IN THE MATTER OF

CAPAX, INC., ET AL.

Docket 9058. Interlocutory Order, Oct. 20, 1976

Order denying motion by all respondents except one individual that the administrative law judge be disqualified from presiding in this proceeding.

Appearances

For the Commission: *Carthon E. Aldhizer, John F. LeFevre,* and *Alan D. Reffkin.*

For the respondents: *Robert F. Stockton, Segal & Stockton,* Philadelphia, Penn., for Capax, Inc., Joseph V. Defelice and Arnold Goodman. *Barbara Van Horn Colsey,* Delanco, New Jersey, for Norman Bricker.

ORDER DENYING MOTION TO DISQUALIFY ADMINISTRATIVE LAW JUDGE

Administrative Law Judge Paul R. Teetor has certified a motion filed by all respondents other than Norman Bricker requesting that the ALJ be disqualified from presiding in this proceeding. The moving respondents assert that two letters to the ALJ written by complaint counsel were *ex parte* communications and had "the capacity to prejudice" the ALJ against respondents or their attorneys.[1]

We agree with the ALJ's decision not to disqualify himself. The letters did not constitute *ex parte* communications since copies were forwarded to respondents' counsel. Nor has there been a showing that the law judge's ability to conduct a fair hearing has in any way been prejudiced. Accordingly,

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

Commissioner Dole not participating by reason of absence.

[1] According to one letter, a prospective witness had informed complaint counsel that she intended to cancel her scheduled interview date because of threats made by a telephone caller who identified himself as a representative of respondent Capax. The other letter complained of a questionnaire mailed to a prospective witness.

IN THE MATTER OF

GUARDIAN LOAN COMPANY, INC.

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

Docket C-2846. Complaint, Oct. 20, 1976 — Decision, Oct. 20, 1976

Consent order requiring a Roslyn Heights, N.Y., consumer finance company, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit such information as required by Regulation Z of the said Act. Further, respondent is required to cease misrepresenting the terms and conditions of insurance coverage requirements; to display insurance information in-house; to mail insurance disclosure letters together with cancellation forms to customers; to send customer-requested refunds within a specified time; and to maintain records.

Appearances

For the Commission: *Angelo M. Presti.*

For the respondent: *Walter C. Wallace, Stein, Mitchell & Mezines,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Guardian Loan Company, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Guardian Loan Company, 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 2 Lambert St., Roslyn Heights, New York.

Respondent Guardian Loan Company, Inc. operates through approximately thirty (30) wholly-owned subsidiary loan offices located in the States of New York, New Jersey, Pennsylvania, Delaware and Connecticut. Respondent Guardian Loan Company, Inc. formulates and controls the policies, acts and practices of each of the wholly-owned subsidiaries, including the acts and practices hereinafter set forth.

PAR. 2. Respondent, by and through its various wholly-owned

subsidiary corporations, is now, and for some time in the past has been, engaged in consumer financing and the granting of consumer loans to members of the public in the States of New York, New Jersey, Pennsylvania, Delaware and Connecticut.

PAR. 3. In the ordinary course and conduct of its business, as aforesaid, respondent regularly extends consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of its business, as aforesaid, has charged, and is now charging, a substantial number of consumers for credit life and credit disability insurance written in connection with consumer loans.

Typical and illustrative, but not all inclusive, of the circumstances in which such insurance charges are incurred by consumers are the following, which generally occur in the sequence set forth.

1. During the consumer's initial contact with respondent, either on the telephone or in person, respondent orally quotes a monthly repayment figure which includes charges for credit life and credit disability insurance.

2. Respondent automatically includes charges for credit life and credit disability insurance on the Disclosure Statement of Loan, and, unless the consumer specifically objects to the inclusion of the charges for such insurance, the coverage becomes part of the credit transaction.

3. On that portion of the Disclosure Statement of Loan which contains the statements "I desire Credit Life Insurance the cost of which is shown above ( ) Yes ( ) No," and "I desire Disability Insurance the cost of which is shown above ( ) Yes ( ) No," followed by a line for the consumer's signature, respondent, without the permission or authority of the consumer, checks the "Yes" boxes and then dates and places an "X" on the line for the borrower's signature.

4. The Disclosure Statement of Loan, filled out as indicated above, is presented to the consumer for two signatures, and the consumer is told by respondent's employees to sign next to the "X's" respondent's employees have made. The consumer is not told the purpose of each signature. These signatures are intended (1) to indicate the consumer's request for the insurance coverage, and (2) to acknowledge the consumer's receipt of the completed Disclosure Statement of Loan,

5. If a consumer is told the purpose of each signature mentioned in part 4 of Paragraph Four above, the consumer is not subsequently told whether or not credit life and credit disability insurance are optional.

6. Respondent places the charges for credit life and credit disability insurance in the Disclosure Statement of Loan, and these charges

become part of the "amount financed," but are not included in the amount of the "finance charge" which "finance charge" is used in the computation of the "annual percentage rate."

7. If a consumer becomes aware that he has a choice about obtaining credit life and/or credit disability insurance and specifically objects to or questions the inclusion of the charges for such insurance, respondent informs the customer that deletion of such charges will require it to have all the loan papers retyped as well as drawing a new check for the amount of the proceeds of the loan, and that this process of redoing the papers will result in delaying the completion of the loan, sometimes by as much as several days.

PAR. 5. By and through the acts and practices described in Paragraph Four, and others of similar import, meaning and consequence, but not specifically set forth herein, respondent, in a substantial number of instances, obtains consumers' signatures through practices which operate, directly or indirectly, to defeat the elective language of the insurance authorization disclosures by obscuring from consumers knowledge about the option, by misrepresenting to consumers that their signatures are necessary solely for the purpose of consummating the credit transaction, and by discouraging the declination of the coverage when it is questioned. These practices have the effect of preventing substantial numbers of consumers from exercising their own independent, voluntary choice whether to obtain credit life and/or credit disability insurance.

Therefore, respondent, in a substantial number of instances, induces its customers to incur charges for credit life and credit disability insurance without said customers making a knowing, affirmative election to have such insurance and, thereby, respondent has failed to obtain from each of its customers a "specific dated and separately signed affirmative written indication of [their] desire" to obtain such insurance, as required by Section 226.4(a)(5) of Regulation Z, despite the existence of language to the contrary in the Disclosure Statement of Loan.

PAR. 6. By and through the acts and practices described in Paragraphs Four and Five hereof, respondent has failed to include the charges for credit life and credit disability insurance in the "finance charge" when a specific dated and separately signed affirmative written indication of the consumer's desire for such insurance has not been obtained, as required by Section 226.4(a)(5) of Regulation Z, and thereby respondent:

1. Failed to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z; and

2. Failed to compute and disclose the "annual percentage rate"

accurately to the nearest quarter of one percent, as required by Sections 226.5 and 226.8 of Regulation Z.

PAR. 7. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of its business, as aforesaid, has furnished Disclosure Statement of Loan forms to its customers. By and through the use of said forms, respondent, in many instances, failed to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8(d)(1) of Regulation Z.

PAR. 8. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with Sections 226.4, 226.5, and 226.8 of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Truth in Lending Act and the regulation promulgated thereunder and 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 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Guardian Loan Company, 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 2 Lambert St., Roslyn Heights, New York.

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

ORDER

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

(a) "consumer loans in open status" refers to those consumer loans in which payments at least totaling the amount of one regular monthly payment have been made by the borrower in the last six months.

(b) "delinquent account" refers to those accounts which are more than 30 days past due for an amount which equals the amount of one regular monthly payment.

(c) "net cash advance" refers to the actual amount of cash that a borrower will receive after choosing one of the credit insurance options available, including that option which contains no credit insurance, in connection with his loan.

(d) "penetration rate" refers to the percentage of all loans eligible for credit insurance on which charges for such insurance are made.

(e) "refund method" refers to an accounting method to compute refunds of insurance premiums in connection with cancellation of insurance coverage which method makes use of both the Rule of 78 and a pro rata computation. As an example, the Rule of 78 would operate on a 12-month loan as follows: The numbers 1 through 12 added together provide the figure 78. This is the denominator. The sum of the months expired at the date of cancellation supplies the numerator. The first month of a 12-month loan is considered as 12 because the outstanding balance is 12 times as large during the first month as it is for the last month. The second month is 11, and so on, to 1. The portion of insurance premiums which must be refunded is, for cancellation during the first month, 78/78-12/78 or 66/78; second month 66/78-11/78 or 55/78; and so on down to the 12th month. The numerator for a 24-month contract is obtained by beginning with 24, instead of 12, as for a 12-month contract, or 36 in the case of a 36-month contract or any other number denoting the total number of months or periods in a particular contract. To the amount of any refund due in connection with any loan as determined by use of the Rule of 78 will be added an amount which is equal to 40 percent of the difference between said Rule of 78 amount and that amount which would be due if said refund were to be computed on a pro rata basis. Said pro rata amount refers to an amount which shall be at least as great a proportion of the total insurance premiums collected by

respondent in connection with any loan as the number of remaining monthly payments, scheduled to follow the installment date nearest the date of cancellation as explained below, bears to the total number of monthly payments scheduled by the loan contract. Any cancellation made on or before the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately preceding the date of cancellation. Any cancellation made after the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately following the date of cancellation. Any borrower making cancellation on or before the fifteenth day following consummation of the loan shall receive a refund or credit for the full amount of insurance premiums in connection with said loan. Cancellation for purposes of computing the amount of any refund or credit due shall be as of the date of receipt by respondent of the notice set forth in Attachment C of this order or as of the date of receipt by respondent of any other communication from the borrower under the terms of this order indicating his desire to cancel his insurance coverage.

(f) "time of closing" refers to that period of time during which loan documents are presented to the borrower for consummation of a loan transaction whereby the borrower becomes obligated to make payments to respondent to satisfy said loan.

I.

It is ordered, That respondent Guardian Loan Company, Inc., its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the granting of consumer loans subject to the provisions of Regulation Z (12 CFR §226.8) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Failing, when the charges for credit life insurance and/or credit disability insurance are not included in the finance charge for consumer loans:

(a) To present to the borrower as the first document at the time of closing, which document shall be the first document to be completed by respondent and the first document to be signed by the borrower(s) at the time of said closing in respondent's loan offices, or to mail to the borrower, who is consummating his loan through the mail, at the same time as consummation papers are to be mailed, a separate, written, personal insurance authorization form which sets forth clearly and conspicuously:

(i) the borrower has received credit approval up to a specified amount;

(ii) the borrower's decision with regard to the insurance available through respondent is not considered in granting the credit;

(iii) the purchase of credit insurance is optional and is not required by Guardian Loan Company, Inc., in connection with the loan;

(iv) the amount of the total premium for credit life insurance and the amount of the total premium for credit disability insurance [which, if elected, will be deducted from the amount of the proceeds and added to the "amount financed"];

(v) the net cash advance options which would result from the borrower's election to take the loan, set forth in the following order from left to right across the document: (1) without either credit life insurance or credit disability insurance, (2) with credit life insurance only, (3) with credit disability insurance only, (4) with both credit life insurance and credit disability insurance, (5) with other available forms of credit insurance, if applicable, except that, in any State where credit property insurance is available alone as well as in multiple combinations or options with other forms of credit insurance, respondent, in addition to providing the required information for the above stated four options, need only provide the required information for one other option if the borrower has indicated an interest in such an option;

(vi) a signature and date line for each option set forth in (v) above for the borrower(s) to indicate his election;

(vii) the borrower authorizes respondent on behalf of the borrower to pay the insurance premiums to the insurance company for such personal insurance which has been chosen.

(b) To send to mail order loan borrowers, at the same time and along with the papers to consummate said loan, a separate written statement containing the notice, in no less than 12 point bold type and easily legible, which this order requires to be displayed at respondent's loan offices.

(c) To make the disclosures required by subparagraph (a) above on a separate document which contains no other printed or written material.

(d) To make disclosures required by subparagraphs (i), (ii) and (iii) above in not less than 12 point type. A form substantially in conformance with Attachment A herein will be considered as in compliance with the provisions of subparagraphs (a), (b) and (c) above. Respondent shall maintain the original statement for two years following its execution and provide the customer with an executed copy thereof.

2. Making any marks or otherwise instructing a borrower where to sign or date the separate personal insurance authorization form

required by subparagraph (a) above in advance of the borrower's free and independent choice for such insurance.

3. Misrepresenting, orally or otherwise, directly or by implication, that credit life and/or credit disability insurance are required as a condition of obtaining credit from respondent.

4. Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of credit life and/or credit disability insurance.

5. Representing, orally or otherwise, directly or indirectly, that the borrower's failure to elect credit insurance will result in a delay in processing his loan or in his receiving the proceeds.

6. Failing to compute and disclose accurately the finance charge, as required by Section 226.4(a)(5) and 226.8(d) of Regulation Z.

7. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent as required by Section 226.5(b) and 226.8(b) of Regulation Z.

8. Failing to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8(d)(1) of Regulation Z.

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

II.

It is further ordered, That respondent display at each booth, or at or near each desk or other location where loans are consummated, in such a manner and in such dimensions so as to be easily viewed and read by the borrower from his seated or other normal position in such booth or at such desk or other location, and which shall not be in close proximity to any other written or display material, the following notice:

NOTICE TO BORROWERS

THE PURCHASE OF CREDIT INSURANCE IS OPTIONAL AND IS NOT REQUIRED BY THIS COMPANY IN CONNECTION WITH YOUR LOAN. YOUR DECISION WITH REGARD TO THE INSURANCE AVAILABLE IS NOT CONSIDERED BY THIS COMPANY IN THE GRANTING OR DENYING OF CREDIT TO YOU.

III.

It is further ordered, That respondent maintain records on a State-by-State basis (covering each State in which they do business) of the penetration rate of (a) credit life insurance for loans; and (b) credit disability insurance for loans. Such records shall be maintained on a

yearly basis and submitted to the Commission each year for a period of five years, and thereafter from time to time as the Commission may request.

IV.

It is further ordered, That respondent, in reporting penetration rates, state the total number and dollar amount of loans entered into each year which were eligible for credit insurance, stated separately for credit life insurance and credit disability insurance.

V.

It is further ordered, That within forty-five (45) days after the date this order becomes final respondent mail to all borrowers to whom credit life and/or credit disability insurance were sold prior to the date this order becomes final and the premium(s) for same were not included in the finance charge, and who did not receive death benefits or health benefits under said insurance policies, in connection with respondent's consumer loans in open status on the date this order becomes final, notwithstanding the sale or assignment of any or all of said loans to a third party, the two notices set forth in Attachments B and C of this order, together with a self-addressed, postpaid, return envelope.

VI.

