (CX 61, CX 62) which were used for dissemination to the public (Tuder 79-82). Both the matches and the ballpoint pens have been disseminated to the public from 1968 on through at least June 14, 1974 (Tuder 80-82; see also generally, Sanders 197-198).

Respondent started using folios (CX 1) in 1968 to record both credit and cash transactions. He directed the terminology to be used on these folios which were still in use on June 14, 1974 (Tuder 80).

What these exhibits have in common (*e.g.*, CX 1, CX 50, CX 51A-B, CX 52A-B, CX 55-CX 59, CX 61, CX 62) is that they use the term "No money down" without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z (12 C.F.R. §226.8), as required by Section 226.10(d)(2) (12 C.F.R. §226.10(d)(2)) thereof:

(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 payment 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.

(See also RAR 46, 47, 48.)

21. Respondent's credit transactions are other than open end credit transactions and, therefore, come under the purview of Section 226.8 of Regulation Z (12 C.F.R. §226.8) (Schanker 167-169).

Respondent's Defense of Discontinuance

Respondent testified that he had been in the jewelry business since 1959 (Sanders 212), a full ten years before July 1, 1969, the effective date of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*).

Respondent's defense consists almost entirely of a plea of discontinuance. Respondent testified that on or since June 1974, he has attempted in good faith to comply with the requirements of the Truth in Lending Act (Sanders 196-207).

Assuming, *arguendo*, that respondent had not been aware of the Truth in Lending Act on the date it became effective, he was certainly put on notice about the Truth in Lending Act on or about Aug. 15, 1972, when he received a letter from the Federal Trade Commission's Atlanta Regional Office (CX 63A-B) to which respondent Sanders had replied on Sept. 27, 1972 (CX 63C). Respondent Sanders was subsequently visited by officials of the Federal Trade Commission during the end of Jan. 1973 (Schanker 148; Sanders 190).

As of June 14, 1974, the date Miss Tuder had left her employment with respondent, respondent was still using the folio (CX 1) to record credit sales to his customers (Tuder 80, 82, 89; RAR 1, 2, 3, 4, 5, 6, 7). The folio has been in use since 1968 (Tuder 80).

Not until late in 1973 did respondent make an effort to comply fully

with the requirements of the Truth in Lending Act by using, in addition to the folio, a retail installment contract in connection with sales consummated with railroad employees in his store and financed through the railroad (CX 65; Tuder 107; RAR 73).[6] However, respondent, during the last two years, frequently went "on the road," and during these trips sold as much as $3,000 of merchandise in three hours to railroad employees (Tuder 71). When credit sales are made "on the road" to railroad employees, the customer only receives as evidence of his indebtedness one of respondent's business cards with limited information written on the back of the card. The information indicates the cost of the merchandise, the 10 percent railroad fee, the 1 1/2 percent collecting fee, and the sales tax. These figures are totaled, the amount of the monthly payments and the number of months to pay are also set forth on the back of the card (Tuder 70). After respondent returned from a "road trip," the customer generally would be mailed a folio as evidence of his indebtedness (Tuder 108). Within the last year, however, instead of subsequently mailing only a folio, as was respondent's practice for similar sales more than a year ago (Tuder 108), he would mail a folio and a retail installment contract (CX 65) to be signed (Tuder 90-91), or in some cases these documents were signed in blank on the road (Tuder 92). In any event, with respect to sales "on the road" made within the last year, the customer did not receive the required cost of credit disclosures either prior to or at the time the sale was consummated, as required by 12 C.F.R. §226.8(a) (15 U.S.C.A. 1638(b)); *Ratner* v. *Chemical Bank New York Trust Co.*, CCH Consumer Credit Guide, ¶ 99.456, 329 F.Supp. 270 (S.D.N.Y. 1971).

An examination of said retail installment contract (CX 65; see also CX 72, dated 8/26/74; CX 73, dated 2/27/74; CX 74, dated 6/10/74; and CX 82, dated 6/10/74), which is presently in use by respondent (RAR 73), reveals that it still fails to comply with the requirements of the Truth in Lending Act, *e.g.*, because on respondent's installment sales contracts only one amount can be financed and one ratio only used to compute the annual percentage rate. CX 65, however, under "ANNUAL PERCENTAGE RATE" has a space for two figures (Schanker 168-169). Apparently no other efforts have been made by respondent since issuance of the complaint in this matter (July 1, 1974) to comply with the requirements of the Truth in Lending Act on his installment contracts.

Matches (CX 51A-B, CX 52A-B) and ballpoint pens (CX 61, CX 62), both bearing the logo "No money down" without other required credit

[6] On or since June 15, 1972, in addition to the folio, respondent used a retail installment contract (CX 68) for "open account" sales, that is, purchases not financed through the railroad (Tuder 108-110). CX 68 was limited to (a) lay-away transactions, *i.e.*, when merchandise was kept in respondent's store until the customer's financial obligation had been paid, or (b) "open account," *i.e.*, credit transactions not financed through the railroad (Tuder 110).

cost disclosures, have been disseminated by respondent to the public for promotional purposes from 1968 on through at least June 14, 1974 (Tuder 78-82). Respondent's newspaper advertisements (CX 55-CX 59) advise the reader that he can purchase respondent's goods with "No money down" without disclosing other required credit cost information. Yet it was not until "several months ago" that respondent had allegedly ceased to advertise "No money down" (Sanders 197).

It is, therefore, clear that respondent, as of this date, has not fully complied in all respects with the requirements of the Truth in Lending Act.

Even assuming, *arguendo*, that respondent is now complying with all the requirements of the Truth in Lending Act, the evidence clearly establishes that his "compliance" insofar as merchandise financed through the railroad would have been subsequent to being contacted in Jan. 1973 by representatives of the Federal Trade Commission. Therefore, as noted in footnote 6 of *Guziak* v. *FTC*, 361 F.2d 700 (8th Cir. 1966), *cert. denied*, 385 U.S. 1007 (1967), the Court of Appeals stated that:

> The mere fact that the [respondent] is no longer engaged in some, if not all, of the activities which were the basis for the Commission's action does not prevent the issuance of a cease and desist order against such activities. *Automobile Owners Safety Ins. Co.*, v. *FTC*, 255 F.2d 295, (8th Cir. 1958).

More recently, the Commission stated that:

> It is well established that the mere fact that the offending practices have been discontinued prior to the issuance of a complaint does not provide, by itself, the requisite assurance that an order is unnecessary and not in the public interest. As the courts have noted, it is the timing and circumstances of the claimed abandonment which is of importance to the issue of the necessity for an order. Where, as here, *the abandonment took place only after the Commission's hand was on respondent's shoulder*, the courts are clear that abandonment of the practices under such circumstances will not support a conclusion that the practices will not be resumed. (Zale Corporation, 78 F.T.C. 1233, 1240 (1971) [emphasis supplied]; see also *Spencer Gifts, Inc.* v. *FTC*, 302 F.2d 267 (3d Cir. May 4, 1962); *Damar Products Inc.* v. *United States*, 309 F.2d 323 (3d Cir. 1962); *Marlene's, Inc.* v. *FTC*, 216 F.2d 556, 559 (7th Cir. 1954); *Galter* v. *FTC*, 186 F.2d 810, 812, 813 (7th Cir. 1951), *cert. den.*, 342 U.S. 818 (1951); *Eugene Dietzgen Co.* v. *FTC*, 142 F.2d 321, 330 (7th Cir. 1944), *cert. den.*, 323 U.S. 730 (1944); *Coro, Inc.* v. *FTC*, 338 F.2d 149, 153 (1st Cir. 1964), *cert. den.*, 380 U.S. 954 (1965); *Ward Baking Co.*, 54 F.T.C. 1919 (1958); *Arnold Constable Corporation*, 58 F.T.C. 49 (1961); *Art National Manufacturers Distributing Co. Inc.*, 58 F.T.C. 719, 724 (1961)).

In view of the foregoing, it is clear that the Commission's investigation commenced on Aug. 15, 1972; that a full field investigation was made in Jan. 1973; that as of June 14, 1974, respondent was still using a folio (CX 1) that did not comply with the law; and that as late as Oct. 2, 1974, the date of the hearing, respondent had not complied in all respects with the law. Accordingly, it does not appear that respondent has completely abandoned the unlawful practices, and there is no

assurance that without a cease and desist order he will comply with the law.

DISCUSSION

The Truth in Lending Act and the regulations enacted pursuant to it require that certain disclosures be made in connection with consumer credit transactions. The purpose of requiring these disclosures, as stated by Congress in § 1601, is:

> The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.

See also S.Rep. No. 392, 90th Cong., 1st Sess. 1-3 (1967); H.R.Rep. No. 1040, 90th Cong., 2d Sess. 7, 13 (1968). The key to assuring that the required disclosures will provide for the knowledgeable use of credit and make "comparison shopping" possible is standardization of what certain credit terms mean. In order to avoid violation of the Truth in Lending Act, a creditor must calculate these terms in compliance with technical statutes and regulations. This technical precision is, however, necessary if the congressional purpose is to be fulfilled. Recognizing this, the courts have found violations of the act based upon slight deviations. See, *e.g.*, *Buford* v. *American Finance Co.*, 333 F.Supp. 1243 (N.D.Ga. 1971) (failure to include one dollar notary fee in "finance charge").

As to the enumerated violations of the Truth in Lending Act, it is clear that the Regulations do make the use of specific terminology mandatory. 12 C.F.R. §226.2(a) [226.6(a)] reads in part, "The disclosures required to be given by this part shall be made * * * in the terminology prescribed in applicable sections." 12 C.F.R. §226.8 in describing what disclosure is required repeatedly uses the format "shall be disclosed: * * * using the term [with applicable term stated in quotation marks]."

In the present case, there is no question that respondent failed to make the required disclosures in proper form.

CONCLUSIONS

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

2. The complaint herein states a cause of action and this proceeding is in the public interest.

3. Respondent, by violating Sections 226.6, 226.8, and 226.10 of Regulation Z (12 C.F.R. §226.6, §226.8, and §226.10), is in violation of the Truth in Lending Act by virtue of Section 103(q) of said Act (15

U.S.C. 1602(q)). Violation of the Truth in Lending Act by virtue of Section 108(c) of the Truth in Lending Act (15 U.S.C. 1607) is a violation of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*).

4. The facts having been found to be as alleged in the complaint, and respondent having violated the Federal Trade Commission Act, the following order should be issued to protect the public interest.

ORDER

It is ordered, That respondent J. M. Sanders, an individual trading and doing business as J. M. Sanders Jewelry Company, his successors or assigns, respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Failing in any consumer credit transaction to disclose the price at which respondent, in the regular course of business, offers 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 consumer credit transaction and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

3. Failing to disclose the amount of any downpayment in property made in connection with any consumer credit transaction and to describe that amount as the "trade-in," as required by Section 226.8(c)(2) of Regulation Z.