It is further ordered, That within forty-five (45) days after the date this order becomes final respondent contact by telephone or other means available all those borrowers who would be sent, under the terms of this order, the notices set forth in Attachments B and C of this order were it not for the fact that said borrowers have been extended confidential loans by respondent under the terms of which no correspondence is forwarded by mail to said borrowers, in order to advise said borrowers of their prerogatives to cancel their insurance coverage and receive a partial refund of the insurance premiums paid;

Provided, however, That any obligation under Paragraphs V and VI above shall only apply to respondent and shall not apply to: (a) any third party to whom said loans may be or may have been sold or assigned, (b) any offices of respondent transferred to a third party in connection with the sale or assignment of said loans, or (c) any of said loans sold or assigned to a third party;

Provided further, however, That it is understood that any of said loans sold or assigned to a third party shall be used by respondent pursuant to the terms of Paragraphs V and VI above solely to determine the names of the borrowers required by it to fulfill its obligation under said

paragraphs and the amount of each insurance premium refund which may be required pursuant to respondent's fulfillment of such obligation;

Provided further, however, That respondent shall not be required to forward the two notices set forth in Attachments B and C of this order to any borrower, or to contact any borrower who has been extended a confidential loan, who has already received the above-mentioned notices prior to the date this order becomes final, or who has already been contacted by respondent with respect to cancellation of insurance coverage prior to the date this order becomes final, and where any and all follow-up provisions required by this order with respect to said notices or contact, including the making of refunds or the crediting of accounts, where applicable, have been or will be accomplished by respondent within the time periods specified in this order;

Provided further, however, That respondent shall not be required to forward the two notices set forth in Attachments B and C of this order to any borrower who, for any loan consummated prior to the date this order becomes final, received from respondent during the time of closing of said loan the personal insurance authorization form required by Section 1(a) of this order and where any and all requirements connected with said form as required by this order have been accomplished by respondent.

VII.

It is further ordered, That a record of mailing by respondent of the notices set forth in Attachments B and C of this order be kept by respondent and that said record be available for examination by Commission personnel in connection with any compliance obligations arising out of this order.

VIII.

It is further ordered, That all telephone calls or other attempts to advise the above-mentioned confidential loan borrowers of their cancellation prerogatives be noted on the ledger cards of such borrowers so as to legibly indicate: (1) the dates and times of such telephone calls or other means of communication employed to make contact with said borrowers; (2) the results of such attempts; and (3) the name or initials of respondent's employee making such contacts.

Respondent's obligations under Paragraphs V and VI of this order shall not be fulfilled until each borrower affected by said paragraphs has received the notices, or been contacted, as specified therein; *provided however*, that respondent shall be deemed to have complied with said Paragraphs V and VI if respondent can demonstrate that it

expended reasonable efforts, in writing or orally, to deliver such notices or make such contact according to the terms of this order.

IX.

It is further ordered, That any and all requests for refunds of insurance premiums under the terms of this order be made by respondent based on the Refund Method as defined in this order and that said refunds be made by respondent within thirty (30) days of receipt by respondent, within the time period specified in this order, of the notice set forth in Attachment C of this order or receipt by respondent of any other form of communication from borrowers indicating their desire to cancel their credit insurance coverage;

Provided, however, That respondent under Paragraph IX above shall have the option in connection with open status but delinquent accounts to either make refunds in accordance with the terms of this order or to credit said accounts for the full amount of any refunds due.

X.

It is further ordered, That respondent, when crediting any delinquent account with the full amount of any refund due following receipt of the notice set forth in Attachment C of this order, or following contact with any borrower under the terms of this order, credit said account within thirty (30) days of the receipt by respondent of said notice or within thirty (30) days of the contact by respondent whereby the borrower indicates his desire to cancel his credit insurance coverage.

XI.

It is further ordered, That the above-mentioned credit be reflected on the next account status statement to be sent to the borrower following the above-mentioned crediting of his account;

Provided, however, That respondent shall not be required under Paragraphs IX and X above to make refunds or to credit accounts with respect to any cancellation notice, as so set forth in Attachment C of this order, or any cancellation request, received by respondent later than twenty-one (21) days following the post office receipt date of said notice's mailing by respondent or later than twenty-one (21) days from the date that respondent otherwise notifies the borrower of his cancellation prerogatives.

XII.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent at its

general offices in Roslyn Heights, New York and in each of its subsidiary loan offices who are engaged in the extension of consumer loans, and that respondent secure a signed statement acknowledging receipt of said copy of this order from each such person.

XIII.

It is further ordered, That respondent notify the Commission within thirty (30) days of any change in the corporate respondent which may affect compliance obligations with regard to the extension of consumer loans arising out of this order, 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 with regard to the extension of consumer loans which may affect compliance obligations arising out of this order.

XIV.

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.

Commissioner Dole not participating by reason of absence.

ATTACHMENT A

PERSONAL CREDIT INSURANCE AUTHORIZATION

YOUR LOAN (OTHER EXTENSION OF CREDIT) HAS BEEN APPROVED IN THE AMOUNT OF _____ .

CREDIT LIFE OR CREDIT ACCIDENT & HEALTH (DISABILITY) INSURANCE IS NOT REQUIRED IN CONNECTION WITH THIS EXTENSION OF CREDIT TO YOU AND YOUR DECISION WITH REGARD TO THE PERSONAL INSURANCE WILL NOT AFFECT THE TOTAL AMOUNT OF CREDIT WHICH HAS ALREADY BEEN APPROVED FOR YOU.

IF YOU ELECT CREDIT INSURANCE THESE PREMIUMS WILL BE DEDUCTED FROM THE PROCEEDS OF YOUR LOAN AND ADDED TO THE AMOUNT FINANCED.

Credit Life	$ _____ (For term of transaction)
Credit A & H (Disability)	$ _____ (For term of transaction)

I have received a fully completed and executed copy of this form. I have reviewed the net cash advance options set forth below and understand that if I choose a net cash advance option that includes any of the insurance coverages I am authorizing the lender to pay the insurance premiums on my behalf. I have voluntarily chosen the following net cash advance option:

Option 1 Net Cash Advance Without Personal Credit Insurance	Option 2 Net Cash Advance with Credit Life Only	Option 3 Net Cash Advance With Credit A & H (Disability) Only	Option 4 Net Cash Advance With Credit Life and A & H (Disability)
$ _____	$ _____	$ _____	$ _____
No. of Months _____	No. of Months _____	No. of Months _____	No. of Months _____
_____ (Borrower)	_____ (Borrower)	_____ (Borrower)	_____ (Borrower)
_____ (Borrower)	_____ (Borrower)	_____ (Borrower)	_____ (Borrower)
_____ (Date)	_____ (Date)	_____ (Date)	_____ (Date)

ATTACHMENT B

Name of Creditor
Address of Creditor

Dear Customer:

As part of your current loan with Guardian Loan Co., Inc., charges were made for credit life insurance and/or credit disability insurance.

Because it has been determined that many of our customers may not have been fully aware of the voluntary nature of this insurance coverage at the time they purchased it, we are offering you the opportunity to cancel your insurance coverage and receive a partial refund of the insurance premiums based on a refund schedule which takes into account the remaining time period on your loan. If you cancel this insurance, your protection will end as of the date we receive your written notice of cancellation.

If you desire to cancel your insurance coverage, please complete the enclosed form and return it within two weeks in the enclosed envelope which requires no stamp. Do not return the enclosed form if you want your credit insurance to remain in force.

Sincerely,

ATTACHMENT C

From [Name of Borrower]:
To [Name of Creditor]:

At the time I made my loan, I did not understand that credit insurance was voluntary. Please cancel the insurance checked below and refund to me the applicable portion of the premium(s). I understand that in connection with any delinquent account the company reserves the right to credit the account with such refund.

CHECK INSURANCE COVERAGE TO BE CANCELLED

( ) cancel my credit life insurance [list applicable

( ) cancel my credit disability insurance coverages]

(NOTE: DO NOT SIGN OR RETURN THIS FORM IF YOU WANT YOUR CREDIT INSURANCE TO REMAIN IN FORCE)

DATE _____ _____

Borrower

IN THE MATTER OF

SHINYEI COMPANY, INC., ET AL.

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

Docket C-2847. Complaint, Oct. 21, 1976 — Decision, Oct. 21, 1976

Consent order requiring a New York City importer and distributor of fabrics and wearing apparel, among other things to cease violating the Wool Products Labeling Act by mislabeling products as to their wool and fiber content, and failing to firmly affix identification tags. Further, respondents are required to mail a copy of this order to affected customers, notifying them that the products they purchased had been mislabeled.

Appearances

For the Commission: *Jerry R. McDonald* and *James M. Cox*.

For the respondents: *Semel, Patrusky & Buchsbaum*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 Shinyei Company, Inc., a corporation, Exx-Calibre Gentlemen's Apparel, Inc., a corporation, Yoshijiro Ochiai, individually and as an officer of said corporations, and Peter Held, individually and as an officer of Exx-Calibre Gentlemen's Apparel, Inc., 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:

PAR. 1. Respondents Shinyei Company, Inc., and Exx-Calibre Gentlemen's Apparel, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. The principal office and place of business of respondent Shinyei Company, Inc., is located at 260 Madison Ave., New York, New York. The principal office and place of business of respondent Exx-Calibre Gentlemen's Apparel, Inc., is located at 873 Broadway, New York, New York.

Respondent Yoshijiro Ochiai is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of

respondent Shinyei Company, Inc., and participates with respondent Peter Held in the formulation, direction and control of the acts and practices of respondent Exx-Calibre Gentlemen's Apparel, Inc., including the acts and practices hereinafter set forth. His address is the same as that of respondent Shinyei Company, Inc.

Respondent Peter Held is an officer of respondent Exx-Calibre Gentlemen's Apparel, Inc. He participates with respondent Yoshijiro Ochiai in the formulation, direction, and control of the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporate respondent.

PAR. 2. Respondent Shinyei Company, Inc., is engaged in the business of importing from the Orient and distributing in the United States various products including wool blend men's suits and slacks.

Respondent Exx-Calibre Gentlemen's Apparel, Inc., is a wholesale distributor of men's clothing imported from the Orient by respondent Shinyei Company, Inc. Respondent Shinyei Company, Inc., owns controlling stock of respondent Exx-Calibre Gentlemen's Apparel, Inc.

PAR. 3. Respondents, now and for some time last past, have imported 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. 4. 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 wool blend men's suits and slacks stamped, tagged, labeled, or otherwise identified by respondents as 45% reprocessed wool, 55% polyester and 70% wool, 30% polyester whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 5. 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, wool blend men's slacks and suits 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. 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, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the 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, as amended, and the Wool Products Labeling Act of 1939; 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 by Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional finding, and enters the following order:

1. Respondent Shinyei Company, Inc. and Exx-Calibre Gentlemen's Apparel, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. The principal office and place of business of respondent Shinyei Company, Inc., is located at 260 Madison Ave., New York, New York. The principal office

and place of business of respondent Exx-Calibre Gentlemen's Apparel, Inc., is located at 873 Broadway, New York, New York.

Respondent Yoshijiro Ochiai is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of respondent Shinyei Company, Inc., and participates with respondent Peter Held in the formulation, direction and control of the acts and practices of respondent Exx-Calibre Gentlemen's Apparel, Inc., and his address is the same as that of corporate respondent Shinyei Company, Inc.

Respondent Peter Held is an officer of respondent Exx-Calibre Gentlemen's Apparel, Inc. He participates with respondent Yoshijiro Ochiai in the formulation, direction and control of the acts and practices of said corporate respondent, and his address is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents Shinyei Company, Inc., a corporation, Exx-Calibre Gentlemen's Apparel, Inc., a corporation, their successors and assigns, and their officers, and Yoshijiro Ochiai, individually and as an officer of said corporations, and Peter Held, individually and as an officer of respondent Exx-Calibre Gentlemen's Apparel, Inc., and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the introduction, or importing for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" 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.

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 respondent Exx-Calibre Gentlemen's Apparel, Inc., mail a copy of this order, by registered mail, to each of its customers that purchased the wool products which gave rise to this complaint.

It is further ordered, That the individual respondents named herein

promptly notify the Commission of each change in business or employment status, which includes discontinuance of their present business or employment and each affiliation with a new business or employment, for ten (10) years following the effective date of this order. Such notice shall include respondents' current business address and a description of the business or employment in which they are engaged as well as a description of their duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligations arising under this order.

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

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

It is further ordered, That 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.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

JOSEPH CORN & SON, INC., ET AL.

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

Docket C-2848. Complaint, Oct. 21, 1976 — Decision, Oct. 21, 1976

Consent order requiring a New York City manufacturer of fur products, among other things, to cease misbranding and deceptively invoicing their fur products by failing to set forth on labels and invoices information and disclosures mandated by the Fur Products Labeling Act.

Appearances

For the Commission: *Jerry R. McDonald.*
For the respondents: *Michael M. Maloney*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joseph Corn & Son, Inc., a corporation, and Milton Corn, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Fur Products Labeling 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 Joseph Corn & Son, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 141 West 28th St., New York, New York.

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

Respondents are wholesalers and retailers of fur products including items of wearing apparel.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, offered for sale,

transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder. Among such misbranded fur products, but not limited thereto, were fur products without labels as required by said Act.

PAR. 4. Certain of said products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with rules and regulations promulgated thereunder in the following respects:

(a) The term "natural" was not used on labels to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said rules and regulations.

(b) Required item numbers were not set forth on labels, in violation of Rule 40 of said rules and regulations.

(c) The true animal name of the fur used in such fur products was not shown on labels in violation of Rule 5 of said rules and regulations.

(d) Required information on labels was described in abbreviated form and not spelled out fully, in violation of Rule 4 of said rules and regulations.

(e) Required information on labels was entered in handwriting in violation of Rule 29 of said rules and regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated under such act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced to imply that the fur contained therein was natural when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the rules and regulations promulgated thereunder in the following respect:

The term "natural" was not used on invoices to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored in violation of Rule 19(g) of said rules and regulations.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the 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, as amended, and the Fur 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Joseph Corn & Son, 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 141 West 28th St., New York, New York.

Respondent Milton Corn is an officer of said corporation. He

formulates, directs and controls the acts, practices and policies of said corporation and his principal office and place of business is located at the above-stated address.

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

ORDER

It is ordered, That the respondents Joseph Corn & Son, Inc., a corporation, its successors and assigns, and its officers, and Milton Corn, 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, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Failing to set forth the term "natural" as part of the information required to be disclosed on a label under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to set forth on a label the item number or mark assigned to such fur product.

4. Failing to set forth on a label the true animal name of the fur used in such fur product.

5. Setting forth information required under the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form on a label pertaining to such fur product.

6. Setting forth required information on a label in handwriting.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on an invoice that the fur contained in such fur product is natural when such is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to disclose the term "natural" on invoices to describe fur products which contain fur which has not been pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, as required by Rule 19(g) of said rules and regulations.

It is further ordered, That the individual respondent named herein promptly notify the Commission of each change in business or employment status, which includes discontinuance of his present business or employment and each affiliation with a new business or employment, for ten (10) years following the effective date of this order. Such notice shall include respondent's current business address and a description of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligations arising under this order.

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

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 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.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

THE COCA-COLA COMPANY, ET AL.

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

Docket 8824. Complaint, Nov. 20, 1970 — Decisions, Oct. 26, 1976

Consent order requiring an Atlanta, Ga., manufacturer of soft drinks and other food products, among other things to cease failing, in contests and promotional games, to disclose all terms, conditions and rules; to award all prizes to entries who conform to the conditions of entitlement to a prize; and to keep adequate records for a minimum of two years.

Consent order requiring a Westport, Conn., promotional firm, among other things to cease failing, in contests and promotional games, to meet all of the above-mentioned requirements, and additionally, in relation to the future conduct of skill contests, to base them solely on matters of established, provable fact; to use such facts as are readily available from reference materials; to disclose that skill is involved and the reference works on which answers are based; to file questions and answers with an independent organization prior to promotion implementation; and to make available to participants the correct answers and a list of winners within sixty (60) days of judging the contest.

Appearances

For the Commission: *John J. McNally* and *David C. Fix.*

For the respondents: *White & Case*, New York City; *Wake, See & Dimes*, Westport, Conn.; and *Weil, Gotshal & Manges*, 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 The Coca-Cola Company, a corporation, and Glendinning Companies, Inc., a corporation, hereinafter sometimes referred to as respondents Coca-Cola and Glendinning, 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 The Coca-Cola Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 515 Madison Ave., in the city of New York, State of New York.

Respondent Glendinning Companies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State

of Connecticut, with its office and principal place of business located at One Glendinning Place, in the city of Westport, State of Connecticut.

PAR. 2. Respondent The Coca-Cola Company directly, and through various corporate subsidiaries, affiliates and franchisees is now, and for some time last past has been, engaged in manufacturing, distributing, advertising, offering for sale and selling concentrates, syrups, soft drinks, beverages and other food products. It has production and bottling plants and facilities in numerous American and foreign cities. Its beverages, including those popular soft drinks sold under the trade names "Coca-Cola" and "Tab," are distributed and sold to a vast segment of the general public in substantially all parts of the United States through some 900 local bottlers. Its net sales in 1968 approximated $1,185,808,864.

PAR. 3. Respondent Glendinning Companies, Inc. is now, and for some time last past has been, engaged in developing, manufacturing, promoting, offering for sale, selling and distributing trade stimulation programs and services, and sales promotional materials including promotional games and related devices used in and to induce the sale and distribution of food, gasoline and various other products.

PAR. 4. In the course and conduct of their respective businesses, respondent Coca-Cola and respondent Glendinning have acted separately or in concert for the purpose and with the result of bringing about the use of a promotional game known as "Big Name Bingo" in connection with and in order to induce the sale and distribution of "Coca-Cola" and "Tab" to a vast segment of the general public.

The aforesaid "Big Name Bingo" promotional game utilizes "bingo" type entry cards to which game participants are required to attach game pieces in the appropriate spaces. The entry cards consist, in the main, of cardboard pieces inserted into cartons of Coca-Cola and Tab. The game pieces consist, in the main, of plastic liners inserted within the lids or caps of bottles of said product. The said entry cards and game pieces, together with tear sheets of advertising copy, in-store display pieces and other promotional game materials and devices, were made available through respondents Coca-Cola and Glendinning to bottlers and distributors of Coca-Cola and Tab, for use in connection with and in order to induce the sale and distribution of said products through usual retail channels in numerous marketing areas to a vast segment of the general public throughout the States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business, respondent Coca-Cola now causes, and for some time last past has caused, said beverages and other food products, including Coca-Cola and Tab, to be distributed through said production and bottling plants and facilities located in

various States of the United States, and to be sold and distributed through retail establishments for sale and distribution to a vast segment of the general public throughout the United States. Respondent Coca-Cola causes its said food products, including Coca-Cola and Tab, to be advertised in newspapers of general circulation published and disseminated throughout the various States of the United States, and the District of Columbia. Respondent Coca-Cola maintains, and at all times mentioned herein has maintained, a substantial course of trade in said beverages and other food products, including Coca-Cola and Tab, and has advertised and distributed said food products and the aforementioned promotional games including "Big Name Bingo" and related materials and devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of its business, respondent Glendinning has caused to be manufactured, sold and distributed throughout the United States entry cards, game pieces and other materials and devices necessary for the promotion and use of various promotional games, including "Big Name Bingo" used in connection with and in order to induce the sale and distribution of Coca-Cola and Tab to a vast segment of the general public. Respondent Glendinning maintains, and at all times mentioned herein has maintained, a substantial course of trade in said promotional games, materials and devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. In the course and conduct of their business, respondents have caused advertisements to be published and disseminated in newspapers, through in-store promotional displays, on game entry cards, and by various other means, for the purpose of inducing and which have induced a vast segment of the general public to purchase Coca-Cola and Tab in order to participate in "Big Name Bingo." Many of said advertisements contain depictions of all or a substantial portion of the bingo-type grid format of the game entry cards and set forth an example of a correct or winning game piece liner to be matched up with one of the ten "questions" or spaces on the card. Many of said advertisements recite or paraphrase all or portions of the instructions and rules set out on the game entry cards, and contain statements and representations concerning the likelihood that members of the general public would receive a stated sum by submitting a correct entry in the "Big Name Bingo" promotional game.

Incorporated herein by reference are copies of the following: front and reverse sides of a sample game entry card which are designated Appendix A-1 and A-2, sample of an in-store display card designated Appendix B, and an example of a newspaper advertisement designated

Appendix C. The front side of the said game entry cards consist principally of a grid of 30 circles in six columns of five each. The two center columns comprise statements or "questions," and the outer columns comprise pictures of named famous persons, or "possible answers." Over the grid sections are set forth directions for participating in "Big Name Bingo" and on the reverse side thereof is set forth the "Official Rules" therefor.

PAR. 8. Among and including the statements, depictions and representations set forth on said game cards heretofore designated Appendix A-1 and A-2, and in other advertisements by respondents, as aforesaid, are the following:

PLAY BIG NAME BINGO WIN $100. Here's How You Can Win $100. * * *

(Depiction of three bottle caps, from the inside surface of one cap, a liner portraying Abraham Lincoln is being pried loose by what appears to be a knife blade).

* * * Answer the questions by glueing correct picture liners face up and clearly visible over the appropriate question. For example, get the inside "ABRAHAM LINCOLN" picture liner and glue it on the space marked "Freed Slaves" and you are already playing BIG NAME BINGO. Be sure to read the official rules carefully* * *. When you have glued on as many "answers" as you can correctly, submit your card* * *. Webster's unabridged dictionary and the Encyclopedia Britannica will serve as reference authorities* * *.

Playing Grid, Glue correct picture liners over circles* * *."

* * *Match the correct famous faces. Look for Coca-Cola and Tab Caps with the words "BIG NAME BINGO" on top* * *.

Official Rules * * *. On the playing grid you will find 10 "questions." Adjacent are pictured examples of 20 possible "answers"* * *. There are no other picture liners in the contest. Answer each question by glueing the correct picture liners face up and clearly visible over the appropriate questions (be careful, in some instances the same picture liner may be used to answer more than one question and certain questions may not be answered by any of the picture liners). When you have glued on as many "answers" as you can correctly, sign your card and send it along with your name and address to BIG NAME BINGO * * *. Westport, Connecticut* * *. The decision of the judges will be final* * *.

Certain advertisements, including that heretofore designated Appendix C, set forth directions for participating in "Big Name Bingo," including the following:

* * *Match the faces with brief descriptions and paste the faces on the game card at left. For each description, look through all 20 famous faces to see if any match correctly. For example, get the "Abraham Lincoln" picture liner and glue it in the space marked "Freed Slaves." It's that simple. Correctly completed card wins you $100. But remember, there are 20 liners showing famous faces, and only 10 descriptions on the playing card. So play carefully. Fill in as many spaces as you can correctly* * *

PAR. 9. The aforesaid directions, explanations, rules, depictions and other statements were published and disseminated by respondents so as to interest and attract a vast segment of the general public, including a substantial portion thereof of average sophistication and skill in semantics, and to induce their purchase of Coca-Cola and Tab in order to participate in said promotional game. By and through the use of the aforesaid directions, explanations, rules, depictions, and other statements, and by others of the same import and meaning not set out specifically herein, respondents represented to the aforesaid substantial portion of the general public, directly or by implication, that they would give $100 to each contestant who submitted a Big Name Bingo entry card upon which the appropriate liner was affixed in a clearly visible manner over each space in the playing grid containing a "question" to which the depiction on such liner constituted a correct answer according to the cited reference authorities.

PAR. 10. In truth and in fact, many if not all contestants from among the aforesaid substantial portion of the general public, who submitted Big Name Bingo entry cards upon which the correct "answers" were affixed over the appropriate "questions," as referred to in Paragraph Nine hereof, did not receive $100 from respondents. Contrary to the clear import of their directions, explanations, rules, depictions, and other statements and representations to the substantial portion of the general public interested and attracted thereby, as aforesaid, respondents imposed a material condition or rule, substantially at variance therewith and not disclosed to said substantial portion of the general public, by virtue of which more than one liner had to be affixed over certain of the spaces in order to entitle contestants to win $100. As a consequence thereof, a substantial number of contestants from among the aforesaid substantial segment of the general public who had been beguiled and induced to purchase Coca-Cola or Tab in order to participate in said promotional game did not receive sums to which they would have been entitled had Big Name Bingo been conducted in accordance with the clear import, to said contestants, of respondents' aforesaid statements and representations.

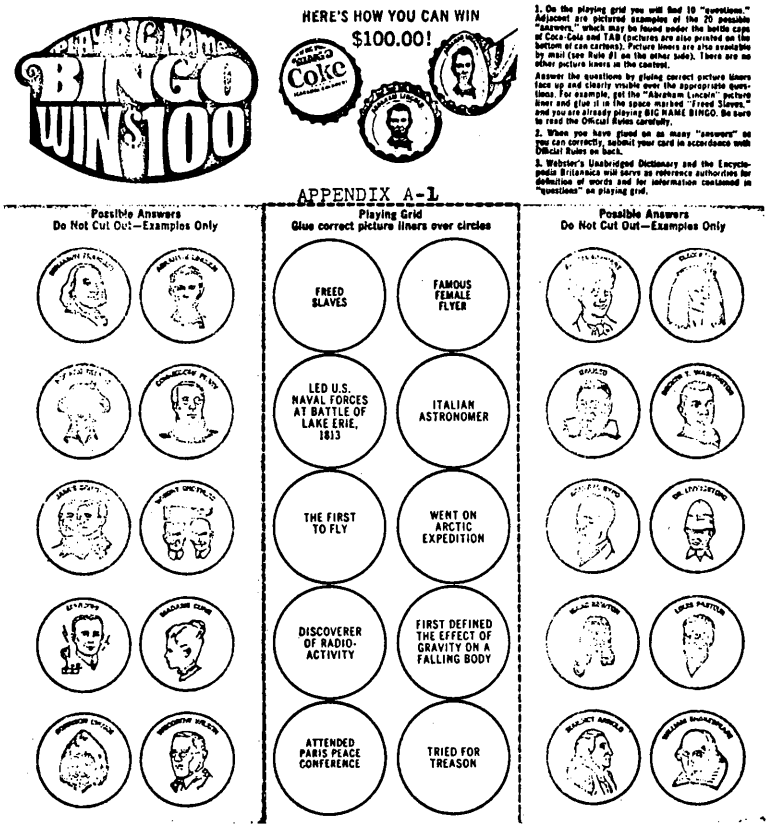
Therefore, respondents' said statements and representations, acts and practices, and their failure to reveal material facts to a substantial segment of the general public and to award prizes to contestants entitled thereto from among said segment of the general public, as set forth in Paragraphs Eight, Nine and Ten hereof, were, and are, unfair, false, misleading and deceptive acts and practices.

PAR. 11. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and

individuals in the sale of syrups, concentrates, beverages and other food products, and of trade stimulation programs and promotional games, of the same general kind and nature as that sold by respondents.

PAR. 12. The use by respondents of the false, misleading and deceptive statements, representations, acts and practices and their failure to reveal material facts and to award prizes to contestants entitled thereto, as aforesaid, has had, and now has, the capacity and tendency to mislead a substantial portion of the general 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 Coca-Cola and Tab by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, including their continuing refusal to award prizes to contestants entitled thereto, as herein alleged, were and continue to be all to the prejudice and injury of the public and the 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.


BIG NAME BINGO WINS 100
HERE'S HOW YOU CAN WIN
$100.00!
Coke
1. On the playing grid you will find 10 "questions." Adjacent are pictured examples of the 20 possible "answers," which may be found under the bottle caps of Coca-Cola and TAB (pictures are also printed on the bottom of can cartons). Picture liners are also available by mail (see Rule #1 on the other side). There are no other picture liners in the contest.
Answer the questions by gluing correct picture liners face up and clearly visible over the appropriate questions. For example, get the "Abraham Lincoln" picture liner and glue it in the space marked "Freed Slaves," and you are already playing BIG NAME BINGO. Be sure to read the Official Rules carefully.
2. When you have glued on as many "answers" as you can correctly, submit your card in accordance with Official Rules on back.
3. Webster's Unabridged Dictionary and the Encyclopedia Britannica will serve as reference authorities for definition of words and for information contained in "questions" on playing grid.
APPENDIX A-1
Possible Answers
Do Not Cut Out—Examples Only
Playing Grid
Glue correct picture liners over circles
Possible Answers
Do Not Cut Out—Examples Only
FREED SLAVES
FAMOUS FEMALE FLYER
LED U.S. NAVAL FORCES AT BATTLE OF LAKE ERIE, 1813
ITALIAN ASTRONOMER
THE FIRST TO FLY
WENT ON ARCTIC EXPEDITION
DISCOVERER OF RADIO-ACTIVITY
FIRST DEFINED THE EFFECT OF GRAVITY ON A FALLING BODY
ATTENDED PARIS PEACE CONFERENCE
TRIED FOR TREASON

Official Rules

1. Picture liners are available under caps of Coca-Cola and Tab that have the words BIG NAME BINGO printed on top (pictures are also printed on the bottom of can cartons). You may trade any picture liner for any other that you want by sending the undesired picture liner plus the name of the picture liner you want together with a stamped, self-addressed envelope to "Picture Liners," P.O. Box 582, Westport, Connecticut 06880. Additional playing cards are also available from this same address.

2. On the playing grid you will find 10 "questions." Adjacent are pictured examples of 20 possible "answers," which may be obtained as provided in Rule #1. There are no other picture liners in the contest. Answer each question by gluing the correct picture liners face up and clearly visible over the appropriate questions (be careful, in some instances the same picture liner may be used to answer more than one question and certain questions may not be answered by any of the picture liners).

3. When you have glued on as many "answers" as you can correctly, sign your card and send it along with your name and address to BIG NAME BINGO, P. O. Box 582, Westport, Connecticut 06880, for verification and awarding of prize if you are a winner. DO NOT SEND METAL BOTTLE CAPS IN THE MAIL—only the liners themselves. Entries must be postmarked no later than May 31, 1969. Winners will be notified by mail about June 20, 1969. Limit one prize to a family.

If your entry is judged incorrect, you will not be notified unless you enclose a stamped, self-addressed envelope with your entry. You will be notified following the official closing date of the contest. No other correspondence will be entered into regarding this contest.

4. Players submitting a card which is judged exactly correct will be awarded $100.00. The decision of the judges will be final and entry in the contest signifies the agreement of the entrant to abide by the judges' decision. All entries become the property of The Coca-Cola Company and none will be returned.

5. Except for incidental help from family and friends, entries must be wholly the work of the person in whose name the entry is submitted, and will be disqualified for professional or compensated help. The Coca-Cola Company reserves the right to terminate this contest at any time. Contest materials are void and may be rejected if not obtained through legitimate channels, or if any part is illegible, mutilated, smeared or tampered with. No facsimiles are eligible. Void where restricted by law. Applicable taxes are the responsibility of winners. Promotion ends May 31, 1969.

6. Offer open to all U.S. residents except employees (and their families) of The Coca-Cola Company, its bottlers, marketing agencies and parties engaged in the development, production and distribution of contest materials.