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

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

6. Failing to disclose the "unpaid balance" to describe the sum of the "unpaid balance of cash price" and all other charges included in the amount financed but which are not part of the finance charge, 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 consumer credit transaction 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. 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. Stating, utilizing, or placing any information or explanation not required or authorized by Regulation Z in a manner which might tend to mislead or confuse the customer or contradict, obscure, or detract attention from the information required by Regulation Z to be disclosed, as required by Section 226.6(c) of Regulation Z.

14. Stating in any advertisement the amount of the downpayment 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 there is also stated in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

(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 periods 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.

15. Failing in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and

226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z.

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

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

FINAL ORDER

The administrative law judge filed his initial decision in this matter of Dec. 31, 1974, finding respondent to have engaged in the acts and practices as alleged in the complaint and entering a cease-and-desist order against respondent. A copy of the initial decision and order was served on the respondent on Jan. 23, 1975. No appeal was taken from the initial decision.

The Commission having now determined that the matter should not be placed on its own docket for review, and that the initial decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice.

It is ordered, That the initial decision and order contained therein shall become effective on Feb. 24, 1975.

It is further ordered, That J. M. Sanders, an individual trading and doing business as J. M. Sanders Jewelry Company, shall, within sixty (60) days after service of this order upon him, file with the Commission a report in writing, signed by respondent, setting forth in detail the manner and form of his compliance with the order to cease and desist.

IN THE MATTER OF

BAGATELLE INTERNATIONAL LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND WOOL PRODUCTS LABELING ACTS

Docket C-2639. Complaint, Feb. 18, 1975 - Decision, Feb. 18, 1975

Consent order requiring a New York City importer of wool blend fabrics and clothing manufacturer, among other things to cease misbranding its wool products and importing wool products into the United States without filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty on them.

Appearances

For the Commission: *Jerry R. McDonald.*
For the respondents: *Jack G. Wasserman*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bagatelle International Ltd., a corporation, and Irving Weinstein and Sidney Weinstein, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Bagatelle International Ltd. 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 1407 Broadway, N.Y., N.Y.

Individual respondents Irving Weinstein and Sidney Weinstein are officers of Bagatelle International Ltd. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

Respondents are engaged in the importation of wool products, namely wool blend fabrics, the manufacturing of said products into clothing, and the sale and distribution of said items of clothing.

PAR. 2. Respondents, now and for some time last past, have imported

for introduction into commerce, manufactured for introduction into commerce, introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, and sold in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain items of clothing stamped, tagged, labeled, or otherwise identified by respondents as "55 percent polyester, 45 percent wool," and "70 percent wool, 30 percent nylon" whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

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

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

PAR. 5. Respondents' wool products, namely wool fabrics from which respondents manufacture the garments described in "Paragraph Four" above, were imported by the respondents into the United States and, as particularized in said paragraph, were not stamped, tagged, labeled, or otherwise identified in accordance with the provisions of the Wool Products Labeling Act of 1939. The invoices of said imported wool products required by the Tariff Act of 1930, failed to set forth the information with respect to said wool products required under the provisions of the Wool Products Labeling Act of 1939, to wit, the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per

centum or more, and (5) the aggregate of all other fibers. The respondents did falsify the consignee's declaration provided for in said Tariff Act of 1930 insofar as it related to the above items of information enumerated in this paragraph, in violation of Section 8 of the Wool Products Labeling Act of 1939 and Section 5 of the Federal Trade Commission Act.

PAR. 6. The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bagatelle International Ltd. 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 1407 Broadway, N.Y., N.Y.

Respondents Sidney Weinstein and Irving Weinstein are officers of said corporation. They formulate, direct and control the acts, practices and policies of said corporation and their addresses are the same as that of said corporation.

Respondents are engaged in the business of manufacturing and distributing clothing in commerce.

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

ORDER

It is ordered, That respondent Bagatelle International Ltd., a corporation, its successors and assigns, and its officers, and Sidney Weinstein, individually and as an officer of said corporation, and Irving Weinstein, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any wool product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any wool product, which has been advertised or offered for sale in commerce; and in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of wool products, as the terms "commerce" and "wool products" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

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

It is further ordered, That respondents Bagatelle International Ltd., a corporation, its successors and assigns, and its officers, and Sidney Weinstein, individually and as an officer of Bagatelle International Ltd., and Irving Weinstein, individually and as an officer of Bagatelle International Ltd., and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from:

1. Importing or participating in the importation of wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents notify, by registered mail, each of their customers that purchased the wool products which gave rise to this complaint of the fact that such products were misbranded.

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

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

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

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

STEVEN RIZZI, ET AL. T/A FREIGHT LIQUIDATORS

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

Docket 8937. Complaint, July 30, 1973 Decision, Feb. 25, 1975*

Order requiring nine individuals operating a group of retail stores under the trade name of Freight Liquidators in the Washington, D.C., and Baltimore, Md., trading areas, among other things to cease misrepresenting the nature of their business; using misleading corporate or trade name; using bait and switch tactics; and violating the Textile Fiber Products Identification Act by failing to

* For the complaint, *see* 83 F.T.C. 1183.

disclose information regarding composition of textile fiber products as required by said Act. The order further dismisses the complaint as to the individual respondent Jerry M. Lytell.

Appearances

For the Commission: *Everette E. Thomas, Richard F. Kelly, Alice C. Kelleher* and *Maureen L. McGill.*

For the respondents: *Albert J. Ahern, Jr.*, Baileys Crossroads, Va., *Jacob A. Stein, Stein, Mitchell & Mezines*, Washington, D.C., *Richard C. Whiteford, Whiteford, Taylor, Preston, Trimble & Johnston*, Towson, Md., *Glen A. Mitchell*, Washington, D.C.

INITIAL DECISION

BY MILES J. BROWN, ADMINISTRATIVE LAW JUDGE

JUNE 27, 1974

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint[1] in this matter on July 30, 1973, charging respondents with 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 (15 U.S.C. §45), as well as with violations of the Textile Fiber Products Identification Act (15 U.S.C. §70).

Answers were duly filed by respondents Joseph W. Green, Harold J. Green, John W. Green, Herbert Millstein, Peter W. Galarneau, George Edward Ommert,[2] Gerald Gautcher and Sam Katz, in which they generally denied the substantive allegations of the complaint as well as the partnership relationships alleged therein, and further denied violating the Federal Trade Commission Act or the Textile Fiber Products Identification Act.

Respondents Sam Katz, Jerry M. Lytell and Mike McKeever all applied to the administrative law judge for Commission-appointed counsel on the grounds of indigency. Pursuant to the requirements of the Commission's Policy Statement (Ad. Bull. 71-21) dated Feb. 1, 1971, a "Statement of Financial Status" form was mailed to each of these three respondents. Respondents Sam Katz and Jerry M. Lytell responded and the administrative law judge made findings on the financial inability of these respondents to retain counsel (Katz, Sept. 28, 1973; Lytell, Nov. 28, 1973). Donald H. Hadley, Esq., accepted

[1] The complaint was dismissed as to respondent Steven Rizzi by Summary Initial Decision dated Nov. 13, 1973. The Commission's Final Order of dismissal was entered on Jan. 3, 1974.

[2] Identified in the complaint as George Edward Ommeret.

designation to represent Mr. Katz on a *pro bono* basis, and he participated throughout the adjudicative hearings. No counsel was ever designated by the Commission to represent Mr. Lytell. Mr. McKeever never returned the required "Statement of Financial Status" form. He was not represented by counsel at the adjudicative hearings.

Nine days of adjudicative hearings were held in Wash., D.C. during Dec. 1973 and Feb. 1974. The record in this proceeding was closed for the reception of evidence on Mar. 1, 1974. On Apr. 5, 1974, proposed findings of fact, conclusions of law, and order were filed by counsel supporting the complaint. By Apr. 19, 1974, respondents Joseph W. Green, Harold J. Green, John W. Green, Herbert Millstein, Peter W. Galarneau, George Edward Ommert, Gerald Gautcher, and Sam Katz had filed their proposed findings and reply briefs. Complaint counsel filed replies to the papers filed by Gerald Gautcher and Sam Katz. By order dated May 14, 1974, the Commission extended until June 28, 1974, the time in which the initial decision should be filed.

Any motions appearing in the record not heretofore or herein specifically ruled upon either directly or by the necessary effect of the conclusions in the decision are hereby denied.

Respondents Herbert Millstein (Tr. 26), George Edward Ommert (Tr. 28), Peter W. Galarneau (Tr. 29), Sam Katz (Tr. 67) and Joseph W. Green (Tr. 577) were subpoenaed as witnesses by counsel supporting the complaint and each refused to testify, invoking his Constitutional immunity against self-incrimination. Pursuant to authorization of the Attorney General, the administrative law judge ordered Herbert Millstein, Peter W. Galarneau and George Edward Ommert to testify, granting each of them immunity from prosecution under Title 18, Section 6001, *et seq.*, United States Code. No authorization for granting immunity was secured for Joseph W. Green and he did not testify. Respondent Sam Katz was not recalled by counsel supporting the complaint.

Counsel supporting the complaint offered into evidence a transcript of an investigational hearing of Mar. 8, 1972, at which Joseph W. Green gave testimony concerning the issues in this case. The administrative law judge sustained the objection of counsel for the other respondents and rejected this exhibit (CX A2, rejected) (Tr. 778-787). Counsel supporting the complaint were permitted to make an offer of proof which was admitted into the record as CX AA1 by order dated Mar. 1, 1974.

Although counsel supporting the complaint in their proposed findings have made reference to certain matters contained in their offer of proof, the administrative law judge has not relied on any matter contained in this exhibit. While reliance on the past sworn statement of

a witness that refuses to testify may be appropriate where he is the only respondent, in my opinion it would be a denial of due process to permit such evidence as against other individuals who were not present at the investigational hearing and who had no opportunity to cross-examine the witness. Moreover, I do not think the issues in this case are so severable that this evidence could be admitted against one respondent without affecting the rights of the other respondents.

The proposed findings, conclusions and briefs submitted by counsel have been given careful consideration and to the extent not adopted by the decision in the form proposed or in substance are rejected as not supported by the evidence or as immaterial.

This case involves the adjudication of alleged false and misleading advertising and selling practices including the deceptive use of a trade name and certain so-called "bait and switch" tactics by approximately fifteen stores that traded under the name Freight Liquidators in the Washington and Baltimore areas during 1971 and 1972. Respondents' main contentions at this posture of the case go to the responsibility of the several individual respondents for the challenged practices, the sufficiency of the evidence as to their individual conduct with respect to said practices, and the proper form and scope of an order, if any order is deemed appropriate in the circumstances.

Having reviewed the record in this proceeding, and having considered the demeanor of the witnesses as they testified, together with the proposed findings, conclusions and briefs submitted by the parties, I make the following findings as to the facts.

FINDINGS OF FACT

1. Freight Liquidators consisted of a group of retail stores operating under the trade name "Freight Liquidators," that were engaged in the advertising, offering for sale, sale and distribution of rugs, sewing machines, stereo radios and phonographs and various other articles of merchandise to the purchasing public in the Washington, D.C. and Baltimore, Md., trading areas during 1971 and 1972 (See CX series F, L, Q; Millstein, 591-602[3]; Galarneau, 683, 692-693; Ommert, 729, 740).