APPENDIX A-2

Mail to: BIG NAME BINGO, P.O. Box 582, Westport, Connecticut 06880

SIGNATURE_____

NAME_____

ADDRESS_____

CITY, STATE_____

SOCIAL SECURITY NO._____

CLOSING DATE: MAY 31, 1969

PLAY
BIG NAME BINGO

Match the correct famous faces. Look for Coca-Cola and Tab caps with the words "BIG NAME BINGO" on top.

APPENDIX B


Match the correct famous faces found on the bottom of can wraps for Coca-Cola and Tab.
Coca-Cola
BINGO
WIN $100
BINGO

APPENDIX C

69-BNB-2-55 (This is a B&W reprint only. The Sunday Supplement ad will be in 4 colors.)

DECISION AND ORDER AS TO THE COCA-COLA COMPANY

The Commission having issued its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint the Commission issued, together with a proposed form of order; and

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25(d) of its Rules now in further conformity with the procedure prescribed in Section 3.25(d) 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. The Coca-Cola Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 310 North Ave., Atlanta, Georgia.

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

ORDER

It is ordered, That respondent The Coca-Cola Company, a corporation, its successors and assigns, officers, agents, representatives and employees, directly or through any corporation or other device, in connection with the advertising, offering for sale, sale or distribution of Coca-Cola, Tab, or any food or other product, or in connection with the sale or distribution of "Big Name Bingo," or any other promotional game, contest, sweepstake or similar device which involves or offers the awarding of a prize or anything of value to participants therein, by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

Engaging in, promoting the use of, or participating in any such

promotional game, contest, sweepstake or similar device, by means of any announcement, notice or advertisement, unless:

(a) All of the requirements, terms and conditions for participating therein and for entitlement of such prizes are clearly and conspicuously set forth in each advertisement or notice which purports to explain or illustrate the operation of, manner of participation in, or the basis for or prospects of becoming entitled to or receiving a prize in connection with, any such contest or promotional game.

(b) All such prizes are in fact awarded to all participants therein whose entries conform to the stated requirements, terms and conditions for entitlement to and receipt of such prizes.

(c) There are maintained by respondent or its designee for a period of at least two years after the closing of each such promotional game or contest and the awarding of all prizes in connection therewith, full and adequate records including all entry forms submitted by participants therein, which clearly disclose the operation of such promotional game or contest, the basis or method used to determine entitlement to prizes, and the facts as to the receipt of such prizes by participants entitled thereto; which said records and documents shall be open for inspection during normal business hours by each contest participant or his duly authorized representative.

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

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

It is further ordered, That 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.

Commissioner Dole did not participate by reason of absence.

Decision and Order as to Glendinning Companies, Inc.

The Commission having issued its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint the Commission issued, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25(d) of its Rules now in further conformity with the procedures prescribed in Section 3.25(d) 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. Glendinning Companies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Glendinning Place, in the city of Westport, State of Connecticut.

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

ORDER

It is ordered, That respondent Glendinning Companies, Inc., a corporation, its successors and assigns, officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Coca-Cola, Tab, or any food or other product, or in connection with the sale or distribution of "Big Name Bingo," or any other promotional game, contest, sweepstake or similar device which involves or offers the awarding of a prize or anything of value to participants therein, by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Engaging in, promoting the use of, or participating in any such promotional game, contest, sweepstake or similar device, by means of any announcement, notice or advertisement, unless:

(a) All of the requirements, terms and conditions for participating therein and for entitlement of such prizes are clearly and conspicuously set forth in each advertisement or notice which purports to explain or illustrate the operation of, manner of participation in, or the basis for or prospects of becoming entitled to or receiving a prize in connection with, any such contest or promotional game.

(b) All such prizes are in fact awarded to all participants therein

whose entries conform to the stated requirements, terms and conditions for entitlement to and receipt of such prizes.

(c) There are maintained by respondent or its designee for a period of at least two years after the closing of each such promotional game or contest and the awarding of all prizes in such connection therewith, full and adequate records including all entry forms submitted by participants therein, which clearly disclose the operation of such promotional game or contest, the basis or method used to determine entitlement to prizes, and the facts as to the receipt of such prizes by participants entitled thereto; which said records and documents shall be open for inspection during normal business hours by each contest participant or his duly authorized representative.

2. Engaging in, promoting the use of, or participating in the development or operation of any skill contest, unless:

a. The skill contest is based solely on matters of established, provable fact.

b. The factual subject matter is obtainable from readily available reference materials, *e.g.*, those available in the typical public library.

c. Contest materials and advertising disclose clearly and conspicuously that a substantial degree of skill is involved and also the specific reference works on which the answers are based, (*e.g.*, a specific dictionary, encyclopedia, atlas, or historical work), and contest rules and directions clearly provide all necessary information for the contestant to participate successfully.

d. Questions and answers with complete supporting data as outlined in paragraphs (a) and (b) and complete judging procedures are filed with an independent organization prior to promotion implementation.

e. The correct answers and a list of winners is made available to participants upon request and filed with an independent organization within 60 days of the close of judging of the competition.

For purposes of this order a skill contest is defined as any promotional contest or device in which the award of a prize or anything of value to the participants is determined on the basis of the winning answers or solutions submitted by participants through the exercise of a substantial degree of skill in determining the winning answers or solutions to the questions or problems which are the subject of the contest or device.

In the event that the Commission promulgates a final trade regulation rule concerned with skill contests, then such trade regulation rule shall completely supersede and replace paragraph 2 and such trade regulation rule shall become part of this order.

It is further ordered, That the terms of this order shall not apply to a promotional game, contest or device conducted by or under the direction

of a governmental instrumentality, or where the respondent neither knew nor had reason to know of failure to comply with the terms of this order.

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

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

It is further ordered, That 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.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

ELECTRONIC COMPUTER PROGRAMMING INSTITUTE, INC., ET AL.

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

Docket 8952. Complaint, Jan. 24, 1974 — Order, Oct. 26, 1976

Order dismissing a complaint issued against a New York City computer programming training school corporation for alleged violations of Section 5 of the Federal Trade Commission Act. Because of the corporation's impending dissolution, and the unavailability of sufficient assets for consumer redress satisfaction, the Commission held that further proceedings would not be in the public interest and ordered the complaint dismissed.

Appearances

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

For the respondents: *Lowenthal, Freedman, Landau, Fischer & Singer*, P.C., New York City, and *Sidney Davis*, 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 Electronic Computer Programming Institute, Inc., Chestkin Computer Corp., York Mountain Computer Corp., Data Processing Resources, Incorporated, and Electronic Computer Programming Institute of Fresno, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Electronic Computer Programming Institute, Inc. (hereinafter sometimes referred to as ECPI) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 350 Fifth Ave., in the city of New York, State of New York. Respondent ECPI is now, and for some time last past has been, engaged in the formulation, development, offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer programmers. Respondent's volume of business in said courses of instruction has been, and is, substantial.

Respondent Chestkin Computer Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 528 Commonwealth Ave., in the city of Boston, Commonwealth of Massachusetts. It is a wholly-owned subsidiary of respondent ECPI. It is primarily engaged in the business of offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer programmers.

Respondent York Mountain Computer Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 805 East 3300 St., in the city of Salt Lake, State of Utah. It is a wholly-owned subsidiary of respondent ECPI. It is primarily engaged in the business of offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer programmers.

Respondent Data Processing Resources, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 111 West St. Johns St., in the city of San Jose, State of California. It is a wholly-owned subsidiary of respondent ECPI. It is primarily engaged in the business of offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer programmers.

Respondent Electronic Computer Programming Institute of Fresno, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 258 North Blackstone Ave., in the city of Fresno, State of California. It is a wholly-owned subsidiary of respondent ECPI. It is primarily engaged in the business of offering for sale, sale and distribution of courses of instruction intended to prepare graduates therefrom for entry-level employment as computer programmers.

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

PAR. 2. In the course and conduct of their business of offering for sale, sale and distribution of courses of instruction, respondents, through individuals and entities who have entered into franchise agreements with respondent ECPI which authorize said individuals and entities to solicit and write enrollments in respondents' courses of instruction under the trade name "Electronic Computer Programming Institute of (*Name of Location*)," and through resident training facilities owned,

organized and operated by the respondents, have induced members of the general public to enroll in various courses of instruction.

Respondents, through their said franchisees and resident training facilities, place into operation and implement a sales program whereby members of the general public, by means of advertisements placed in broadcast and printed media of general circulation, and by means of brochures, pamphlets and other promotional literature disseminated through the United States mail or by other means, and through the use of salesmen and sales personnel, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign contracts or enrollment agreements for a course of resident training of a stated length of time and a stated tuition cost.

Respondents arrange or extend credit for the financing of said executed contracts on deferred payment terms, and accept the proceeds and revenues flowing therefrom or derive substantial income from said executed contracts in the form of royalty payments made by franchisees to respondent ECPI.

In the manner aforesaid, respondent ECPI dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones, approves, and accepts the pecuniary and other benefits flowing from the acts and practices hereinafter set forth of respondents' resident training facilities and franchisees of ECPI.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, said aforementioned courses of instruction to be distributed from their places of business to said aforementioned resident training facilities and franchisees located in various States of the United States other than the State of origination of said courses. Respondents transmit and receive, and cause to be transmitted and received, in the course of the sale of, distribution of and financing of their courses of instruction by said resident training facilities and franchisees among and between the several States of the United States, retail installment contracts, royalty reports, checks, monies or other commercial paper. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and to induce the purchase of their courses of instruction by members of the general public, respondents and their resident training facilities and franchisees and the salespersons at the resident training facilities and franchisees have disseminated, or caused the dissemination, via the United States mail or other means, of radio, television, newspaper, print media or other forms of advertising, or other means and instrumentali-

ties which are furnished, approved, created or condoned by respondents. In conjunction therewith, respondents and their resident training facilities and franchisees and the salespersons at the resident training facilities and franchisees have made certain statements and representations respecting the large and growing demand for graduates of respondents' courses, the ease with which respondents' graduates are placed in positions for which they are trained, the lack of a need for formal education beyond high school in attaining employment, the existence of a present and growing demand for computer programmers as demonstrated by various statistical assertions, projections of occupational demand and the future growth of employment in the field of computer programming derived from the biennial publication of the United States Department of Labor entitled "Occupational Outlook Handbook" and the meaning of aptitude test results.

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

A. Newspaper and Direct Mail

> If you're only earning $7,000 a year how can you afford to live today?* * *Specializing is the answer to making MONEY TODAY. And COMPUTER PROGRAMMING is the specialty most in demand today. Trained computer programmers are writing their own tickets to happy, well paying secure futures.
>
> * * * * * * *
>
> If you're 18 or over and have a high school diploma or its equivalent, chances are that you can be a computer programmer. A college education is not necessary and you don't have to be a math whiz.
>
> * * * * * * *
>
> No previous experience is required, and no special math background is needed.
>
> * * * * * * *
>
> * * * you'll find that computer programmers are being called into just about every field of human endeavor. Government, medicine,* * *research, science* * *. The choice of job will be yours. There's just no comparable training today which gives you the choice of where and when to do your own thing.
>
> * * * * * * *
>
> If you have what it takes, next year at this time, you'll be a part of an in-group. Earning a good salary with a secure future.
>
> * * * * * * *
>
> All you need is a high school diploma or its equivalent and a desire to change your life.
>
> * * * * * * *

At present, there is a shortage of about 60,000 programmers in the United States. And from an estimated 120,000 programmers in 1968, growth in the industry will demand 250,000 by the end of this year and 500,000 within the next few years. Industry predicts a shortage of computer programmers through the 1970's, because of the accelerating use of computers and an urgent demand for people who can work them.

* * * * * * *

If you start right now, you can be a full-fledged computer programmer just in time for next year's frantic call. At this very minute, there are positions going begging for 60,000 people in every branch of business and industry. By the time you're ready for your first job, there'll be 250,000 jobs waiting for you.

* * * * * * *

Every year thousands of our students graduate and find jobs with good pay and good futures.

* * * * * * *

This year alone industry and government have openings for 25,000 well-trained computer programmers* * *. Here's what the Department of Labor said in a recent edition of EMPLOYMENT OUTLOOK: "Many thousands of new jobs for programmers will become available each year throughout the 1970's."

* * * * * * *

Head start* * *to next year's top $$$ careers! Take our sample APTITUDE QUIZ inside and see if your *natural reasoning power* qualifies you to program computers.

* * * * * * *

B. Radio and Television

Qualified programmers can earn good money and buy things they've always dreamed of. All it takes is a high school diploma or its equivalent. At ECPI, we can teach* * *almost anybody.

* * * * * * *

If you're a high school senior, graduate or a college student worried about getting a job—a good job—with good pay and a real opportunity for advancement. A job with a big-name company-educational institute or the Federal government—learn all the facts about computer programming.

Where were you a year ago? Probably about 20 minutes from where you are right now. If you'd seen us, ECPI— Electronic Computer Programming Institute— a year ago, you'd probably have a much better job than you have right now. A job that pays more* * *In fact, a specialized career.

* * * * * * *

* * *We do work hard to place our students and our percentages are high. Higher than almost anywhere we know of.

* * * * * * *

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 out herein, respondents and their resident training facilities and franchisees and the salespersons of the resident training facilities and franchisees have represented, directly or by implication, that:

5(1) There is an urgent need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

5(2) Respondents had a reasonable basis from which to conclude that (a) there was at the time such representations were made, or (b) would be at the time that persons then enrolling graduated from respondents' courses, an urgent need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

5(3) All or substantially all of respondents' graduates are able, on graduation, to secure the positions for which respondents have trained them.

5(4) Respondents had a reasonable basis from which to conclude that (a) at the time such representations were made, or (b) at the time of graduation of persons then enrolling in the course, thousands of respondents' graduates annually obtain positions as computer programmers.

5(5) Respondents had a reasonable basis from which to conclude (a) that at the time such representations were made a substantial number of respondents' graduates were being hired, or (b) that a substantial number of persons then enrolling in respondents' courses would upon graduation, be hired, by certain large, well-known industrial corporations or government agencies in the positions for which respondents train such persons.

5(6) The salaries of $6,500 to $11,000, as set out in the June 1969, edition of *Business Automation* were representative of the salaries as computer programmers that a substantial percentage of (a) persons graduating from respondents' courses, at the time such representations were made, were earning; or (b) persons then enrolling in respondents' courses would earn when they graduated.

5(7) Respondents had a reasonable basis from which to conclude that a substantial percentage of (a) persons graduating from respondents' courses at the time such representations were made, were earning; or (b) persons then enrolling in respondents' courses would earn when they graduated, a salary in excess of $7,000 a year.

5(8) College education is not necessary or advantageous for the placement of respondents' graduates in positions for which respondents train such persons.

5(9) All that is necessary for the placement of respondents' graduates as programmers in scientific applications is the completion of respondents' course in computer programming.

5(10) Respondents' aptitude tests determine whether or not a person has the aptitude to work as a computer programmer and to succeed in such position.

5(11) The placement assistance furnished by respondents is free.

5(12) Respondents' graduates who seek employment in the field of electronic data processing do not find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

5(13) The respondents' sales representatives are interviewers, not salesmen, who are contacting persons in their homes primarily to determine if the prospect is qualified to undertake the course of instruction offered by the respondents, if the prospect will be satisfied with employment in the field of computer programming, and to determine if the respondents can enable the prospect to attain the monetary and professional rewards he wants for himself, or for other purposes other than the sale of an enrollment in one of the courses offered by the respondents.

5(14) If the prospect does not come to the school premises to take the formal aptitude test, the prospect is not entitled to receive a refund of the registration fee he has paid.

PAR. 6.

6(1) In truth and in fact:

At the time it was so represented there was not an urgent need or demand for all or most of respondents' graduates, in positions for which respondents train such persons.

6(2) In truth and in fact:

Respondents had no reasonable basis from which to conclude that (a) there was at the time such representations were made, or (b) would be at the time that persons then enrolling graduated from respondents' courses an urgent need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

6(3) In truth and in fact:

All or substantially all of respondents' graduates are not able, on graduation, to secure the positions for which respondents have trained them.

6(4) In truth and in fact:

Respondents had no reasonable basis for representing that (a) at the time such representations were made, or (b) at the time of graduation of persons then enrolling in respondents' course, thousands of respondents' graduates annually obtain positions as computer programmers.

6(5) In truth and in fact:

Respondents had no reasonable basis from which to conclude (a) that at the time such representations were made a substantial number of respondents' graduates were being hired, or (b) that a substantial number of persons then enrolling in respondents' courses would, upon graduation, be hired, by certain large, well-known industrial corporations or government agencies in the positions for which respondents train such persons.

6(6) In truth and in fact:

The salaries of $6,500 to $11,000, as set out in the June, 1969, edition of *Business Automation* were not representative of the salaries as computer programmers that a substantial percentage of (a) persons graduating from respondents' courses, at the time such representations were made, were earning, or (b) persons then enrolling in respondents' courses would earn when they graduated.

6(7) In truth and in fact:

Respondents had no reasonable basis from which to conclude that a substantial percentage of (a) persons graduating from respondents' courses, at the time such representations were made, were earning; or (b) persons then enrolling in respondents' courses would earn when they graduated, a salary in excess of $7,000 a year.

6(8) In truth and in fact:

In most instances college education is advantageous for the placement of respondents' graduates as programmers and in many instances college education is necessary for such placement.

6(9) In truth and in fact:

In many instances a college degree in a science or mathematical discipline is necessary for the placement of respondents' graduates as programmers in scientific applications.

6(10) In truth and in fact:

Respondents' aptitude tests do not determine whether or not a person has the aptitude to work as a computer programmer and to succeed in such position. Respondents' sample aptitude quizzes are merely sales devices. Respondents' entrance examination aptitude tests are designed only to determine whether or not a person will be likely to complete any of the courses of instruction offered by respondents.

6(11) In truth and in fact:

The placement assistance furnished by respondents is not free, but rather included in the tuition cost of respondents' courses.

6(12) In truth and in fact:

Respondents' graduates who seek employment in the field of electronic data processing do find it necessary, in many instances, to

seek said employment through sources other than respondents' placement office.

6(13) In truth and in fact:

Respondents' sales representatives are commissioned salesmen, not just interviewers, and are not contacting persons in their homes primarily to determine if the prospect is qualified to undertake the course of instruction offered by the respondents, if the prospect will be satisfied with employment in the field of computer programming, or if the respondents can enable the prospect to attain the monetary and professional rewards he wants for himself. To the contrary, the principal purpose for contacting such persons is to sell enrollments in one of the courses of instruction offered by the respondents.

6(14) In truth and in fact:

The prospect is entitled to receive a refund of the registration fee he has paid in the event that he does not come to the school premises to take the formal aptitude test administered by the respondents.

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

PAR. 7.

7(a) In the further course and conduct of their business, and in the furtherance of their purpose of inducing the purchase of their courses by the general public, respondents and their resident training facilities and franchisees directly or indirectly, have held out commissioned salespersons to be qualified or trained vocational counselors, or instructed their salespersons to create a "counseling" atmosphere during selling sessions. Respondents thereby have falsely and deceptively represented that such persons were in a position to give disinterested advice to prospective students as to the best career choice for them, when in fact such persons had a direct or indirect economic interest in whether the applicants enrolled at respondents' schools.

7(b) Respondents have induced high school seniors to purchase certain of their courses of instruction by conducting dramatized demonstrations of the use of computers and the programming of computers. Said dramatized demonstrations have been conducted at high schools in various States of the United States and have emphasized the fact that programming a computer is a simple task which requires no college training, no special mathematical ability, and only the desire to succeed. Respondents have thereby falsely and deceptively represented that high school seniors who are interested in programming computers will be assured of employment as computer programmers if they enroll in one of the courses of instruction offered by the respondents, when in fact the dramatized demonstrations do not

present an accurate picture of computer programming or the availability of jobs for persons with only a high school education.

Therefore, respondents' statements, representations, acts and practices, as set forth herein were, and are, false, misleading, unfair or deceptive acts or practices.

PAR. 8. Through the use of the aforesaid advertisements and otherwise, respondents have represented directly or by implication, that there was at the time of the representation or would be at the time of graduation from respondents' courses an urgent need or demand for respondents' graduates in positions for which respondents train such persons; that substantial numbers of respondents' graduates are being hired by certain large, well-known, industrial corporations or government agencies; that a substantial number or percentage of graduates of the respondents' courses of instruction earn a salary in excess of $7,000 per year and that each year the respondents successfully place thousands of such graduates as computer programmers. At the time said representations were made respondents had no reasonable basis adequate to support such representations. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 9. Respondents offered for sale courses of instruction intended to prepare graduates thereof for entry-level employment as computer operators and computer programmers without disclosing in advertising or through their sales representatives: (1) the percentage of recent graduates of each school for each course offered that were able to obtain employment in the positions for which they were trained; (2) the employers that hired any such recent graduate for each course offered; (3) the initial salary any such recent graduates received for each course offered; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would be an indication of the probability of graduating from respondents' courses and would indicate the possibility of securing future employment upon graduation and the nature of such employment. Thus, respondents have failed to disclose material facts, which if known to a consumer would be likely to affect his or her consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 10.

(a) Respondents as aforesaid, have been, and are now failing to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase courses of instruction whose value to the said persons for future employment in the jobs for which

training was offered was virtually worthless. Respondents have received the said sums and have failed to offer to refund and refuse to refund such money to such purchasers of their courses.

The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice.

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

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

PAR. 11. By and through the use of the aforesaid acts, practices, statements and representations, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 12. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of instruction covering the same or similar subjects.

PAR. 13. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and to induce a substantial number thereof to purchase respondents' courses by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

ORDER

The administrative law judge has certified complaint counsel's motion 1) to dismiss the complaint in this matter, with the Commission reserving the right to take further action as the public interest may require; 2) that the Commission direct the General Counsel not to file proofs of claim in the pending bankruptcy proceedings relating to respondents; and 3) that the Commission withdraw its direction to the General Counsel [1] that he seek court enforcement of subpoenas issued to Sidney Davis and William S. Kalaboke.

The Commission agrees with complaint counsel that further proceedings are not in the public interest in view of the impending dissolution of the respondent corporations, the insubstantiality of the assets that would be available for satisfaction of a consumer redress award [2] and the cost of further proceedings.

The Commission has, therefore, determined that complaint counsel's motion be, and it hereby is, granted. The Commission's decision to dismiss the complaint is without prejudice to the taking of such further action as the public interest may require.

It is so ordered.

Commissioner Dole did not participate by reason of absence.

[1] See order, September 21, 1976

[2] Pursuant to Section 19(a)(2) of the Federal Trade Commission Act.

IN THE MATTER OF

LAFAYETTE UNITED CORPORATION, ET AL.

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

Docket 8963. Complaint, May 2, 1974 — Decision, Oct. 26, 1976

Consent order requiring a North Providence, R.I., correspondence school, among other things to cease misrepresenting its authority to award high school equivalency diplomas; misrepresenting employment opportunities, industry demand, job placement services; misrepresenting the titles or qualifications of their sales personnel; the importance of English in training and employment; and the imminency of legal action in delinquent debt collection. Further, respondents are required to make written disclosures (in Spanish, if applicable) regarding drop-out and job placement rates, starting salaries, names of firms employing graduates, and customers' rights to cancellation and refunds. Additionally, respondents must provide a $200,000 restitution fund, institute a good-faith search for persons eligible for refunds, and to make proper refunds to those identified.

Appearances

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

For the respondents: *Peter J. Mansbach, Kronish, Lieb, Shainswit, Weiner & Hellman,* 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 Lafayette United Corporation, Lafayette Academy, Inc., Lafayette Motivation Media, Inc., corporations, and Stuart Bandman, individually and as an officer and Chairman of the Board of Directors of Lafayette United 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 Lafayette United Corporation, (hereinafter sometimes referred to as United) 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 984 Charles St., North Providence, Rhode Island. United was incorporated in May 1972 and established as a holding company in July 1972. Through its wholly-owned subsidiary, Lafayette Academy, Inc., it has engaged in

the formulation, development, offering for sale, sale and distribution of correspondence courses for vocational training and high school equivalency preparation. These courses are intended to prepare graduates thereof for entry level employment as Nursing Assistant/Aide, Medical Receptionist/Office Assistant, Insurance Claims Adjuster/Investigator and other positions.

Respondent Lafayette Academy, Inc. (hereinafter sometimes referred to as Academy) 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 984 Charles St., North Providence, Rhode Island. It is a wholly-owned subsidiary of respondent United. It is primarily engaged in the formulation, development, offering for sale, sale and distribution of correspondence courses for vocational training and high school equivalency preparation. These courses are intended to prepare purchasers thereof who complete such training courses for employment in the different vocational fields, including Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator. Its volume of business in said courses of instruction has been, and is, substantial.

Respondent Lafayette Motivation Media, Inc. (hereinafter sometimes referred to as Media) 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 108-18 Queens Boulevard, Forest Hills, New York. Respondent Media is a wholly-owned subsidiary of Lafayette Academy, Inc. and is engaged in the promotion, offering for sale, and sale of correspondence courses developed and distributed by Academy.

Respondent Stuart Bandman is president, chairman of the board of directors and a principal stockholder of respondent United. Prior to establishment of respondent United, he was the president of respondent Academy and respondent Media. He was the principal founder of respondent Lafayette in 1969. Respondent Bandman formulates, directs, and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Respondent Bandman and the corporate respondents have the same business address.

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

PAR. 2. Respondents are now and for some time last past have been engaged in the formulation, development, promotion, offering for sale, sale, and distribution of courses of instruction to the public. Respondents, through their own sales representatives and through individuals, partnerships or corporations who have entered into license and

Independent Regional Sales Representative Agreements, with respondents, have induced members of the general public to enroll in various courses of home study instruction.

Respondents, through their own sales representatives, and through their said licensees and Independent Regional Sales Representatives place into operation and implement a sales program whereby members of the general public, by means of advertisements placed in printed media of general circulation, and by means of brochures, pamphlets and other promotional literature disseminated through the United States mail or by other means, and through the use of salesmen and sales personnel, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign contracts or enrollment agreements for a course of home study instruction for a stated tuition cost.

Respondents and their said licensees and Independent Regional Sales Representatives arrange or assist in the arrangement of credit and deferred payment terms for the financing of said executed contracts mainly through the Tuition Loan Company, an unincorporated division of respondent Academy, or through independent financial institutions.

Respondents receive substantial income from the results of such agreements.

In the manner aforesaid, the respondents dominate, control, furnish the means, instrumentalities, course materials, and services and administer all courses and instructional programs, and condone, approve and accept the pecuniary and other benefits flowing from the acts and practices hereinafter set forth of respondents' own salesmen and of respondents' licensees and Independent Regional Sales Representatives.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause and for some time last past have caused the correspondence portion of their home study instruction courses, when sold, to be distributed from their place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States.

Respondents solicit sales of their courses of home study instruction via their own salesmen, and via the salesmen of licensees and Independent Regional Sales Representatives. These courses are sold to purchasers in States other than the State of Rhode Island by said salesmen who visit the prospective purchasers in their homes.

Respondents transmit and receive and cause to be transmitted and received, in the course of the sale of, distribution of and financing of their courses of home study instruction and collection of allegedly delinquent accounts arising therefrom, by their own salesmen and by

their licensees and Independent Regional Sales Representatives, among and between the several States of the United States, retail installment contracts, commission statements, invoices, billing statements, checks, monies, coupon payment books or other commercial paper, and collection letters and notices. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of home study instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and to induce the purchase of their courses of home study instruction by members of the general public, respondents and their licensees and Independent Regional Sales Representatives have disseminated, or caused the dissemination of, via the United States mail or other means, newspaper, print media or other forms or advertising, or other means and instrumentalities which are furnished, approved or condoned by respondents. In conjunction therewith, respondents and their licensees and Independent Regional Sales Representatives have made certain statements and representations respecting the granting of high school equivalency diplomas.

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

> "IF YOU WISHED YOU HAD FINISHED HIGH SCHOOL Study at home in your spare time and get your Ohio State Equivalency Diploma"
>
> "HIGH SCHOOL EQUIV. DIPLOMA FOR SURE"
>
> "Now you can learn at home in your spare time and get a High School Equivalency Diploma that is generally recognized in all states by business, Civil Service, Colleges, etc."

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 out herein, respondents, and their licensees and Independent Regional Sales Representatives have represented, directly or by implication, that:

1. Respondents will provide a high school equivalency diploma to those who purchase and complete their home study instruction course.

2. No State examination is required for the awarding of a high school equivalency diploma.

PAR. 6. In truth and in fact,

1. Respondents do not and cannot provide those who purchase and

complete their home study instruction course with a high school equivalency diploma.

2. An examination administered by the State Department of Education is required prior to the awarding of a high school equivalency diploma.

PAR. 7. In the further course and conduct of their business, respondents, their licensees and Independent Regional Sales Representatives, cause prospective purchasers of their home study instruction courses who have answered respondents' advertisements to be interviewed by commissioned salesmen at the place of residence of individual prospective purchasers. Said commissioned salesmen endeavor to sell and do sell respondents' courses of instruction to said prospective purchasers. For the purpose of inducing the sale of said courses, said salesmen make many statements and representations, directly or by implication, regarding said courses and the services afforded by respondents, both orally or by means of brochures or other printed material displayed by salesmen to prospective purchasers, which are furnished by respondents to their licensees and Independent Regional Sales Representatives.

In conjunction therewith, respondents have made certain statements concerning the value of the courses offered, the qualifications of their students after training, and the ease of placement in positions for which they are to be trained.

Typical and illustrative, but not all inclusive of said statements and representations relating to the hereinafter described home study instruction courses, (1) Nursing Assistant/Aide, (2) Medical Receptionist/Office Assistant and (3) Insurance Claims Adjuster/Investigator, are the following:

A. Newspaper Advertisements

INSURANCE
Investigating/Adjusting
Train at home

Men of all ages needed. Many opportunities for high pay and advancement can be yours in an industry that never stops growing call 566-1521 for free information or send coupon to Lafayette Academy, 20 Kent Street, Brookline, Mass.