2. Joseph W. Green, who had been engaged in a sewing machine business in New York, N.Y., moved to the Washington, D.C., area in 1969, and in 1970 he organized several retail stores under the trade name Consumers Buying Service. Shortly thereafter in 1971 the trade

[3] References are to the pages of the transcript of testimony at the adjudicative hearing preceded by the identification of the witness, most of whom were associated with the Freight Liquidators organization. Consumer witnesses have not been designated by name.

name Freight Liquidators was adopted (Silverman, 69-70, 72-77; Galarneau, 684; Millstein, 587, 590, 659).

3. The "Freight Liquidators concept" was that the use of that name was an effective way of advertising (Silverman, 72-73). Through collective purchasing and collective advertising the individual stores would be able to purchase and sell at lower prices (see Rizzi, 224). Newspaper advertisements for certain products were placed under the name "Freight Liquidators" listing the addresses of the individual stores. The advertised products were purchased under the direction and control of Joseph W. Green by his various employees (Silverman, 116-117; Rizzi, 216; Mullinax, 232; Dolinger, 269-270). Mr. Green was also responsible for preparing and placing the advertisements (Dolinger, 280, 281, 283-284, 289-291; Millstein, 588, 591, 597; Galarneau 692, 719).

4. Joseph W. Green was the owner or part owner of each of the individual Freight Liquidators stores. Although the relationships between Joseph W. Green and the individual respondents and others not named in the complaint were informal, it is clear from the record considered as a whole that these arrangements were in the nature of partnerships and that the individuals involved considered themselves as partners of Joseph W. Green (see CX B 3-14; Silverman, 88, 91, 93, 98-99, 102, 103, 107, 148; Rizzi, 210, 219-220; Dolinger, 271-274, 275-276; Galarneau, 717; Gautcher, 763).

5. Prospective "partners" were solicited through classified advertisements and upon making the required investment of anywhere from $3,000 to $25,000, the partner would be set up at his own store location. Some of these individuals were employees of the Freight Liquidators organization and Joseph W. Green before becoming partners (CXF6; Silverman, 74; Rizzi, 200-203; Begun, 240-241; Dolinger, 268; Gautcher, 760).

6. Mr. Green's individual partners were usually the managers of the store (Silverman, 117-118). The partner's original investment in cash was matched by Mr. Green in merchandise. The leases of the store premises were usually in Mr. Green's name, whereas the business license and the store's bank account were in the name of the manager-partner (Millstein, 592-594, 602; Ommert, 732-33; Gautcher, 763-764). The manager-partner, who was in charge of the day-to-day operation of the store, usually received a guaranteed "draw" per week from the profits and the rest of the profits were shared among the individual partner of partners and Mr. Green, according to their respective interests (Silverman, 107-110, 117-118; Begun, 245; Millstein, 590; Galarneau, 686, 718; Ommert, 731-732, 735; Gautcher, 768). Salesmen were employed on a commission basis which constituted 25 percent of

any profit realized from a sale (Silverman, 120; Stefano, 302; Millstein, 651-653; Galarneau, 691-692).

7. Herbert Millstein, one of Mr. Green's earliest partners, also established several Freight Liquidator stores in the Baltimore area. In those arrangements the manager-partners were half owners and Mr. Millstein and Mr. Green each had a 25 percent interest, sharing in the profits accordingly. The merchandise was supplied to these Baltimore stores from Mr. Millstein's Essex, Md., warehouse. The leases on the various store premises in the Baltimore area were in Mr. Green's name (Millstein, 599-600, 604-608; Ommert, 728-729, 732; Gautcher, 762-763).

8. Peter W. Galarneau, also one of Mr. Green's earlier partners, established a branch Freight Liquidator store as part of his main location (Galarneau, 690). This branch store arrangement was also used by Mr. Millstein and Mr. Green (see CX B 12-13; CX Z 15-17; Galarneau, 682-683; Silverman, 105).

9. Each store was required to report its daily sales to Mr. Green's office or to Mr. Silverman, Mr. Green's accountant (see Silverman, 104, 106, 137; Rizzi, 207-208; Stefano, 294, 299; Galarneau, 706). The several stores paid Mr. Green for the merchandise delivered to them (Rizzi, 215; Stefano, 299-300; Galarneau, 700). In addition, Mr. Green's office billed the stores for their share of the advertising costs, this cost originally being divided equally among the stores, but later computed on the volume of business done by each store (Silverman, 111-115, 129; Brunner, 432; Millstein, 626, 631). None of Mr. Green's individual partners had control over the content of these advertisements (*ibid.*).

10. Mr. Millstein was responsible for the advertising for the Baltimore stores and his arrangement for payment of this cost was similar to that used by Mr. Green (Millstein, 589, 623; Ommert, 732-733; Gautcher, 769). None of Mr. Millstein's partners in the Baltimore area stores had control over the content of the Baltimore advertisements (Ommert, 741; Gautcher, 769).

11. Although most of the products handled by the Freight Liquidators stores were procured by Mr. Green and the headquarters personnel and distributed to the various store locations, when necessary the stores exchanged merchandise (Millstein, 595, 609, 611, 615, 620; Galarneau, 691, 697-698, 706). In some instances the individual partners did some purchasing, and Mr. Millstein purchased certain products for his Baltimore area stores (Ommert, 735; Millstein, 591, 618-619, 629).

12. Respondent Joseph W. Green was the main motivation and controlling force behind Freight Liquidators and he had prime responsibility for the management, direction, policy and control of the Freight Liquidators organization (see Findings 2, 3, 4, 5, 6, 7, 9, 11,

supra; Galarneau, 717-718). Herbert Millstein had principal responsibility for the management, direction, policy and control of the Baltimore area stores (see Findings 7, 10, 11, *supra*).

13. Freight Liquidators has caused their merchandise to be shipped across state lines between their various retail stores located in the states of Virginia and Maryland for sale to purchasers thereof located in the states of Virginia and Maryland and the District of Columbia (see Millstein, 620, 625, 649; Galarneau, 683, 700; CX series F, L, Q). Freight Liquidators business was substantial (CX B 14).

14. In the course and conduct of their business of advertising, offering for sale and sale and distribution of rugs, stereos and sewing machines, and other products, respondents have engaged in a substantial course of trade in commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act (15 U.S.C. 44).

15. Freight Liquidators has caused the dissemination of certain advertisements concerning its articles of merchandise in the Washington Post and Washington Star newspapers, each of which has substantial interstate circulation, for the purpose of and which were likely to, induce, directly or indirectly, the purchase of respondents' merchandise (see CXF 2-11; CXF 13-25; CXF 26-30; CXL 1-4; CXQ 1-2; Tr. 578).

16. The following are typical and illustrative of Freight Liquidators' newspaper advertising and circular advertising:

(a)

PUBLIC NOTICE
(4 DAYS ONLY!)
LIQUIDATION SALE

BANKRUPTCY STOCK - FACTORY & MILL CLOSEOUTS
ALL NEW MERCHANDISE - FAMOUS BRAND NAMES.

$1,287,350 WORTH OF PRE-CUT
RUGS AND MILL-END ROLLS,
TELEVISIONS, STEREOS
AND
COMPONENTS & SEWING MACHINES (HUNDREDS OF ITEMS NOT SHOWN BELOW ARE ALSO ON DISPLAY.)

BE EARLY FOR BEST SELECTION

(see CX F2)

* * * * * * *

(b)

STEREO
UNCLAIMED FREIGHT
BANKRUPTCY STOCK FACTORY CLOSEOUTS
TRUCK LOAD LIQUIDATION

All New Merchandise
LAST NOTICE FOR THIS WEEKEND,
FRIDAY, SATURDAY, SUNDAY & MONDAY

ONLY $88
New 1972 (in cartons), 5-piece Stereo Component Units, 40 Watts, AM/FM radio, a deluxe 4 spd. BSR turntable, 4-speaker sound system, equipped for 8 track tape player, tape recorder, etc. Only $88

Only $147
New 5-piece Components 4-speed Deluxe Turn Tbl., 100 watts, AM/FM radio, deluxe 4-spd. turntable w/diamond stylus, 4-speaker air suspension audio system. Equip. for 8-trk. cassette. Orig. $329. Yours for $147

Only $108

New 1972 (in cartons), famous make, 100 watt tuners w/AM/FM multiplex equipped for 8 track or cassette. Only $108

From Only $88
New console stereo, various sizes & finishes. Lge. assortment w/AM/FM radio & deluxe 4 spd. changer.

FREIGHT LIQUIDATORS
DEAL WITH THE STORE NEAR YOU* * *
(see CXF 4, CXF 11 and CXF 13)

* * * * * * *

(c)

RUGS
12 x 9's $19
WAREHOUSE LIQUIDATION
4 DAYS ONLY!
All 100 percent nylon, acrilan, polyester pile. Full sizes 9x12, 12x12, 12x15, 12x21, 6x9, also odd sizes and various size ovals, In gold, green, red, blue, and other exciting colors. Shags, plushes, twists and sculptured. Will give a warm look to your apt.

OVALS — FRINGES $8
WE LIQUIDATE RUGS FOR FAMOUS SOUTHERN MILLS. ALL ARE GUARANTEED PERFECT.

MASTER CHARGE, BANKAMERICARD, TERMS AVAILABLE
FREIGHT LIQUIDATORS WAREHOUSES
(see CXF 17, CXF 20, CXF 21)

* * * * * * *

(d)

FREIGHT LIQUIDATORS
Deal With The Store Near You* * *

BRAND NEW
SEWING
MACHINES $63
You may own a 1971 "Touch N Stitch"
Zig-Zag, new stretch stitch, embroiders,
monograms, appliques, makes buttonholes,
etc., all without attachments; Ordered
for schools, "UNCLAIMED BY THEM." 25-yr.
guarantee and instructions.

(see CXF 12, 14, 15, 19, 22, 26)

17. By and through the use of the name "Freight Liquidators," separately or in connection with other statements or representations in advertising, respondents have represented to customers and prospective customers that the organization was one of liquidators, authorized adjustors or agents engaged in the sale or distribution of bankrupt, salvage, distrained or other transportation company surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtness or claims (see Finding 16, *supra.*).

18. By and through the use of the name "Freight Liquidators" separately or in connection with other statements or representations in advertising, respondents have represented to customers and prospective customers that the merchandise advertised was bankrupt, salvage, distrained, distress or transportation company surplus merchandise, and therefore had a unique or special disposition and thus was being offered for sale at prices below those usually and customarily charged at retail (see CX series F, L, Q; Consumer witnesses, Tr. 308, 381, 459-460, 483-484, 486, 359, 503-504; CXF 4, 28).

19. In their advertisements respondents also represented that purchasers of the advertised products were being afforded savings equal to the differences between Freight Liquidators' advertised prices and those at which the merchandise was usually and customarily sold at retail, that the amount designated as "Orig." was the price at which the merchandise had been sold by Freight Liquidators in the recent regular course of business and that purchasers of the merchandise advertised were afforded savings equal to the difference between the higher and lower prices listed in said statements (see CXF 8, 9, 10, 12, 14, 15, 18, 19, 22, 24, 25, 26).

20. Freight Liquidators was not an organization of liquidators, authorized adjustors or agents engaged in the sale or disposition of bankrupt, salvage, distrained or other distress or transportation

company surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims. Instead, Freight Liquidators was in the business of purchasing the advertised merchandise from manufacturers or suppliers and selling it at retail for their own account to the purchasing public (See Mullinax, 235-238; Millstein, 629-630). Merchandise advertised by Freight Liquidators was not bankrupt, salvage, distrained, distress or transportation company surplus merchandise, and therefore, did not have a unique or special disposition. Only a minute quantity of merchandise, if any, could have properly been described as "bankruptcy" merchandise. The advertised merchandise was not being offered at prices below those usually and customarily charged at retail (Millstein, 629-630, 636-640; CXF 2; see Brunner, 431; Galarneau, 708-711).

21. Purchasers of the advertised merchandise were not afforded savings equal to the differences between Freight Liquidators' advertised prices and those at which the same merchandise was usually and customarily sold at retail. Said merchandise had not been customarily and usually sold at retail by Freight Liquidators in the recent, regular course of their business for the amounts set out in the advertisements as "Orig." Purchasers of the merchandise advertised were not afforded savings equal to the differences between the higher and lower prices listed in the statements (see Consumer witnesses, Tr. 312, 314, 315, 321-322, 488-489, 504; Millstein, 641, 712, 743).

22. The representations set forth in Findings 17, 18 and 19, *supra*, were untrue and had the tendency and capacity to mislead prospective customers.

23. By and through their advertisements and the statements and representations contained therein respondents represented that they were making a bona fide offer to sell the advertised merchandise at the price and on the terms and conditions stated in the advertisements. In this connection, respondents represented that they were making a bona fide offer to sell a complete and operable sewing machine for the advertised price (Consumer witnesses Tr. 355, 521-522, 482-484, 513-514).

24. Freight Liquidators was not making a bona fide offer to sell certain of the advertised merchandise at the price and on the terms and conditions stated in the advertisements. Such "offers" were made primarily to obtain "customer leads" in order to sell them more expensive merchandise (see Findings 25, 26, *infra*).

25. Members of the purchasing public who responded to such advertisements were either told by Freight Liquidators' salesmen that the merchandise was not available, or they found that the salesmen were very reluctant to show the merchandise to them (Consumer

witnesses, Tr. 511, 516, 532, 550, 555). Because of the poor appearance and quality or unattractive display of the samples of advertised merchandise, Freight Liquidators' customers were immediately attracted to higher priced, better quality merchandise sold by Freight Liquidators (Consumer witnesses, Tr. 311, 415, 474, 498-500, 515-517, 547-550, 539-542; see Rizzi, 218; Begun, 249, 257-258; Stefano, 296-298). Very few actual sales were made of the advertised products at the price and on the terms set forth in the advertisements (CXX1, 2), and salesmen attempted to sell the better quality, and more expensive merchandise (Consumer witnesses, Tr. 532, 540, 550).

26. Freight Liquidators was not making a bona fide offer to sell a complete sewing machine without attachments for the advertised price. The advertised price was for the sewing machine head and did not include such essentials as a base or stand containing the operating controls and without which the head of the machine was useless (Griffith, 165-170, 195-196; Begun, 247-248, 254-255; Consumer witnesses, Tr. 315, 355, 412, 415-416, 457-460, 482-483, 491, 513-514, 521-522, 533-534). Freight Liquidators sold very few sewing machines at the advertised price of $58 or $63 without also selling attachments necessary for operation for an additional price of $15 or $30 (see Begun, 255-257; CXX 1).

27. The representations set forth in Finding 23, *supra*, were untrue and had the tendency and capacity to mislead prospective customers.

28. By and through their advertisements and the statements and representations contained therein respondents represented that certain of Freight Liquidators' products were unconditionally guaranteed for various periods of time, such as twenty-five years (CXF 8, 12, 14, 15, 19, 22, 24, 26; Consumer witnesses, Tr. 383, 395).

29. Freight Liquidators' products were not unconditionally guaranteed for the period of time as represented in their advertisements or as orally represented by Freight Liquidators' salesmen. The only guarantees for the products sold by Freight Liquidators were that which were provided by the manufacturers thereof, and such guarantees were subject to conditions and limitations not disclosed in Freight Liquidators' representations (Millstein, 642-643; Consumer witnesses, Tr. 396, 465-467).

30. The representations set forth in Finding 28, *supra*, were untrue and had the tendency and capacity to mislead prospective customers.

31. By and through their advertisements and the statements and representations contained therein, respondents represented that the quantities of merchandise and time during which such were available for sale were limited (CXF 11, 13, 16, 17, 20, 21, 23; Consumer witnesses, Tr. 396, 400-401).

32. The quantities of merchandise and the time during which such were purportedly available for sale was not limited but identical merchandise was available at all times relevant herein (Consumer witnesses, Tr. 393-396, 401-402; Millstein, 643-644; Galarneau, 714).

33. The representations set forth in Finding 31, *supra*, were untrue and had the tendency and capacity to mislead prospective customers.

34. In their advertising respondents used the term "Acrilan" to describe certain rugs without stating the true generic name of the fiber content of such rugs. In addition where respondents advertised the fiber content of their rugs they did not disclose that such information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding (CXF 11, 13, 16, 17, 20, 21, 23).

35. During the period of time relevant hereto, there were at least 18 Freight Liquidators stores that operated in the Washington-Baltimore area. These stores were located at the following addresses (CX B2, 12, 13; CXQ 1, 2; CXF 1, 2, 8; CXL 3):

4689 King Street, Arlington, Va.[4]
7849 Eastern Ave., Silver Spring, Md.
1065 Broad Street, Falls Church, Va.
1727 Wilson Blvd., Arlington, Va.
7515 Lee Highway, Merrifield, Va.
912 Center St., Manassas, Va.
127 Cope Street, Woodbridge, Va.
8651 Richmond Hwy., Alexandria, Va.
4801 Suitland Rd., Suitland, Md.
11200 Baltimore Ave., Beltsville, Md.
5459 Annapolis Rd., Bladensburg, Md.
5552 Kenilworth Ave., Riverdale, Md.
14811 Washington Blvd., Laurel, Md.
442 Eastern Blvd., Essex, Md.[5]
1616 N. Ritchie Highway, Glen Burnie, Md.
4706 Hollins Ferry Rd., Baltimore, Md.
716 Reisterstown Rd., Reisterstown, Md.
939 York Rd., Towson, Md.

36. Respondent, Herbert Millstein, who is presently the owner and manager of Herbmar, Inc., a retail carpet store, first became acquainted with Joseph W. Green in 1971, and in April of that year opened the Suitland, Md., store as a partner of Mr. Green. The lease was in Mr. Green's name, the occupancy permit in Mr. Millstein's name (Millstein, 585-594).

[4] This address was sometimes listed as Alexandria, Va. The executive offices of Freight Liquidators also were located at the King Street address.

[5] Herbert Millstein's warehouse for the Baltimore area stores was located at the Essex, Md., location.

37. Sewing machines, stereos and carpets, the advertised products, were supplied by Mr. Green to the Suitland location. Mr. Millstein also handled other products which he purchased (Millstein, 595).

38. In late 1971 Mr. Millstein opened a store in Gaithersburg, Md., which was stocked from the Suitland store. This Freight Liquidators store was closed in the early part of 1972 and apparently was moved to the Reisterstown, Md., location (Millstein, 668-669; Ommert, 728).

39. During the first three months of 1972, Mr. Millstein opened four stores in the Baltimore area, in Essex, Md., in Reisterstown, Glen Burnie and Towson, Md. (Millstein, 604-608; Begun, 242, 244; Ommert, 728; Gautcher 762-767). The Essex store was stocked from Mr. Millstein's Suitland store and the other three from a warehouse located at the Essex store (Millstein, 619). Mr. Green was a part owner in each store as an extension of his partnership with Mr. Millstein, although the shares of ownership varied. Each store lease was in Mr. Green's name. Mr. Millstein made direct purchases from manufacturers for items handled in the Baltimore stores (Millstein, 627-630).

40. Mr. Millstein was responsible for placing the advertising on behalf of the Baltimore stores in the Baltimore News American and the Baltimore Sun (Millstein, 623). He did not formulate or have control over the advertisements run in the Washington, D.C., newspapers which were placed by Joseph W. Green, although he paid the share of the cost of those advertisements applied to his Freight Liquidators stores (Millstein, 631-632). The Baltimore advertising, although not exactly the same as used in Washington, did contain such representations describing the advertised items as "unclaimed freight" and, "bankruptcy stock," and did offer the sewing machine for $63 which required the purchase of a cabinet or case to be operable. At certain times these advertisements represented that there was a limited time for the advertised offering (Millstein, 647-654).

41. Respondent Harold J. Green is Joseph W. Green's son and he was a partner of Mr. Green in the Freight Liquidators stores located at King Street, Arlington, which was opened in Mar. 1971 when the main office of Freight Liquidators was moved from Falls Church. Harold J. Green was also Mr. Green's partner in the Riverdale, Md., store which opened in Oct. 1971 (CXB 8, 10, 12-13; Silverman, 94, 108).

42. Respondent John Green, also the son of Joseph W. Green, was a partner of his father in the Freight Liquidators stores located at Richmond Highway, Alexandria, and Eastern Avenue, Silver Spring. The Silver Spring store was opened in 1970, and the Alexandria store was opened in May 1971. John Green was also a partner in the Bladensburg, Md., store which was opened in Nov. 1971 (CXB 6, 7, 11; Silverman, 97-98, 100; Millstein, 622).

43. Respondent Peter W. Galarneau, owner of Carpet Caravan, a corporation engaged in the retail carpet business, was employed by Joseph W. Green in 1970 in connection with Consumer Buying Service, and this relationship carried over to Freight Liquidators. In July 1971 Mr. Galarneau became Mr. Green's partner in the Wilson Blvd. store, in which he invested $5,000 (CXB 4, 12-13). The lease in this store was in Mr. Green's name. In Dec. 1971, Mr. Galarneau opened the Manassas store as a part of the Wilson Blvd. store. In connection with this branch store Mr. Galarneau did some advertising in the Manassas media. Over 90 percent of the merchandise handled by Mr. Galarneau was supplied by Mr. Green from the King Street warehouse. The Manassas store was closed in the spring of 1972, and Mr. Galarneau went out of business at the Wilson Blvd. location in Sept. 1972 (Galarneau, 683-684, 694, 698, 687, 715).

44. Respondent Jerry M. Lytell was a partner of Joseph W. Green in the Falls Church store of Freight Liquidators, and later was a one-third partner of Sam Katz and Joseph W. Green in the Laurel, Md., store (CX B 9, 12-13; Silverman, 101-102; Rizzi, 214, 219; Dolinger, 272; Stefano, 292; Brunner, 428; Millstein, 610-611).