Approved for Veteran Training

Name _____

Address _____

Tel. _____ Age _____

* * * * * * *

Women 18-60
Earn Higher Pay as a
MEDICAL
Receptionist/Office Ass't

H.S. Diploma not Required
Train at home

Write Lafayette Academy
108-18 Queens Blvd.
Forest Hills, N.Y. 11375
Call N.Y. (212) 268-8292
N.J. (201) 676-1905

Approved for Veterans training

Please send me free booklet
Check one ____ Medical Receptionist/Assistant
____ Nurses Aid

Name _____ Age ____

Address _____ _____
_____ _____

Phone _____ Apt ____

B. Statements from Brochures

1. Nursing Assistant/Aide

LAFAYETTE ACADEMY PROVIDES THE TRAINING YOU NEED!

Obviously, there are many high-pay positions waiting for you * * * if you have the proper training.

Choose your own time schedules. Your skills as a trained Nursing Assistant/Aide are needed in every town, city and state across the country.

Doctors and institutions want women who have the basic understanding and skills taught by the Lafayette Academy program which you can easily learn without any previous training or experience.

Glamour, prestige, high earnings and a deep personal satisfaction — that's what a NURSING ASSISTANT/AIDE CAREER offers you.

Nationwide Placement Advisory Service

2. Medical Receptionist/Office Assistant

As a trained Medical Receptionist/Office Assistant, your services are needed by

private Doctors and by institutions, such as hospitals, nursing homes, clinics and so forth.

There is an urgent need for trained Medical Receptionists/Office Assistants. In the United States alone, there are about 300,000 practicing physicians and almost 40,000 accredited hospitals and health care institutions.

As a graduate of Lafayette Academy, you will be in demand. Employment will be open to you in the full range of opportunities for Medical Receptionists/Office Assistants.

Nationwide Placement Advisory Service

3. Insurance Claims Adjuster/Investigator

Insurance companies want men who can do the work. Of course, additional knowledge and experience can be helpful, but your Lafayette Academy program will qualify you to get into this profession.

As an independent adjuster/investigator, you work on cases referred to you by more than one company, on a retainer fee basis.

Lafayette Academy will assist you in selecting that better job through our own personalized NATIONWIDE PLACEMENT ADVISORY SERVICE.

Nationwide Placement Advisory Service.

C. Oral Statements by Sales Representatives

1. Nursing Assistant/Aide

After taking the Lafayette course you will be qualified to work in a hospital.

You should try to get a job but if you can not find a job we will get one for you.

The Lafayette correspondence course will qualify you to work in hospitals as a Nursing Assistant/Aide.

Completion of the Lafayette course is absolutely essential to attaining a Nurses Aide position in some hospitals.

2. Medical Receptionist/Office Assistant

Lafayette is in contact with hospitals where a student can be placed after completing the course.

Students can get jobs at a hospital or at a doctor's office.

3. Insurance Claims Adjuster/Investigator

When the course is finished, you will be a qualified claims adjuster.

We can't guarantee you a job, but we can practically guarantee one.

You can set yourself up as an independent adjuster.

PAR. 8. By and through the use of the above statements and representations and others of similar import and meaning, but not expressly set out herein, respondents, their licensees, and Independent Regional Sales Representatives have represented, directly or by implication, that:

1. There are many job openings available which require qualifications possessed by persons who purchase and complete respondents' courses of home study instruction in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

2. Purchasers who complete respondents' courses of home study instruction are qualified, on the basis of that training alone, for employment in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

3. The purchase and completion of respondents' course of home study instruction in the field of Insurance Claims Adjuster/Investigator will qualify such persons to work as an independent insurance adjuster.

4. Purchasers who complete respondents' courses of home study instruction are assured of placement in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

5. There is reasonable basis from which to conclude that there is now or will be an urgent need or demand for persons who complete respondents' courses of instruction in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

6. Completion of respondents' course of home study instruction furnishes training which is essential for obtaining a job in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

7. Purchasers who complete respondents' courses of home study instruction will have no difficulty getting a job in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

8. Purchasers who complete respondents' courses of home study instruction are qualified on the basis of that training alone, to perform on-the-job duties required of persons in the positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

9. Respondents maintain a placement service which actively seeks employment for persons who complete courses of home study instruction in the fields of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

PAR. 9. In truth and in fact:

1. There are few, if any, job openings available which require the qualifications possessed by purchasers who complete respondents' courses of home study instruction in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

2. Purchasers who complete respondents' courses of home study instruction are not qualified on the basis of that training alone for employment in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator. The completion of these courses has virtually no effect on whether such persons will be hired.

3. Completion of respondents' courses of home study instruction as an Insurance Claims Adjuster/Investigator will not qualify the enrollee to be an independent insurance adjuster. Additionally, certain states require that independent insurance adjusters must be licensed in order to function in this capacity within such States.

4. Purchasers of respondents' course of home study instruction are not assured of placement in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

5. Respondents have no reasonable basis from which to conclude that there is now or will be an urgent need or demand for persons who complete their courses of instruction in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

6. The completion of respondents' courses of home study instruction does not furnish training essential for obtaining employment in positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant and Insurance Claims Adjuster/Investigator. The completion of respondents' courses is not a factor in securing employment in these fields.

7. The completion of respondents' courses of home study instruction constitutes no assurance that purchasers thereof will have no difficulty finding employment as Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and, Insurance Claims Adjuster/Investigator. Factors other than completion of respondents' courses determine whether such persons will secure employment in these fields.

8. Purchasers who complete respondents' courses of home study instruction are not qualified, on the basis of that training alone, to perform on-the-job duties required of persons in the positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator. Special on-the-job training

furnished by the employer is required of persons who are hired to perform the duties of persons in these positions.

9. Respondents do not maintain a placement service which actively seeks employment for persons who complete the courses of home study instruction in the fields of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

Therefore, the statements and representations set forth in Paragraphs Seven and Eight hereof were, and are, false, misleading, unfair or deceptive acts or practices.

PAR. 10. Respondents, through an unincorporated division, identified as Tuition Loan Company, finance the tuition cost of the courses of home study instruction for a substantial number of their enrollees in the instructional program for Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator.

1. In the further course and conduct of their business, respondents disseminate or cause to be disseminated to current enrollees and to former enrollees who have completed their courses of home study instruction, from whom respondents have not received payment for course tuition costs, various collection letters and notices as well as telephone calls seeking payment therefor from such persons.

Typical of the statements and representations contained in such letters and notices, but not all inclusive thereof, are the following.

(a) Tuition Loan Company
a Division of Lafayette Academy Inc.
P.O. Box 6284
Providence, Rhode Island
Telephone 401-723-8186

Your payment of $ still has not arrived. This means that steps might be necessary to recover this amount.

WE DEMAND PAYMENT AT ONCE

If your payment is not received by 12:00 Noon on ————, your account may be refered to our attorney for collection, as provided by law.

(b) Tuition Loan Company
A Division of Lafayette Academy, Inc.
P.O. Box 6284
Providence, Rhode Island
Telephone 401-723-8186

NOTICE TO DEBTOR:

Repeated *demands* for payment of this just obligation have been ignored, THEREFORE, you are hereby notified that

unless payment is made proceedings may be instituted to recover this claim in full.

Detach this and Return with Payment
DO NOT START SUIT AGAINST ME

I enclose $_____ and promise to pay regularly.
Student No._____ Name _____ _____
Street & Number _____
Date _____ 19_____ Town & State _____
Telephone No._____

(c) NOTICE BEFORE SUIT

Tuition Loan Company Creditor — Our File No._____
Balance $_____
_____ Debtor — Amount Due $ _____

Notice to Debtor:

Repeated demands for payment of this just obligation have been ignored, therefore, you are hereby notified that unless settlement is made within five days from date legal proceedings may be instituted to recover this claim in full together with attorney fees, interest, court costs and such other relief, as the court may deem proper.

Detach this and Return with Payment

DO NOT START SUIT AGAINST ME

I enclose $_____ and promise to pay regularly $_____ on _____

PAR. 11. By and through the use of the above quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented directly or by implication, that:

1. Legal proceedings are imminent.

2. If payment is not received within a specified period of time, Tuition Loan Company will refer the outstanding accounts of such persons to an attorney for institution of legal action or other legal steps as may be necessary to collect the outstanding accounts.

PAR. 12. In truth and in fact:

1. Legal proceedings are not imminent.

2. If payment is not received during the period of time specified, such outstanding accounts are not referred by Tuition Loan Company to

an attorney for institution for legal action or other legal steps. Respondents make no further efforts to collect from persons receiving such letters, notices and telephone calls who do not remit the sums of money demanded.

Therefore, the statements, representations, acts and practices as set forth in Paragraphs Ten and Eleven were, and are false, misleading, deceptive or unfair acts and practices.

PAR. 13. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of their courses of home study instruction by the general public, respondents and their licensees and Independent Regional Sales Representatives, directly or indirectly, have engaged in the following additional acts and practices.

a. Respondents have induced members of the general public to purchase certain of their courses of home study instruction by holding out commissioned salesmen to be qualified or trained counselors or vocational counselors. Respondents thereby have falsely and deceptively represented that such persons have special training, experience, title, qualifications or status, when, in fact, such persons are commissioned salesmen and possess no special training, experience, title, qualifications or status.

b. Respondents have solicited the enrollment of and have, in fact, enrolled persons of non-English speaking background who have English language difficulties. Respondents thereby have deceptively and unfairly represented or held out to such persons that proficiency in the English language is not important for completion of the courses of home study instruction offered by respondents and that proficiency in the English language is not important for the placement of such persons in positions for which respondents' courses of instruction are intended to prepare them when, in fact, proficiency in the English language is important for the completion of such courses of instruction by such persons and for the placement of such persons in positions for which respondents' courses of instruction are intended to prepare them.

c. Respondents administer an aptitude test to prospective purchasers of their courses of home study instruction representing that such aptitude test is a requirement prior to the prospective purchaser being considered for enrollment and is designed to determine whether the prospective enrollee possesses basic abilities in the fields in which respondents' courses of instruction are designed to provide training. Respondents have thereby created the impression that through this means respondent Academy is selective in the manner in which persons are selected for enrollment in their courses of home study instruction when, in fact, the successful completion of such aptitude test is not determinative as to whether a prospective purchaser is enrolled in

respondents' courses of instruction. In certain instances, prospective purchasers have been enrolled without taking the aptitude test while in other instances, such prospective purchasers have been assisted in the completion of the test by the salesmen who sold the courses of instruction to such persons.

Therefore, respondents' statements, representations, acts and practices, as set forth herein, were and are, false, misleading, unfair or deceptive acts or practices.

PAR. 14. Through the use of the aforesaid advertisements, brochures and otherwise, respondents have represented, directly and by implication, that there is or will be an urgent need or demand for trained people in positions for which respondents have trained them. There existed at the time of said representation no reasonable basis which was and is now, adequate to support the representation pertaining to the urgent need or demand for respondents' graduates in positions for which respondents have trained them. Therefore, the aforesaid acts and practices were, and are, deceptive or unfair acts or practices.

PAR. 15. Respondents offered for sale courses of home study instruction intended to prepare purchasers thereof for employment as Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator without disclosing in advertising or through their sales representations: (1) the recent percentage of persons who have completed each of the previously designated courses of home study instruction who were able to obtain the employment for which such courses were intended to train them; (2) the employers that hired any such persons; (3) the initial salary any such persons received; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts by prospective purchasers of respondents' courses of home study instruction would indicate the possibility of securing future employment upon completion of the courses and the nature of such employment. Thus, respondents have failed to disclose a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 16. (a) Respondents have been and are now using the aforesaid unfair, false, misleading or deceptive acts and practices, which a reasonably prudent person should have known, under all of the facts and circumstances, were unfair, false, misleading or deceptive to induce persons to pay or to contract to pay over to them substantial sums of money to purchase or pay for courses of instruction which, to such purchasers in connection with their future employment and careers

were, and are, virtually worthless. Respondents have received the said sums and have failed to offer refunds and have failed to refund such sums to or to rescind such contractual obligations of substantial numbers of enrollees and participants in such courses who were unable to secure employment in the positions and fields for which they had been purportedly trained by respondents.

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

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

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

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

PAR. 17. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 18. In the course and conduct of their business, and at all times mentioned herein respondents have been, and now are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of home study instruction covering the same or similar subjects.

PAR. 19. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts or practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and to induce a substantial number thereof to purchase respondents' courses of home study instruction by reason of said erroneous and mistaken belief.

PAR. 20. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair

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

DECISION AND ORDER

The Federal Trade Commission having issued its complaint on May 2, 1974, charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and respondents having been served with a copy of the complaint, together with a proposed form of order; and

Respondents and counsel for the Commission having submitted a joint motion to withdraw this matter from adjudication for consideration of settlement by the entry of a consent order together with an executed agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's Rules; and

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

The Commission having thereafter considered the matter and having thereupon provisionally accepted the executed consent agreement, 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 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Lafayette United Corporation (hereinafter sometimes referred to as United) 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 984 Charles St., North Providence, Rhode Island. United was incorporated in May 1972 and established as a holding company in July 1972.

Respondent Lafayette Academy, Inc. (hereinafter sometimes referred to as Academy) 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 984 Charles St., North Providence, Rhode Island. It is a wholly-owned subsidiary of respondent United.

Respondent Lafayette Motivation Media, Inc. (hereinafter sometimes referred to as Media) 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 984 Charles St., North Providence, Rhode Island. Respondent Media is a wholly-owned subsidiary of respondent Academy.

Respondent Stuart Bandman is President, Chairman of the Board of Directors and a principal stockholder of respondent United. Prior to establishment of respondent United, he was the President of respondent Academy and respondent Media. Respondent Bandman formulates, directs and controls the policies, acts and practices of said corporations and his address is the same as that of said corporations.

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

ORDER

I

It is ordered, That respondents Lafayette United Corporation, Lafayette Academy, Inc., and Lafayette Motivation Media, Inc., corporations and their successors and assigns and their officers, and Stuart Bandman, individually and as an officer, chairman of the board of directors of Lafayette United Corporation, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division, franchisee, licensee or other device, in connection with the creating, advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction for the positions of Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator or any other course for any position in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

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

(a) Respondents will award a High School Equivalency diploma to those who complete their course of home study instruction.

(b) No examination is required by the State or any other governmental or political subdivision or body prior to the awarding of a High School Equivalency diploma.

2. Failing to disclose in advertising materials, brochures, application forms, sales contracts, and similar documents that the completion of respondents' course of home study instruction is not recognized or accepted as sufficient education or training to qualify such persons to be awarded a High School Equivalency diploma without further education,

testing, or other legal requirements as required by the State or States, if such is the case; further failing to disclose clearly and conspicuously therein such additional requirements as are imposed by the State prior to the awarding of such High School Equivalency diploma by the State or States.

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

(a) Persons who complete any of respondents' courses of home study instruction can, as a result of that training alone, meet all prerequisites for available job openings.

(b) Purchasers who complete courses of home study instruction offered by respondents are qualified on the basis of that training alone, for employment in those positions for which they were purportedly trained by respondents; or misrepresenting, orally or in writing, the significance or importance of any course of instruction in qualifying any person for employment in a particular field of endeavor.

(c) Graduates of any course of instruction offered by the respondents are assured of placement in the positions for which they have been trained; or misrepresenting, orally or in writing, the ease with which graduates of any course will attain employment, or the effectiveness of any course of training or instruction in preparing or qualifying any graduate for employment.

(d) There is an urgent need or demand, or a need or demand of any size, proportion or magnitude, for graduates of any course of instruction offered by respondents, or otherwise representing, orally or in writing, that opportunities for employment of any size, figure or number are available to such persons, except to the extent that the above claims conform with and are substantiated by the information set forth in Paragraph 10(b) of this order.