45. Respondent Sam Katz was a partner of Joseph W. Green and Jerry M. Lytell in the Laurel, Md., store from February 16, 1972 until May 9, 1972 (see Katz Answer to Complaint; Silverman, 102-103; Dolinger, 273; Millstein, 613-615; Galarneau, 702-703).

46. Respondent Mike McKeever was a partner of Joseph W. Green in the Riverdale, Md., store having put up $25,000 for the opportunity (Silverman, 107; Rizzi, 205). He had contacted Freight Liquidators early in 1972 in response to a business-opportunity advertisement (Rizzi, 202, 204). The following language is representative of such an advertisement (CXF 6):

"WANTED! PARTNER!!!!
Instant Money Maker
NAKED TRUTH - BARE FACTS
This is a once in a lifetime opportunity for longevity in success. Successful national company is interested in a working partner to take full charge of outlet store in Northern Virginia or Maryland, generating 1-2 million annual gross through a unique method of Unclaimed Freight Liquidation, disposing of Stereos, TV's, Rugs, etc. If you qualify and can invest $25,000 and are available immediately, for further information call:
Many other areas available

Steven T. Rizzi
FREIGHT LIQUIDATORS"

47. Respondent George Edward Ommert, who is in the retail unfinished furniture and carpet business, was a partner of Joseph W. Green and Herbert Millstein in the Gaithersburg and Reistertown stores (Silverman, 104-105; Ommert, 727-729). Although starting as Mr. Millstein's employee in Suitland, he took over the Gaithersburg store as a partner late in 1971 upon investing $10,000. He moved to Reistertown in Apr. 1972. He ceased doing business as Freight Liquidators in Nov. 1972. Almost all of Mr. Ommert's merchandise was supplied by Mr. Millstein (Ommert, 727-736).

48. Respondent Gerald Gautcher, who owns several retail carpet businesses including Carpet Carryout, Carpet Cleaner and Decor Interiors, contacted Freight Liquidators in Oct. 1971 in response to an advertisement and was referred to Mr. Millstein by Mr. Green. He was established as a partner in the Towson store in Jan. 1972, investing $5,000. His merchandise was supplied by Mr. Millstein from the Essex store. The store lease was in Mr. Green's name. Mr. Gautcher ceased operations as Freight Liquidators in mid-April 1972 (Gautcher, 761-767; see Begun, 264-266; Millstein, 656-658).

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Joseph W. Green, Harold J. Green, John W. Green, Herbert Millstein, Peter W. Galarneau, George Edward Ommert, Gerald Gautcher, Sam Katz, Mike McKeever, and Jerry M. Lytell.

Said respondents have, during all times or part of the time relevant hereto, engaged in interstate commerce within the intent and meaning of Sections 4 and 5 of the Federal Trade Commission Act. There is no doubt on this record that Freight Liquidators advertised in commerce. The newspapers in which such advertisements were placed have interstate circulation. In addition, Freight Liquidators was engaged in a course of trade in commerce. It purchased merchandise from suppliers located outside the District of Columbia, Maryland and Virginia. Merchandise was transferred from the Arlington, Va., King Street, location to the stores in Maryland, and among the various stores in Maryland and Virginia. The individual Freight Liquidators stores attracted and sold to customers from all three jurisdictions. All acts and practices that were part of these transactions were methods of competition in commerce or acts and practices in commerce within the coverage of the Federal Trade Commission Act. *Holland Furnace Co.* v. *Federal Trade Commission*, 269 F.2d 203 (7th Cir. 1959), *cert. denied*,

361 U.S. 932; *Guziak* v. *Federal Trade Commission*, 361 F.2d 700 (8th Cir. 1966); see *United States* v. *South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944); *Standard Oil Co.* v. *Federal Trade Commission*, 340 U.S. 231 (1951).

2. The acts and practices of respondents that were challenged in the complaint and in which they were found to be engaged, were and are all to the prejudice and injury of the public and of respondents' competitors and 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.

It is well established that it is an unfair trade practice to make statements in advertising which have the tendency and capacity to deceive the prospective customer. *Carter Products, Inc.* v. *Federal Trade Commission*, 323 F.2d 523 (5th Cir. 1963); see *Spiegel, Inc.* v. *Federal Trade Commission*, 494 F.2d 59 (7th Cir. 1974). It is not essential that the Commission find actual deception to support its complaint when the representations have the capacity to deceive. *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission*, 143 F.2d 676 (2d Cir. 1944); *Regina Corp.* v. *Federal Trade Commission*, 322 F.2d 765 (3d Cir. 1963); *Montgomery Ward & Co.* v. *Federal Trade Commission*, 379 F.2d 666 (7th Cir. 1967). The Commission may challenge and prevent true statements if, when considered in the context of all representations made, the advertisement has that tendency and capacity to mislead. *J. B. Williams Co.* v. *Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967).

Furthermore, where the advertisements themselves sufficiently demonstrate their capacity to deceive, the Commission can find the requisite deception or capacity to deceive on a visual examination of the exhibits without evidence that the public was actually deceived. *Federal Trade Commission* v. *Colgate-Palmolive Co.*, 380 U.S. 374 (1965); *Double Eagle Lubricants, Inc.* v. *FTC*, 360 F.2d 268, 270 (10th Cir. 1965); *Mohr* v. *Federal Trade Commission*, 272 F.2d 401, 405 (9th Cir. 1959), *cert. denied*, 362 U.S. 920 (1960). It is no defense to a charge of engaging in unfair trade practices to assert that the customer was advised of the truth or of all material facts before making his choice to purchase. The initial contact, if deceptive, may be prohibited under the Federal Trade Commission Act. *Exposition Press, Inc.* v. *Federal Trade Commission*, 295 F.2d 869, 873 (2d Cir. 1961), *cert. denied*, 370 U.S. 917 (1962); *Carter Products, Inc.* v. *Federal Trade Commission*, 186 F.2d 821, 824 (7th Cir. 1951).

All of the acts and practices challenged in the complaint and in which respondents were found to be engaged had the requisite tendency and capacity to deceive. Moreover, the conclusion that each practice

constitutes an unfair trade practice accords with applicable case law. It is an unfair trade practice to misrepresent the origin and character of one's business or the merchandise offered for sale by the use of a trade name or false advertising claims. *Goodman* v. *Federal Trade Commission*, 244 F.2d 584 (9th Cir. 1957); *Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212, 216 (1933); *Resort Car Rental System, Inc.*, F.T.C. Docket 8862 (July 31, 1973); *New Crosstown Railroad Salvage Co.*, 68 F.T.C. 47 (1965).

It is an unfair trade practice to advertise a product in order to obtain contact with a prospective customer for the purpose of selling another product. *Tashof* v. *Federal Trade Commission*, 437 F.2d 707 (D.C. Cir. 1970); *Pati-Port, Inc.* v. *Federal Trade Commission*, 313 F.2d 103 (3d Cir. 1968). In this respect, the Commission need not show evidence of disparagement of the advertised product. It may infer that customers were "switched" from the advertised product by evidence of the type of advertising used and relatively minimal sales of the advertised products. *Tashof* v. *Federal Trade Commission, supra; Giant Food Inc.* v. *Federal Trade Commission*, 322 F.2d 977 (D.C. Cir. 1963).

It is an unfair trade practice to misrepresent that a price is a "sale" price, if in fact it is the usual and customary price at which the product is sold. *Niresk Industries* v. *Federal Trade Commission*, 278 F.2d 337 (7th Cir. 1960), *cert. denied*, 364 U.S. 883; *Heavenly Creations, Inc.* v. *Federal Trade Commission*, 339 F.2d 7, 8 (2d Cir. 1964), *cert. denied*, 380 U.S. 955 (1965).

It is an unfair trade practice to offer an unconditional guarantee in an advertisement when in fact there are undisclosed conditions on the terms of the actual guarantee. *Benrus Watch Co.* v. *Federal Trade Commission*, 352 F.2d 313 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966); *Coro, Inc.* v. *Federal Trade Commission*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965); *Montgomery Ward & Co.* v. *Federal Trade Commission, supra.*

It is an unfair trade practice to falsely represent that a price offer is for a limited time only or that quantities of an advertised product are limited. See *ADF Warehouse, Inc.*, 66 F.T.C. 1267 (1954).

Finally, it is a violation of Section 4(c) of the Textile Fiber Products Identification Act and Sections 11 and 41(c) of the rules and regulations promulgated thereunder to describe in advertising the content of any rug product by using its trade name without also stating its generic name and without disclosing that any such information relates only to the face, pile or outer surface of the floor covering, and not to the backing filling or padding, and such conduct constitutes unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce under the Federal Trade Commission Act.

3. Respondents Joseph W. Green and Herbert Millstein were responsible for their own actions as well as for all actions and practices of the Freight Liquidators organization. Between them they exercised complete control of the organization and are liable for all of the deceptive acts and practices in which it was found to be engaged. Joseph W. Green was the motivating and controlling force behind the organization, was responsible for its management, direction, policy and control, and had an interest in all of the individual stores. Herbert Millstein was Mr. Green's close associate and partner, actively participating in the Freight Liquidators scheme, and exercising authority, direction, control and policy of the affairs of the stores in Suitland, Gaithersburg and the Baltimore area. *Guziak* v. *Federal Trade Commission*, 361 F.2d 700 (8th Cir. 1966), *cert. denied*, 385 U.S. 1007; *Benrus Watch Co.* v. *Federal Trade Commission, supra; Bruhn's Freezer Meats of Chicago, Inc.* v. *U.S. Dept. of Agriculture*, 438 F.2d 1332 (8th Cir. 1971); *Cotherman* v. *Federal Trade Commission*, 417 F.2d 587 (5th Cir. 1969); *Surf Sales* v. *Federal Trade Commission*, 259 F.2d 744 (7th Cir. 1958). It is well established that those who place in the hands of others the instrumentality by which unfair and deceptive acts and practices are conducted may be held responsible for said trade practices. *Federal Trade Commission* v. *Winsted Hosiery Co.* 258 U.S. 483, 494 (1922); *Regina Corp.* v. *Federal Trade Commission, supra.*

The other individual respondents, Peter Galarneau, Harold J. Green, John Green, Jerry Lytell, Sam Katz, Mike McKeever, George Edward Ommert and Gerald Gautcher had no control over the content of the advertising that was challenged in this proceeding. Although it is concluded that they were Joseph W. Green's partners, the record shows they were primarily manager-salesmen at the various Freight Liquidators store locations, usually receiving a fixed salary-commission and sharing the profits with Mr. Green and any other partner of that store. And although the consumer testimony clearly establishes the manner in which the Freight Liquidators' method of business was implemented in the stores, such testimony does not identify any of the individual respondents as being engaged in any particular unfair trade practice.