Provided, however, that where respondents offer a new course of home study instruction or respondents open a residential school or any new residential school location, or offer from any such residential school or residential school location a new course of study, respondents shall cease and desist making the representations aforementioned in this subparagraph 3(d) with respect to the new course or new school unless the respondents in each and every instance:

(1) Until the passage of a base period to be determined pursuant to Paragraph 10(b) of Part I of this order, after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where they did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

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

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

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

(2) After the passage of a base period to be determined pursuant to Paragraph 10(b) of Part I of this order, and until two years after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where they did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(A) Make any such representations in the form and manner provided in Paragraph 10(b) of Part I of this order, and

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

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

For purposes of subparagraph (3)(d) and Paragraph 10 of this order, "new course" shall be defined as any course of study which has substantially different course content and occupational objectives from any course previously offered by respondents.

4. Representing, orally, or in writing, directly or by implication that delinquent accounts of current enrollees or former enrollees in any course of instruction offered by respondents will be referred to an attorney for institution of legal action or other legal steps if payment is not received, unless respondents intend to do so; or using any subterfuge or deceptive scheme or device in connection with the collection of outstanding tuition amounts or other fees due from such enrollees or former enrollees in any of respondents' courses of instruction.

5. Representing, orally, in writing or in any other manner, directly, or by implication that any person engaged in connection with the promotion, offering for sale, sale, distribution or other use of any course of instruction offered by the respondents, is a trained admissions

counselor or vocational counselor, unless such person is so trained; or misrepresenting, orally or in writing, the training, experience, title, qualifications or status of any person engaged in connection with the promotion, offering for sale, sale, distribution or other use of any course of instruction, or the import or meaning of any advice given by or any other statement made by any such person.

6. Representing, orally, or in writing, directly or by implication that any aptitude test rendered by respondents to prospective purchasers of any course of instruction determines whether or not a person is qualified for employment in any field for which respondents' training is designed to meet, unless the same is true; or misrepresenting, orally or in writing, the meaning, purpose, benefit, significance or use of any examination or test or its results.

7. Representing, orally, in writing or in any other manner, directly, or by implication, that proficiency in the English language is not important for completion of any course of instruction offered by respondents; or representing orally, in writing or any other manner, directly, or by implication, that proficiency in the English language is not important for the placement of graduates of any course of instruction offered by respondents in positions for which respondents' courses of instruction are intended to prepare them; and failing to disclose in all advertisements and sales presentations written or spoken either in English or a language other than English, in immediate and conspicuous conjunction therewith, that proficiency in the English language is important for the completion of any course of instruction offered by respondents and is important for the placement of people in positions for which courses of instruction are offered by respondents.

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

(a) Which disclose the facts upon which any placement percentages or claims, or other representations of the type described in Paragraphs 3(a) and (d) and Paragraph 10 of this order are based; and

(b) From which the validity of any placement percentages or claims or other representations of the type described in Paragraphs 3(a) and (d) and Paragraph 10 of this order can be determined.

9. 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 vocational fields for which any course of instruction offered by respondents is designed to provide training.

10. Failing to send by certified mail, return receipt requested, to each person that shall contract with respondents for the sale of any

course of instruction, a notice 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) Paragraphs providing the following information in the format prescribed in Appendix A hereto and for a base period described in Appendix B hereto:

(1) Information regarding postgraduate employment of graduates as required by Appendix A including, as therein more fully set forth, the total number of graduates and the total number of graduates who responded to questionnaire, the total number of graduates who so responded to questionnaire and sought employment in the field described by the relevant course title, total number of such persons who obtained employment in the field so described and the percentage of graduates who are known to respondents to have obtained employment in the field so described.

(2) A list of firms or employers which are currently hiring graduates of respondents' courses in the positions for which such graduates have been trained, and the number of such graduates hired, as to the same graduates used to compute the placement percentage in (b)(1) above or, in the alternative, a statement in the form set forth in Appendix A hereto that any applicant desiring to obtain a schedule containing the names and addresses of employers may obtain the same from respondents; *provided, however*, that if respondents so agree in the notice to provide such schedule of employers then, and in such event, the following provisions will apply: (i) respondents shall at all times maintain and have available such list of employers to be so provided to its applicants, and (ii) upon request of any applicant for such schedule of employers, such schedule of employers shall forthwith be furnished, by certified mail, by respondents to such applicant.

(3) The salary range of respondents' graduates as to the same graduates used to compute the placement percentage in (b)(1) above.

(4) The number and percentage of enrollees who have failed to complete their course of instruction, such number and percentage to be computed separately for each course of instruction offered by respondents, and if respondents should at any time operate one or more residential schools, then such percentage to be computed separately for each course of instruction offered by respondents at each such residential school, location or facility.

(c) An explanation of the cancellation procedure provided in this order, namely:

(i) That any contract or other agreement may be cancelled for any

reason until midnight of the twelfth (12th) day after mailing to the customer, via the U.S. mail, of this notice; and

(ii) If in accordance with the provisions of subparagraph (b)(2) above, the notice shall provide the applicant with the right to request a schedule of employers and if within the aforesaid twelve (12) day period any such applicant shall so request such a schedule of employers then, and in such event, any contract or other agreement may be cancelled by such applicant for any reason until midnight of the third (3rd) business day after receipt by such customer of such schedule of employers.

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

This notice shall be sent by respondents no sooner than the next day after the person shall have contracted for the sale of any course of instruction; respondents, during such period provided for in subparagraph (c) above, shall not initiate contact with such person other than that required by this paragraph and except that during such period respondents may send, by mail, the written forms which are required for processing a student loan under the Federal Insured Student Loan Program.

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

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

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

> "This school has not been in operation (course has not been

offered) long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course)."

Provided further, that the notice specified by Paragraph 10 of this order shall be printed or otherwise set forth legibly in the Spanish language in each instance where respondents make sales presentations and/or conduct contract negotiations in Spanish with any person incident to the offering for sale and sale of any course of instruction to any such person.

Notwithstanding anything to the contrary set forth in subparagraph 10(b) hereof, the following provisions shall apply:

(a) The notice provided for in this Paragraph 10 shall not be required to contain the information set forth in subparagraph (b) hereof until the later of (i) nine (9) months after this order shall have become final, or (ii) fifteen (15) months after the date on which the agreement containing order to cease and desist shall have been signed by respondents and counsel for the Federal Trade Commission;

(b) The notice provided for in this Paragraph 10 shall not be required to contain the information provided for in subparagraphs (b)(1), (b)(2) and (b)(3) if respondents do not represent orally, in writing or in any other manner, directly or by implication, that there is an urgent need or demand, or a need or demand of any size, proportion or magnitude, for graduates of any course of instruction offered by respondents or that opportunities for employment of any size, figure or number are available to such persons.

11. Contracting for any sale of any course of instruction in the form of a sales contract or other agreement which shall become binding prior to the end of the twelfth day after the date of mailing to the customer of the form of notice provided for in Paragraph 10 of this order. Upon cancellation of any said sales contract or other agreement within the period provided for herein, the respondents are obligated to refund, promptly to any person exercising the cancellation right, all monies paid or remitted up until the notice of cancellation.

Provided, further, that respondents shall not contract for the sale of any course of instruction in the form of any type of binding sales contract or other agreement to any Spanish-speaking person who cannot read and write English proficiently, unless the sales contract or other agreement is itself set forth in the Spanish language.

II

1. *It is further ordered*, That:

(a) Respondents herein deliver, by certified or registered mail, a copy of this decision and order to each of their present and future

franchisees, licensees, employees, salesmen, agents, solicitors or independent contractors who promotes, offers for sale, sells or distributes any course of instruction offered by respondents, and to any other such person who does the same;

(b) Respondents herein provide each person so described in paragraph (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 upon request;

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

(d) Respondents herein inform the persons described in paragraph (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;

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

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

2. *It is further ordered*, That respondents herein present to each interested applicant or prospective student or to any other person, at the home or place of business of any such person, immediately prior to the commencement of any meeting or interview during which the purchase of or enrollment in any course of instruction offered by the respondents herein is discussed or solicited, either directly or indirectly, except a meeting or interview which respondents or their representatives attend pursuant to an appointment or arrangement made in advance with such person, a 5" X 7" card containing only the following language:

"YOU WILL BE TALKING TO A SALES REPRESENTATIVE"

3. *It is further ordered*, That respondents Lafayette United Corpo-

ration, Lafayette Academy, Inc., Lafayette Motivation Media, Inc. and Stuart Bandman shall forthwith distribute a copy of this order to each of their operating divisions.

4. *It is further ordered*, That the respondents Lafayette United Corporation, Lafayette Academy, Inc., Lafayette Motivation Media, Inc. and Stuart Bandman shall notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of which may affect compliance obligations arising out of this order.

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

III

It is further ordered, That:

1. Respondents shall submit to the Commission, within five (5) days after the date this order is served on respondents (hereinafter "date of service"), a notarized affidavit, executed by the president of respondent Lafayette Academy, Inc., to the effect that respondents have made or have caused to be made a good faith search of documents that pertain to purchasers of respondents' Nursing Assistant/Aide, Medical Receptionist/Office Assistant, and Insurance Claims Adjuster/Investigator courses of instruction, and that respondents, to the best of their knowledge, have previously or simultaneously with said affidavit submitted to the Commission the names of all purchasers of such courses covered by this agreement.

2. Respondents or their designee shall make an inquiry in writing on the one hundred and twentieth (120th) day after the date of service, in the language, manner and form shown in Appendices C and D, via certified mail with return receipt requested and with a self-addressed, postage prepaid envelope, to the most current home address known to respondents of each former purchaser of one of such courses who appears on a list of such purchasers to be supplied to respondents by the Commission within sixty (60) days after the date of service.

3. With respect to each purchaser whose mailed inquiry is returned undelivered or whose aforesaid return receipt card is not returned, respondents or their designee shall have a duty to mail on the one hundred and forty-fifth (145th) day after the date of service the same inquiry via first class mail to such purchaser's most current business

address that is known to respondents and, if none, then to such purchaser's most current home address known to respondents.

4. On the two hundred and seventieth (270th) day after the date of service, respondents shall pay a refund, by check or otherwise, in an amount derived in accordance with Part III of this order, to each "eligible class member" determined in accordance with Part III of this order.

5. "Eligible class member" means only those persons who:

(a) Signed their enrollment contracts during the period of time from February 1, 1969 to June 30, 1972 in respondents' aforementioned courses; and either

(b)

(1) Completed the course for which he or she enrolled; and

(2) Sought employment in the field described by the relevant course title, or decided, for reasons related to the sufficiency or quality of the training, or job demand, not to seek employment in the field described by the relevant course title; and

(3) After completion of respondents' course did not obtain employment in the field described by the relevant course title; or

(c) Decided, for reasons related to the sufficiency or quality of the training, or job demand, not to complete the course.

6. Each refund shall be accompanied by a letter in the language, manner and form shown in Appendix E; and a notice in the language, manner and form shown in Appendix F shall be sent via first class mail, with the sender's return address on the face of the envelope, to the last known home address of all persons whose returned questionnaire show them to be ineligible for a refund under Part III of this order.

7. Respondents shall make pro rata refund payments to each eligible class member based upon the proportion that total tuitions paid by or for all such members bear to the total amount available for refunds as provided in Part III of this order. In no event shall any member receive an amount greater than the tuition paid by or for such member.

8. Respondents shall ultimately provide a sum of no greater than two hundred thousand dollars ($200,000) solely to carry out its obligations to provide refunds. No charges against this amount shall be made for administrative costs, (*i.e.*, the costs necessarily incurred in carrying out the provisions of this Part III), which costs shall be absorbed by the corporate respondents.

9. Respondents shall file, within one hundred and eighty (180) days after the date of service, under Rule 3.61(d) of the Commission's Rules of Practice, a written request for advice as to whether respondents' determination of who is an eligible class member complies with the terms of this order provision; and respondents shall submit simultane-

ously with their request all Appendix D questionnaires they have received as of the date said request for advice is filed. The Commission shall render its advice to respondents and return all Appendix D questionnaires to respondents within two hundred and forty (240) days after the date of service.

10. Respondents or their designee shall deliver, by first class mail, a refund check to each eligible class member or his legal representative.

11. Respondents shall, on the three hundredth (300th) day after the date of service, file with the Commission a report in writing setting forth the manner and form in which they have complied with Part III of this order. This report shall contain a listing of the names, addresses, and refund amounts of those eligible class members whose refund checks were returned by the United States Postal Service. The Federal Trade Commission shall have one year from the date of receipt of this report to locate such eligible class members. Upon notification by the Federal Trade Commission that eligible members whose checks were not delivered have been located, the respondents shall then mail, by certified mail, such refund check to said eligible class member at the address provided by the Federal Trade Commission.

12. Respondents shall maintain records and documents for two (2) years after the filing of the report referred to in Paragraph 11 of Part III of this order, which demonstrate that respondents have complied with Part III of this order.

13. If any duty required to be performed on a certain day under Part III of this order falls upon a non-business day, the respondents herein shall perform such duty on the next following business day.

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

Commissioner Dole did not participate by reason of absence.

APPENDIX A

IMPORTANT INFORMATION

Regarding Students of Lafayette Academy, Inc.

Course: Medical Receptionist/Office Assistant
(or other course title as appropriate)

Base Period: January 1, 197____ through December 31, 197____
(or other Base Period as appropriate)

Information Regarding Post-Graduate Employment of Graduates:

Total number of graduates .....

Total number of graduates who responded to questionnaire seeking employment data .....

Total number of graduates who so responded who sought employment in the fields of Medical Receptionist or Office Assistant (or other course title as appropriate) .....

Total number of graduates who so responded and sought employment, who obtained employment in the fields of Medical Receptionist or Office Assistant (or other course title as appropriate) .....

Percentage of graduates who are known to have obtained employment in the fields of Medical Receptionist or Office Assistant (or other course title as appropriate) ..... per cent

Employers Hiring Persons Who Graduated From Lafayette Academy, Inc.:

Any applicant who desires to obtain a schedule containing the names and addresses of employers of graduates of this course may do so by requesting same, in persons or by telephone or mail, at the offices of the Company, 984 Charles Street, North Providence, Rhode Island.

Salary Information Regarding Persons Who Graduated From Lafayette Academy, Inc.:

As Medical Receptionist/Office Assistant (*or other course title as appropriate*)

_____ * Graduate(s) began at a salary below $5,000
_____ Graduate(s) began at a salary between $5,000 and $5,999
_____ Graduate(s) began at a salary between $6,000 and $6,999
_____ * Graduate(s) began at a salary above $7,000

*Complete by indicating number of graduates employed at each salary range.

Information Regarding Total Number and Percentage—Who Failed to Complete This Course:

Total number of students enrolled in this course and scheduled to graduate during the Period Covered:

Total number of such students who failed to complete this course:

Total percentage who failed to complete this course: per cent

* * * * * * *

APPENDIX B

1. The initial "base period" shall be the twelve-month period ending on the last day of the third full calendar month which follows the date on which the Order shall have become final.

2. The subsequent "base period" shall be twelve-month periods which begin and end on the same calendar days each year as the initial "base period."