In the briefs filed on behalf of the individual respondents who were represented by counsel, it is argued generally that under the circumstances the Commission has failed to prove that they were engaged in the challenged conduct and that, accordingly, are not responsible for the challenged practices (see Proposed Findings Green; Proposed Findings Millstein).

Counsel supporting the complaint contend on the other hand, that each of these individuals, because of his partnership relationship with Joseph W. Green, was an integral part of the Freight Liquidators

organization and its scheme, that each partner was essential to the implementation of that scheme, and that each one is responsible for all the actions of the organization. In effect, counsel contend that as active partners these individual respondents, having benefited from the Freight Liquidators' operation, ratified the advertising and the deceptive representations therein and the unfair trade practices resulting therefrom, and, accordingly, each and every one was individually responsible therefore.

This case presents what appears to be a unique situation. Although the fact that the individual respondents were partners is clearly established, their respective roles varied, not only with respect to implementing the Freight Liquidators scheme, but also with respect to the point of time and place in which they participated. This presents a situation where individual participation and responsibility was a matter of degree.

It should be emphasized that the Commission has not held officers of corporations, partners, or salesmen vicariously liable for the conduct of the businesses with which they are associated. As I read the cases, there must be some indicia of control, some power to change, alter or influence the course of events involved. In the usual situation all active partners would be presumed to have such power. But this does not appear to be the fact in the instant case.

In my opinion the record clearly demonstrates that Peter Galarneau, Harold J. Green, John Green, and Jerry Lytell were sufficiently involved to be held responsible. I believe that the single fact that is most controlling is that each was involved in more than one store location; each was responsible for furthering the Freight Liquidators scheme for their own benefit. In my opinion this constitutes ratification of the advertising and other elements of the challenged conduct. See *Star Office Supply Co.*, 77 F.T.C. 383, 445 (1970), *aff'd per curiam*, 2d Cir. No. 35066 (1972) (not reported); *Park, Austin & Lipscomb, Inc.* v. *Federal Trade Commission*, 142 F.2d 437 (2d Cir. 1944), *cert. denied*, 323 U.S. 753.

It was not necessary for Commission counsel to prove that each individual respondent personally did the challenged acts and practices or any element of the overall selling scheme. Responsibility, if it exists, may attach from the nature of the individual's involvement in the organization. There is no doubt that all of the above respondents were deeply involved in the organization, participating fully in its operation.

On the other hand Sam Katz, Mike McKeever and Gerald Gautcher were relatively late comers into the organization and were only concerned with single stores for very short periods of time. Not only were they induced into becoming partners by questionable representa-

tions as to the nature of the Freight Liquidators operation, but it appears that their sizeable investments became liabilities and that they actually were victims of the Freight Liquidators organization and the other partners.

Somewhere in between these two groups of respondents stands George Edward Ommert. Employed for a while by Mr. Millstein, Mr. Ommert took over the Gaithersburg store and subsequently the store was moved to Reisterstown, Md. In the general circumstances of this case and in view of Mr. Ommert's demeanor on the stand, I am convinced that he was more of a victim of Freight Liquidators and Mr. Millstein, than an active purveyor of deception. Accordingly, I hold that Mr. Ommert was in the same category as Sam Katz, Mike McKeever and Gerald Gautcher.

Thus consistent with controlling case law, it is concluded that Peter Galarneau, Harold J. Green and John Green and Jerry Lytell are individually responsible for the unfair trade practices engaged in by Freight Liquidators and that the Commission has the power and authority to enter an appropriate order to cease and desist covering their future conduct.

However, as pointed out above, the Commission did not secure counsel for Mr. Lytell even though he had made a timely request therefore, and was found by the administrative law judge to be indigent. Under the authority of the Commission's decision in *American Chinchilla Corp., et al.*, 76 F.T.C. 1016, 1034 (1969), and the policy announced in Ad. Bull. No. 71-21, the administrative law judge must dismiss the complaint without prejudice as to Jerry Lytell.

On the other hand Sam Katz, George Edward Ommert, Mike McKeever and Gerald Gautcher are not individually responsible for the unfair trade practices in which Freight Liquidators, Joseph W. Green and Herbert Millstein and the other respondents were found to have been engaged, and the complaint should be dismissed as to these respondents with prejudice.[6]

THE REMEDY

The Commission is vested with broad discretion in determining the type of order necessary to ensure discontinuance of the unlawful practices found. *Federal Trade Commission* v. *Colgate-Palmolive Co., supra.* The Commission's discretion is limited only by the requirement that the remedy be reasonably related to the unlawful practices found. *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 613

[6] Dismissing the complaint as to Mike McKeever renders moot the additional questions as to whether he was in default or whether the Commission policy announced in *American Chinchilla* should have been pursued even though Mr. McKeever failed to return the required statement to substantiate his claim of indigency.

(1946); *Niresk Industries, Inc.* v. *Federal Trade Commission, supra.* It is well settled that the Commission may require affirmative statements in advertising where failure to make such statements leaves the prospective consumer without all the material facts on which to base his choice as to whether to do business with the advertiser or purchase the product advertised. *Federal Trade Commission* v. *Colgate-Palmolive Co., supra; Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U.S. 67, 78 (1934).

Counsel supporting the complaint have proposed an order which, except for slight modifications, is substantially similar to the notice order which was attached to the complaint.

Respondents contend that there has been no showing that the imposition of any order would be in the public interest, because Freight Liquidators has ceased to exist, the challenged practices have been abandoned, and that there is "nothing in the record to indicate that these respondents will in the future experiment with any of the practices which were the subject of the complaint" (Proposed Findings Green; Proposed Findings Millstein).

Discontinuance or abandonment of unfair trade practices does not render a cease and desist order improper. The statutory scheme contemplates the issuance of an appropriate order to protect the public prospectively from any possible resumption of the unfair trade practices in which respondents were found to be engaged without the statutory sanctions available for future enforcement. *Benrus Watch Co.* v. *Federal Trade Commission, supra; Montgomery Ward & Co.* v. *Federal Trade Commission, supra; Clinton Watch Co.* v. *Federal Trade Commission*, 291 F.2d 838 (7th Cir. 1961); *Doherty, Clifford, Steers & Shenfield* v. *Federal Trade Commission*, 392 F.2d 921 (6th Cir. 1968). In a case such as this where the individual respondents are still engaged in retail businesses the imposition of an order to cease and desist against those who were responsible is fully justified. However, it should be pointed out that it is not up to complaint counsel to prove respondents' present vocations or disposition toward continuing the challenged practices.

The order to cease and desist proposed by complaint counsel would require each respondent to include in any advertisement for at least a year after said order becomes enforceable a so-called consumer warning disclosure stating as follows:

The Federal Trade Commission has found that we engage in bait and switch advertising. That is, the salesmen make it difficult to buy the advertised product and he attempts to switch you to a higher priced item.

Respondents contend that "the Commission has no authority to require respondents to publish in their advertising the black bordered pronouncement setting forth that respondents bait and switch." They

assert that such an advertisement is a declaration of a present intent to "bait & switch" customers and would make it impossible for respondents to earn a living in the retail sales business (Proposed Findings Green; Proposed Findings Millstein).

It is clear that the Commission's power to direct whatever relief is reasonably necessary to prevent recurrence of business practices it has found to be unlawful extends beyond mere prohibitions against the continuation of the illegal practices themselves. The Commission may require affirmative disclosure of any material fact, which if known to the prospective customer, might affect his choice of whether to do business with the particular advertiser. *Federal Trade Commission* v. *Colgate-Palmolive Co., supra.* In my opinion an appropriate consumer warning may be required by the Commission.

The need for such a disclosure in the circumstances of this case is manifest. First, by its very nature, the practice of "bait & switch" as demonstrated in this case can be done so smoothly that few consumers realize, or for that matter will complain, that they were victims of such a scheme. Second, consumers are entitled to know what prohibitions a retailer is operating under. Armed with such knowledge the prospective customer is in a better position to make an independent choice as to the product, if any, he wishes to purchase. Of course the possibility that a prospective consumer is aware of any such prohibition on the retailer will serve as an incentive for compliance with the terms of the order.

The consumer warning proposed by counsel supporting the complaint by its very terms presupposes that respondents will continue to engage in "bait & switch" practices and further infers that respondents are violating the terms of the order. To require any respondent to make such a statement would be quite punitive.

I am also of the opinion that the use of the colloquial term "bait & switch" in the consumer warning is also punitive. There are many variations on the scheme. In fact, the definition which is included in the proposed consumer warning is really only an example. Nor does the term itself appear in the complaint, or any other part of the proposed order. Although this term has a generic meaning to attorneys dealing in consumer protection matters, it is far from a precise concept. At this posture of the case the *order* is the thing. I think that the consumer warning should be keyed to the cease and desist order instead of the past proceeding.

In the circumstances the following affirmative disclosure will be substituted for the proposed consumer warning, it being my opinion that it is truthful, understandable, useful, remedial, and not punitive:

We are subject to the prohibitions of a Federal Trade Commission Order in Docket

8937, that requires us to sell the products which we advertise without attempting to sell you a different item or a higher priced item.

Insofar as respondents' argument that any requirement that they use a consumer warning would make it impossible to earn a living in the retail sales business carries over to the substitute disclosure, it must be rejected. The consumer is entitled to this information, and any adverse result is the price a violator of the Federal Trade Commission Act must be expected to pay if he continues to advertise.

Respondents also object to certain paragraphs of the order contending that Paragraphs 5 and 6 are encompassed in Paragraphs 3(a), (b) and (c) and are unnecessary, and that Paragraphs 5 and 6 are also covered by Paragraph 7. Although the order does appear somewhat redundant, each paragraph clearly apprises respondents of the prohibitions on future conduct, and each is reasonably related to the proven illegal practices.

Paragraphs 4, 9 and 12 of the order are attacked as punitive because, respondents assert, they would be required to keep records "beyond the capabilities of the small retailers which the evidence shows these respondents to be."

Although the exact manner of compliance and the difficulties of bookkeeping would depend entirely on the type of advertisements used by respondents in the future, the requirements of the order in this respect seem reasonable. Compliance with Paragraph 9 should not require much in the way of bookkeeping, merely separate filing of copies of customer contracts relating to such transactions. With respect to establishing "net profits" on such sales, the other relevant information would be the purchase invoices showing the cost. Likewise, keeping track of advertising costs should be neither a difficult nor an unusual procedure.

Compliance with Paragraph 12 is necessary only if respondents choose to advertise in such way. If a supply of a particular product is in fact limited to a respondent, such fact should not be too difficult to establish. Finally, if the savings claim in Paragraph 4 is a claim of savings from respondents' usual selling price, the relevant information would be the invoices from respondents' prior sales of that item. Such information would presumably be kept in the usual course of business. If the savings claim involves comparison with competitors' prices for the same or comparable merchandise, respondents merely have to document the basis for making the representation in the first place. See *Tashof* v. *Federal Trade Commission, supra.*

Paragraph 10 of the proposed order would require respondents to cease and desist from "[a]dvertising or offering merchandise for sale when the advertised merchandise is inadequate for the purposes for

which it is offered." Claiming that the word "inadequate" is peculiarly vague, respondents contend that Paragraph 10 "is an attempt to convert the original sewing machine bait and switch theory into a products liability prosecution." I find nothing in the record in this case which directly supports this paragraph of the order. Presumably, the fact that the $63 sewing machine was incomplete made it inadequate as a sewing machine, or that because the $19 rug was like a "shower curtain" made it inadequate for wall-to-wall carpeting. I agree with respondents that the term "inadequate" as used in Paragraph 10 is unduly vague, and Paragraph 10 will be stricken.

ORDER

It is ordered, That respondents Joseph W. Green, Harold J. Green, John W. Green, Herbert Millstein, and Peter W. Galarneau, individually, and/or as copartners, trading and doing business as Freight Liquidators, or under any other trade name or names, and each of respondents' agents, representatives and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of rugs, sewing machines, stereo radios and phonographs, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Liquidators," "Freight," "Forwarding," or any other word or words of similar import or meaning in or as part of respondents' corporate or trade name or names; or representing, orally or in writing, directly or by implication, that they are liquidators, authorized adjustors or agents engaged in the sale or disposition of bankrupt, salvage, distrained, distress, or transportation company surplus merchandise; or are engaged in liquidating, adjusting, paying off or otherwise settling indebtedness or claims; or misrepresenting, in any manner, their trade or business status.

2. Representing, directly or indirectly, orally or in writing, that any merchandise offered for sale is bankrupt, salvage, distrained, distress or transportation company surplus merchandise; or misrepresenting, in any manner, the source, character or nature of the merchandise being offered for sale.

3. (a) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondents for a

reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise or services in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

4. Failing to maintain and produce for inspection or copying, for a period of three (3) years following the date on which any savings claims, sales claims, or other similar representations are made, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraph Three of this order is based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

5. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise.

6. Making representations, directly or indirectly, orally or in writing, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise or services but to obtain leads or prospects for the sale of other merchandise at higher prices.

7. Representing, directly or indirectly, orally or in writing, that any merchandise is offered for sale when such offer is not a bona fide offer to sell such merchandise.

8. Discouraging or disparaging, in any manner, the purchase of any merchandise which is advertised or offered for sale.

9. Failing to maintain and produce for inspection and copying for a period of three years following the date of publication of any

advertisement, adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

a. the cost of publishing each advertisement including the preparation and dissemination thereof;

b. the volume of sales made of the advertised product or service at the advertised price; and

c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

10. Representing, directly or indirectly, orally or in writing, that any product is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondents deliver to each purchaser a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, directly or indirectly, orally or in writing, made to each such purchaser, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of each such guarantee.

11. Representing, directly or indirectly, orally or in writing, that the supply of merchandise or the time during which it is available for sale is limited unless respondents establish that their supply of any article of merchandise advertised was not sufficient to meet reasonably anticipated demands therefor, and that their supply could not be replenished through their customary sources.

12. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records from which compliance with the prohibition of Paragraph Eleven of this order can be determined.

It is further ordered, That respondents Joseph W. Green, Harold J. Green, John W. Green, Herbert Millstein, and Peter W. Galarneau, individually, and/or as copartners, trading and doing business as Freight Liquidators, or under any other trade name or names, and each of respondents' agents, representatives, and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products,

as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

B. Falsely and deceptively advertising textile products by:

1. Making any representations by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Failing to set forth in advertising the fiber content of floor covering containing exempted backings, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

3. Using a fiber trade-mark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

4. Using a fiber trade-mark in advertising textile fiber products containing only one fiber without such fiber trade-mark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

It is further ordered, That respondents Joseph W. Green, Harold J. Green, John W. Green, Herbert Millstein and Peter W. Galarneau do forthwith cease and desist from disseminating, or causing the dissemination of, any advertisement of merchandise by means of newspapers, or other printed media, television or radio, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless respondents clearly and conspicuously disclose in each advertisement the following notice set off from the text of the advertisement by a black border:

We are subject to the prohibitions of a Federal Trade Commission Order in Docket 8937, that requires us to sell the products which we advertise without attempting to sell you a different item or a higher priced item.

One year from the date this order becomes final or any time thereafter, respondents upon showing that they have discontinued the practices prohibited by this order and that the notice provision is no

longer necessary to prevent the continuance of such practices may petition the Commission to waive compliance with this order provision.

It is further ordered, That each of said five respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of merchandise, or utilized in the advertising, promotion or sale of merchandise.

It is further ordered, That each of said respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of merchandise, or to advertise, promote, or sell merchandise, with a copy of the Commission's news release setting forth the terms of this order.

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

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

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

It is further ordered, That the said 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.

It is further ordered, That the complaint in this matter is dismissed as to respondents Sam Katz, George Edward Ommert, Gerald Gautcher and Mike McKeever with prejudice.

It is further ordered, That the complaint in this matter is dismissed as to Jerry M. Lytell without prejudice.

OPINION OF THE COMMISSION

FEBRUARY 25, 1975

BY THOMPSON, *Commissioner:*

The dedication of these respondents to the principles of truthful advertising is not particularly impressive. Indeed, the very name under which they do business- "Freight Liquidators"-misrepresents the nature of their operation and is a key part of the deceptive "concept" on which the organization was founded, namely, convincing consumers-contrary to the fact-that "distress" or surplus merchandise of good quality is being offered at bargain prices.

In an initial decision of June 27, 1974, our administrative law judge found (and respondents do not challenge these findings on appeal) that the business practices of Freight Liquidators have included (1) "bait and switch" tactics (advertising a low-price product as "bait" and then, when the customer tries to buy it, "switching" him to a higher priced item); (2) misrepresenting the sources of their merchandise; (3) misrepresenting the "savings" to be realized by purchasing their merchandise; (4) falsely claiming that their price offers were for a limited time only or that their goods were available in limited quantities only; (5) misrepresenting the nature and extent of the "guarantees" on their merchandise; and (6) failure to make certain disclosures required by the Textile Fiber Products Identification Act, 15 U.S.C. 70. These findings of extensive violations of law not being challenged on appeal, the only issue before us is the scope of the corrective order to be entered, particularly whether certain of the individual "partners" are to be held responsible and thus bound by its terms; whether an order provision dealing with the "adequacy" of the products sold is required; and whether, in respondents' future advertisements, a "warning" provision must be included.

The learned law judge has succinctly summarized the facts of the case in his findings. Joseph W. Green, who had been engaged in the sewing machine business in New York City until 1969, moved to the Washington, D.C. area in that year and began organizing a number of retail stores under the name Consumers Buying Service, a name that was changed to "Freight Liquidators" in 1971. Additional stores were opened from time to time, with Mr. Green as either the sole or part owner. In general, the fifteen (15) or more stores that traded under the Freight Liquidators name in the Washington and Baltimore areas during 1971 and 1972 were managed by one of Green's individual "partners," a part owner (with Green) who had invested a sum ranging from $3,000 to $25,000 in the store and who shared in its profits on the basis of that ownership interest. Mr. Green handled the purchasing end

of the business and was also responsible for the preparation and placement of all advertising for the entire group of stores. Rugs, stereos, sewing machines, and other items were prominently featured in these advertisements, the thrust of which was (a) that respondents were engaged in the business of selling merchandise that was being "liquidated" for the payment of an indebtedness or claim, *i.e.*, bankrupt, salvage, distrained, distress, or transportation-company surplus goods, and (b) that the consumer, thanks to the unique or special character of this offered merchandise, could buy it at an especially low price, one reflecting significant savings from the price at which such goods are commonly sold at retail in the community in question. (See attached advertisements, CXF 4, 11, and 13[appearing at p. 304 herein].)

All of these claims are false. Freight Liquidators is not engaged in the business of selling bankrupt, salvage, distress, or transportation-surplus goods and the prices charged are not lower than those usually and customarily charged at retail. (Initial Decision, Finding 20, pp. 10-11.[p. 282 herein]) Nor were respondents' advertisements *bona fide* offers to sell at the advertised prices. They were designed, instead, primarily for the purpose of obtaining "customer leads," the opportunity to disparage the advertised products and "switch" the inquiring customer to merchandise bearing a significantly higher price than the one stated in the advertisement that had "baited" the customer into the store in the first instance. Respondents' salesmen, being compensated on the basis of a commission plan that was geared to the amount of *profit* realized on the sale (generally 25 percent of the profit made on each deal), typically diverted customers from the low-priced products featured in the advertisements by claiming the item was not available, by refusing to show it to the inquiring customer, or by displaying poor quality or unattractive samples of it. Thus a sewing machine with an advertised price of $58 or $63 turned out, upon inquiry, to include only a sewing machine *head*, omitting "such essentials as a base or stand containing the operating controls and without which the head of the machine was useless * * *." *Id.*, p. 12 [p. 284 herein]. The record is equally clear on the other misrepresentations found by the law judge and the failure to make the disclosures required by the Textile Act. *Id.*, p. 13[p. 284 herein].

The principal issues on appeal have to do, as noted, with (1) whether the order should include a "consumer warning" provision; (2) whether it should include a provision requiring respondents' merchandise to be "adequate" for its advertised purpose; and (3) whether certain individual respondents should be bound by the order as individuals.

STEREO

UNCLAIMED FREIGHT
BANKRUPTCY STOCK FACTORY CLOSEOUTS
TRUCK LOAD LIQUIDATION
All New Merchandise
LAST NOTICE FOR THIS WEEKEND
FRIDAY, SATURDAY, SUNDAY & MONDAY

ONLY $88
New 1972 (in cartons), 5-piece Stereo Component Units, 40 Watts, AM/FM radio, deluxe 4 spd. BSR turntable, 4-speaker sound system, equipped for 8 track tape player, tape recorder, etc. Only $88

Only $147
New 5-piece Components 4-speed Deluxe Turn Tbl., 100 watts, AM/FM radio, deluxe 4-spd. turntable w/diamond stylus, 4-speaker air suspension audio system. Equip. for 8-trk. cassette. Orig. $329. Yours for $147

Only $108

New 1972 (in cartons), famous make, 100 watt turners w/AM/FM multiplex equipped for 8 track or cassette. Only $108

From Only $88
New console stereo, various sizes & finishes. Lge. assortment w/AM/FM radio & deluxe 4 spd. changer.

FREIGHT LIQUIDATORS
DEAL WITH THE STORE NEAR YOU* * *
(see CXF 4, CXF 11 and CXF 13)]

* * * * * * *

On the first of these issues the law judge included in his order a provision that would require respondents to insert the following language in all of their advertisements for a minimum of one (1) year:[1] "We are subject to the prohibitions of a Federal Trade Commission Order in Docket 8937, that requires us to sell the products which we advertise without attempting to sell you a different item or a higher

[1] At the end of a year respondents would be permitted, under the law judge's order here, to petition the Commission for a waiver of further compliance with this provision upon a showing that they have discontinued the practice of "baiting and switching" their customers and hence that the restraint in question is no longer necessary. Initial Decision, p. 36 [p.300, herein].

priced item." Counsel supporting the complaint argue for a more strenuous "consumer warning" provision[2] and respondents maintain that no such provision of any kind should be entered. While we agree that the instant record is insufficient to support an order provision of this kind, we will strike it here without prejudice to the right of the Commission to reopen these proceedings and add such a requirement if respondents' future conduct and/or changed circumstances should indicate that it is then required by the public interest. See *Wilbanks Carpet Specialists et al.*, Docket 8937 (Sept. 24, 1974 [84 F.T.C. 510]).

We agree with the law judge's ruling that there is no need for a provision in his order prohibiting the advertising of merchandise that is "inadequate for the purposes for which it is offered."[3] This proposed provision was aimed chiefly at respondents' advertisements of low-priced "sewing machines" that turned out to be sewing machine *heads*, items that are not usable without the controls and other accessories that respondents charge "extra" for. Whether or not the word "inadequate" is unduly vague as found by the law judge, it is unnecessary. Another provision in his order prohibits any misrepresentation as to "the source, *character* or *nature* of the merchandise being offered for sale."[4] A sewing machine is not a sewing machine without the controls contained in the cabinet any more than an automobile is an automobile without an engine or a steering assembly. To advertise a sewing machine head as a sewing machine would thus be a misrepresentation of the "character or nature" of the product and hence a violation of this latter provision of the order.

The law judge dismissed the complaint as to six (6) of the individual respondents named in the complaint[5] but included five (5) of them in his cease and desist order, namely, Joseph W. Green, Harold J. Green, John W. Green, Herbert Millstein, and Peter W. Galarneau. Two of these individual respondents, Harold Green and John Green, argue on appeal that the order should not apply to them individually. Counsel supporting the complaint, on the other hand, contend that the law judge erred in not also including four (4) of the other individual respondents, Mike McKeever, Sam Katz, George Ommert, and Gerald Gautcher.

There can be no doubt of the deep personal involvement of two of these individual respondents in this deceptive scheme and thus the

[2] The wording proposed by complaint counsel is as follows: "The Federal Trade Commission has found that we engage in bait and switch advertising. That is, the salesman makes it difficult for you to buy the advertised product and he attempts to switch you to a higher priced item."

[3] See complaint counsel's proposed order, first paragraph, subparagraph 10.

[4] Paragraph 2 of the law judge's order. (Emphasis added.) Initial Decision, p. 28 [p.297, herein].

[5] The law judge had previously dismissed the complaint as to respondent Steven Rizzi by Summary Initial Decision, affirmed by the Commission in a final order of dismissal of Jan. 3, 1974. The complaint was dismissed as to give others—Mike McKeever, Jerry W. Lytell, George Edward Ommert (erroneously identified in the complaint and in a number of other pleadings as George Edward Ommeret), and Gerald Gautcher-in the law judge's later Initial Decision.

soundness of the law judge's decision in holding them individually liable. Joseph W. Green and Herbert Millstein were the principals in the organization and exercised authority and control in the setting of its deceptive advertising and sales policies.[6] Four of the others, Harold J. Green, John W. Green (sons of the founder, Joseph W. Green), Peter Galarneau, and Jerry Lytell,[7] exercised no control over the policies of the central Freight Liquidators organization itself (*e.g.*, its advertising policies) but each of them was involved in implementing the illegal scheme at more than one store location and hence was properly held liable by the law judge.

The more difficult issue concerns the individual liability of the four (4) respondents that the law judge declined to hold in his order, Katz, McKeever, Gautcher, and Ommert, all of whom he believed were more victims than perpetrators here primarily because of the questionable representations used to induce their participation in the plan.[8] While we share the law judge's concern with the welfare of those who have been induced to make a substantial investment in an unlawful scheme by false representations, one deception does not justify another. Each of these men managed one of the stores involved in this unlawful sales scheme, running the day-to-day operations of his own store and participating, either as a salesman himself or as a supervisor of salesmen, in the sale of this falsely advertised merchandise. A mere reading of these advertisements, together with knowledge of the true character of the merchandise and the terms on which it was in fact being sold, should be more than sufficient to put a reasonable and prudent businessman on notice that he had been made an active participant in a false and deceptive sales operation. These manager-owners can hardly be heard to deny that they *read* these advertisements for the products they sold and that the representations in these ads could not be squared with the factual situation they presided over in their own individual stores. Perhaps one can *join* the commercial equivalent of Quantrill's Raiders out of an innocent conviction that it is a religious or charitable organization but one cannot *remain* an uninformed member of it for long. These individual respondents were more than temporary guests at Mr. Green's table. They had made themselves members of the family.

The order of the administrative law judge will be modified in accordance with the foregoing and, as so modified, affirmed and adopted as the order of the Commission.

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[6] Initial Decision, p. 20 [p.291, herein].

[7] The law judge dismissed the complaint as to Mr. Lytell on the ground that he was an indigent and had not been furnished with counsel. We affirm that dismissal.

[8] *Id.*, p. 22 [p.293, herein].

CONCURRING OPINION OF COMMISSIONER LEWIS A. ENGMAN

FEBRUARY 25, 1975

BY ENGMAN, *Commissioner:*

I agree with Commissioner Hanford that we have the power to issue a "consumer warning" and that this remedy should not be used indiscriminately. I also agree that in the process of determining whether we should require a consumer warning, we should take into account a respondent's prior violations, as his prior conduct affords some evidence of proclivity to continue to engage in the prohibited practices.

However, I would not rest the decision to require a consumer warning solely on a respondent's proclivity to continue to violate the law. I would, in addition, take into account the Commission's ability to detect violations of the Commission's order under various circumstances. If we can readily monitor respondent's actions and institute compliance proceedings to cure violations, we may be able to provide adequate enforcement without the necessity of a consumer warning.

The instant order contains an effective means for monitoring respondent's conduct. Paragraph Nine requires respondent to retain records of the cost of publishing each advertisement and the sales volume of the advertised product. Thus, the Commission will have the data to determine whether respondent is expending substantial amounts of money advertising products which he rarely sells, usually a sign of bait and switch activity. Accordingly, I find it unnecessary to require a "consumer warning" in this case.

CONCURRING OPINION OF COMMISSIONER M. ELIZABETH HANFORD

FEBRUARY 25, 1975

BY HANFORD, *Commissioner:*

On four occasions in recent months the Commission has stricken a "consumer warning" provision from an order against a bait and switch retailer.[1] In each instance, the Commission indicated that it did not consider such a provision to be appropriate on the facts of the case. The record of this case, however, appears to present facts which differ significantly. These differences, in my view, merit serious consideration.

At oral argument Complaint Counsel alleged that respondent Joseph

[1] Wilbanks Carpet Specialists, et al., Docket 8937 (Sept. 24, 1974 [84 F.T.C. 510]), Tri-State Carpets, Inc., et al., Docket 8945 (Oct. 15, 1974 [84 F.T.C. 1078]), Theodore Stephen Co., Inc., et al., Docket 8944 (Jan. 28, 1975 [85 F.T.C. 152]), Sir Carpet, Inc., et al. Docket 8981 (Feb. 6, 1975 [85 F.T.C. 190]).

W. Green signed an assurance of discontinuance with the State of New York in 1965 and a consent judgment at a later time, both involving bait and switch practices.[2] Counsel for Mr. Green not only confirmed that Green signed these two consent orders, but admitted that he had been criminally prosecuted for bait and switch advertising in the District of Columbia.[3] Thus, it would appear that this is at least the fourth time that legal sanctions have been imposed upon him as a result of alleged bait and switch conduct. In short, were we to accept the statements of counsel at oral argument, we could easily find Mr. Green to be a bait and switch recidivist.

As an adjudicatory body, however, we must proceed cautiously when considering matters not raised until oral argument. Since none of the prior judgments are a part of this record, and since the parties have not been given an opportunity to brief and argue fully the circumstances and effect of the prior judgments, we cannot properly consider these judgments in framing our order. Accordingly, I concur in the judgment of the Commission.

Had the record been more complete, however, I would not have hesitated to support an order including "consumer warning" relief of the kind ordered by the administrative law judge. Requiring a "consumer warning" is clearly within the power of the Commission; it is "reasonably related" to prohibiting further conduct found to have violated our Act.[4] When dealing with an individual who has repeatedly engaged in bait and switch practices, a consumer forewarned will be far less likely to fall victim to such practices.

Such a remedy should not be used indiscriminately. If the other order provisions were obeyed, there would be no need for a "consumer warning." Where dealing with a known recidivist, however, we may infer a significant likelihood that our order would be disobeyed. In such a case, it is my view that a "consumer warning" remedy may well be both appropriate and necessary.

FINAL ORDER

This matter is before us on cross-appeals by respondents, Herbert Millstein, Harold J. Green, John W. Green, Peter W. Galarneau, and Joseph W. Green, and by complaint counsel from the administrative law judge's initial decision filed June 27, 1974. For the reasons stated in the accompanying opinion, the Commission has determined to adopt the initial decision as the decision of the Commission except insofar as it is inconsistent with said opinion and to issue the cease and desist order

[2] Transcript of Oral Argument of Oct. 16, 1974, 18-19.

[3] *Id.* at 33-37.

[4] *Jacob Siegel Co.*, v. *F.T.C.*, 327 U.S. 608 (1946), *National Lead Co., et al.* v. *F.T.C.*, 352 U.S. 419 (1957).

contained therein as the final order of the Commission with the modifications set forth below. Accordingly,

It is ordered, That the law judge's cease and desist order be modified so as to include respondents Mike McKeever, Sam Katz, George Edward Ommert, and Gerald Gautcher in all provisions and that the paragraph dismissing the complaint as to said respondents be stricken;

It is further ordered, That the paragraph requiring respondents to include in their advertisements an affirmative disclosure to the effect that they are subject to a Federal Trade Commission order in Docket 8937 be stricken without prejudice to the Commission's right to reopen this proceeding to consider reinstating of this requirement or other appropriate relief should the future conduct of any of these respondents warrant such action,

It is further ordered, That in all other respects the appeals of respondents and complaint counsel be denied.

IN THE MATTER OF

REDMAN INDUSTRIES, INC., ET AL.

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

Docket C-2640. Complaint, Mar. 3, 1975 - Decision, Mar. 3, 1975

Consent order requiring a Dallas, Tex., manufacturer of mobile homes, among other things to cease unfair and deceptive warranty practices through the establishment of a prompt and effective system to handle warranty-related problems. The order requires respondent to provide warranty repairs or services on still-unrepaired mobile homes manufactured between 1972 and 1974 and to provide future retail purchasers with relief by establishing and maintaining a regular and effective system to handle complaints and service. Under this system, all repairs must be complete within thirty days after notification to the respondent of defects. Where the defects affect safety or habitability of the mobile home, the repairs must be started within three business days and be expeditiously completed.

Appearances

For the Commission: *Walter E. Diercks*, *Robert Weinstock* and *Pamela B. Stuart.*

For the respondents: *Jerry L. Buchmeyer*, *Thompson, Knight, Simmons & Bullion*, Dallas, Tex.