3. The six (6) month period immediately following the close of any base period shall be used by respondents to monitor and record the employment experience of all enrollees whose enrollment terminates during such base period. Respondents may not include in the computation of statistics for such base period persons whose enrollment terminated during this six (6) month recordation period. Such persons will be included in the statistics for the next subsequent base period.

4. On the first day following the six (6) month recordation period respondents shall begin to disseminate statistics for the base period which ended six months earlier and shall continue to disseminate said statistics for twelve months.

APPENDIX C

(Name)
(Address)

Re: Eligibility for partial reimbursement of tuition to certain former students of Lafayette Academy, Inc., North Providence, Rhode Island

Dear (Name):

In settlement of a complaint brought by the United States Federal Trade Commission, Lafayette Academy, Inc. has agreed to a Consent Order.

The purpose of the enclosed questionnaire is to determine whether or not you are eligible for a partial reimbursement of tuition. Of course, you are under no obligation to send in this questionnaire, but you *must* return this questionnaire to have your eligibility determined.

DIRECTIONS: Please mark or fill in the appropriate spaces on the questionnaire enclosed, and return it in the enclosed stamped addressed envelope. It is suggested that you fill out and mail in this questionnaire as soon as possible, but in any event no later than (date which represents the one hundred and seventieth day from the date of service). If you should misplace the envelope provided, please mail your questionnaire to Lafayette Academy, Inc., 984 Charles Street, North Providence, Rhode Island 02904.

You must follow the directions and should answer all questions which apply to you *completely* and *truthfully*, to the best of your knowledge. Questionnaires which are incomplete or improperly filled out could result in the loss of eligibility.

APPENDIX D

ELIGIBILITY QUESTIONNAIRE

RE: Your enrollment with Lafayette Academy, Inc.,
North Providence, Rhode Island

1. Did you enroll in a course at the above-named school? (CHECK ONE)

Yes ..... ( )
No ..... ( )

IF THE ANSWER IS "NO", DO NOT FILL IN THE REMAINDER OF THE QUESTIONNAIRE: TURN TO THE LAST PAGE, DATE AND SIGN ON THE APPROPRIATE LINES, AND RETURN THE QUESTIONNAIRE IN THE POSTAGE-PAID ENVELOPE.

2. For which course did you enroll? (CHECK ONE)

a. Nursing Assistant/Aide ..... ( )
b. Medical Receptionist/Office Assistant ..... ( )
c. Insurance Claims Adjuster/Investigator ..... ( )

3. In what month and year did you enroll in the school? (You must give *both* month and year)

MONTH/YEAR _____ / _____

4. Did you complete the course in which you enrolled? (CHECK ONE)

No ..... ( )
Yes ..... ( )

If the answer is "No", skip to question 7.

5. When you completed the course did you make any effort to seek a job in that field? (CHECK ONE)

No ..... ( )
Yes ..... ( )

If the answer is "No", skip to question 7.

6. Have you ever attained a job in that field at any time after you completed the course? (CHECK ONE)

Yes ..... ( )
No ..... ( )

7. Please give the *most important* reason why you did *not* complete the course; or why you did not seek a job in the field to which the course related. (Mark only one box.)

a. I took the course for advancement in my job and not for the purpose of seeking a job in another field ..... ( )

b. I preferred a job in another field ..... ( )

c. I decided I did not want a job in the field to which the course related ..... ( )

d. I decided I would not be able to find a job due to a lack of on-the-job experience ..... ( )

e. I decided I would not be able to find a job due to insufficient training ..... ( )

f. I decided there were no jobs available for graduates of this course in the field to which this course related ..... ( )

g. I married or started a family ..... ( )

h. I was drafted or enlisted in the military service ..... ( )

i. I went to college or other schooling ..... ( )

j. I decided that the course would not help me get a job ..... ( )

k. Other (PLEASE DESCRIBE) ..... ( )

_____

_____

_____

8. How much in tuition was paid by you or on your behalf for the course you took? (Include all outstanding tuition loan obligations, but do not include interest charges)

AMOUNT: $_____

9. Have you ever received a refund of any tuition money from the above-named school? (CHECK ONE)

Yes ..... ( )
No ..... ( )

10. How much was the refund?

AMOUNT: $_____

Please attach to this form any documents or copies of such documents that indicate you paid an amount of money for any course of instruction offered by the above school. If you cannot provide such documents, your eligibility to receive reimbursement will not be affected.

WARNING: It is a Federal crime for anyone to knowingly and willfully make a false, fictitious or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. §1001.

_____ _____
SIGNATURE DATE

_____ _____
PRINT NAME HERE SOCIAL SECURITY NO.

HOME ADDRESS:

_____
Number Street Apt.

_____
City State Zip Code

HOME TELEPHONE:
(___)_____

BUSINESS ADDRESS:

_____
Employer's Name

_____
Number Street

_____
City State Zip Code

BUSINESS TELEPHONE:
(___)_____

APPENDIX E

IMPORTANT NOTICE

(Name)
(Address)

Dear (Name):

Pursuant to a consent order of the Federal Trade Commission issued on (*date*), Lafayette Academy, Inc., Lafayette United Corporation and Lafayette Motivation Media, Inc. have been directed to make [percentage] per cent refunds of tuition to certain students who had enrolled in certain courses offered by Lafayette Academy, Inc.

The order of the Commission contains the provisions identifying the class of persons eligible for refunds, and the procedures for making refunds. (You may obtain a copy of the order without charge by writing to the Federal Trade Commission, Publications, Room 130, Washington, D.C. 20580. Refer to "Lafayette United Corporation, et al., Docket No. 8963.")

In accordance with the provisions of the order, it has been determined that you are entitled to a refund of $ ____. A check for this amount is enclosed.

LAFAYETTE ACADEMY, INC.

By _____
Irwin Stein
President

Enclosure

APPENDIX F

IMPORTANT NOTICE

Pursuant to a consent order of the Federal Trade Commission issued on (*date*), Lafayette Academy, Inc., Lafayette United Corporation and Lafayette Motivation Media, Inc. were directed to make partial reimbursements of tuition to certain students who had enrolled in certain courses offered by Lafayette Academy, Inc. The order of the Commission contains the provisions identifying the class of persons eligible for reimbursement and the procedures for making reimbursements.

In accordance with the provisions of the order, it has been determined, based upon your responses to the "Eligibility Questionnaire," that you are not eligible for reimbursement.

The order specified that the class of purchasers entitled to reimbursement was limited to those persons who signed enrollment contracts during the period of time from February 1, 1969 to June 30, 1972 and also meet either of the following tests:

(A)(1) Completed the course for which he or she enrolled; and

(2) Sought employment in the field described by the relevant course title, or decided for reasons related to the sufficiency or quality of the training, or job demand, not to seek employment in the field described by the relevant course title; and

(3) After completion of respondents' course, did not obtain employment in the field described by the relevant course title; or

(B) Decided for reasons related to the sufficiency or quality of the training, or job demand, not to complete the course.

You may obtain a copy of the order without charge by writing to the Federal Trade Commission, Publications, Room 130, Washington, D.C. 20580, (refer to "Lafayette United Corporation, et al., Docket No. 8963").

IN THE MATTER OF

HERTZ CORPORATION, ET AL.

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

Docket 9033. Complaint, June 10, 1975 — Decision, Oct. 26, 1976

Consent order requiring Hertz Corporation, Avis Rent-A-Car System, Inc., and National Car Rental System, Inc., of New York City, Garden City, N.Y., and Minneapolis, Minn., respectively, the three largest passenger car rental companies in the nation, among other things to cease conspiring to, or entering into anti-competitive agreements which tend to fix prices, monopolize on-airport passenger car rental market, and hinder the effective operations of off-airport competitors. Further, the order prohibits respondents from renewing options in current agreements; and from furnishing false information to airport authorities for the purpose of adversely affecting the competitive position of off-airport competitors.

Appearances

For the Commission: *Robert W. Rosen, Roger J. Leifer, Thomas F. McNerney, William J. Murphy, III* and *Charles G. Brown, III.*

For the respondents: *Jerome Shestack, Schnader, Harrison, Segal & Lewis*, Philadelphia, Pa., and *Irving Kagan*, New York City, for Hertz Corporation. *Alan S. Ward, Baker, Hostetler, Frost & Towers*, Washington, D.C., and *David I. Schaffer*, Garden City, New York, for Avis Rent-A-Car System, Inc. *Michael P. Sullivan, Gray, Plant, Mooty & Anderson*, Minneapolis, Minn.; *J. Wallace Adair, Howrey & Simon*, Washington, D.C.; and *Robert W. Bird*, Minneapolis, Minn., for National Car Rental System, Inc.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated and are now violating Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint charging as follows:

PARAGRAPH 1. A. Hertz Corporation (Hertz) is a corporation organized and doing business under the laws of the State of Delaware with its principal office at 660 Madison Ave., New York, New York. Hertz, with operating revenues of $677 million in 1973, is the Nation's largest rent-a-car company, and is a wholly-owned subsidiary of RCA Corporation. In 1973, RCA was the 20th largest industrial corporation in the United States, with $4.2 billion in sales and $3.3 billion in assets.

B. Avis Rent-A-Car System, Inc. (Avis) is a corporation organized

and doing business under the laws of the State of Delaware with its principal office at 900 Old Country Road, Garden City, New York. Avis, with operating revenues of $349 million in 1973, is the Nation's second largest rent-a-car company and until recently was a wholly-owned subsidiary of International Telephone and Telegraph Corporation. In 1973, ITT was the 9th largest industrial corporation in the United States, with $10.1 billion in sales and $10.1 billion in assets.

C. National Car Rental System, Inc. (National) is a corporation organized and doing business under the laws of the State of Nevada with its principal office at 5501 Green Valley Dr., Minneapolis, Minnesota. National, with operating revenues of $140 million in 1973, is the Nation's third largest rent-a-car company and is a wholly-owned subsidiary of Household Finance Corporation. In 1973, Household Finance was the 4th largest finance company in the United States, with $3 billion in assets.

PAR. 2. In the course and conduct of their business, respondents have purchased and leased passenger automobiles, and have solicited, arranged and contracted to rent passenger automobiles (without drivers) to consumers in interstate commerce. Respondents maintain, and at all times mentioned herein have maintained, a constant and substantial course of trade in said purchasing, leasing, and renting of passenger automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Each of the respondents is in substantial competition with each and all of the other respondents and with other companies in the rental of passenger automobiles in interstate commerce, except to the extent that competition has been hindered, lessened and eliminated as hereinafter set forth.

PAR. 4. Respondents operate their rental businesses through wholly-owned rental stations and through contractually bound franchisees located in towns, cities, and on airports throughout the United States. A substantial and distinct market concerns passenger automobile rentals originating at rental service locations on airport premises throughout the United States (the on-airport auto rental market). The usual method of obtaining rental service locations on airport premises (airport concessions) is through the submission of bids to and negotiation with the respective airports. In acquiring and maintaining airport concessions, respondents negotiate with airports for their respective wholly-owned service locations and their contractually bound franchisee locations. In 1973, respondents' combined sales accounted for approximately 96 percent of the on-airport auto rental market.

PAR. 5. Since at least 1968, respondents, individually and collectively, have maintained and protected a highly concentrated, non-competitive

market structure throughout the United States by employing nationally coordinated programs affecting various local on-airport auto rental markets.

PAR. 6. In maintaining and protecting the aforesaid market structure, respondents, individually and collectively, have been and are engaged in the following acts and practices, among others:

A. Conspiring, combining, following a common course of action, and agreeing among themselves and with and through their franchisees to submit common bid specifications and contractual provisions for airport automobile rental concessions.

B. Conspiring, combining, following a common course of action, and agreeing among themselves and with and through their franchisees, to establish contractual provisions and eligibility criteria in airport automobile rental concession contracts which have the effect of raising barriers to entry into and excluding competitors from on-airport auto rental markets.

C. Conspiring, combining, and agreeing amongst themselves and with and through their franchisees to fix and stabilize prices for automobile rentals at rental service locations.

D. Entering into anticompetitive arrangements with Ford Motor Company, Chrysler Corporation, and General Motors Corporation for advertising subsidies which have the effect of increasing barriers to entry and maintaining and reinforcing the aforesaid non-competitive market structure.

E. Engaging, individually and amongst themselves, in anticompetitive actions, including harassment, which prevent smaller competitors from penetrating the on-airport auto rental markets.

PAR. 7. The aforesaid acts and practices have had, among others, the following effects:

A. American consumers have been forced to pay substantially higher prices for the rental of passenger automobiles than they would have had to pay absent respondents' acts and practices.

B. Respondents have artificially reduced the available supply of automobile rental services in on-airport auto rental markets.

C. Respondents have obtained profits and returns on investment substantially in excess of those they would have obtained in competitively structured on-airport auto rental markets.

D. Actual and potential competition has been lessened, hindered, eliminated, and foreclosed.

E. Barriers to entry into the on-airport auto rental markets have been raised, strengthened, and otherwise increased.

F. Significant entry into the on-airport auto rental markets has been blockaded.

VIOLATIONS CHARGED

PAR. 8. Respondents have conspired to monopolize on-airport auto rental markets in violation of Section 5 of the Federal Trade Commission Act.

PAR. 9. Respondents, in combination, have acquired, maintained, and exercised monopoly power in various on-airport auto rental markets in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. Respondents have conspired, combined, and agreed amongst themselves and with and through their franchisees to fix and stabilize prices for automobile rentals at rental service locations in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. Respondents, individually and in combination, have erected, maintained and raised barriers to entry into on-airport auto rental markets and have engaged in other unfair methods of competition in the auto rental industry in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on June 10, 1975, charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. §45); and

Respondents and complaint counsel, by joint motion filed March 15, 1976, having moved to have this matter withdrawn from adjudication for the purpose of submitting executed consent agreements; and

The Commission, by order issued March 22, 1976, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

Each of the respondents and counsel supporting the complaint having executed separate agreements containing identical consent orders except for the identity of the respondent and the appendices, which include an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, and waivers as required by the Commission's Rules; and

The Commission having considered the agreements and having provisionally accepted same, and the agreements containing consent orders 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 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules,

the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent The Hertz 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 660 Madison Ave., New York, New York.

Respondent Avis Rent-A-Car System, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 900 Old Country Road, Garden City, New York.

Respondent National Car Rental System, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its principal office and place of business located at 5501 Green Valley Dr., Minneapolis, Minnesota.

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

[The decision and order issued by the Commission contained three separate, identical orders as to the respondents. For reasons of economy, only one order is set forth herein.]

ORDER

I

It is ordered, That respondent, [name of respondent], a corporation, its officers, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporate or other device, in connection with the rental of passenger automobiles in the United States do forthwith cease and desist from:

A. Conspiring, combining, or agreeing with any competitor engaged in the passenger automobile rental business to monopolize or to attempt to monopolize the passenger automobile rental business or any relevant submarket thereof in the United States or any relevant submarket thereof.

B. Conspiring, combining, or agreeing with any competitor engaged in the passenger automobile rental business to fix or stabilize prices for passenger automobile rentals.

C. Conspiring, combining, or agreeing with any competitor or with any franchisee or licensee of respondent engaged in the passenger automobile rental business to obtain airport passenger automobile rental bid specifications, or airport passenger automobile rental concession agreements, containing any provision:

1. Requiring passenger automobile rental concessionaires to have their own national credit cards;

2. Requiring passenger automobile rental concessionaires to provide a national reservation system;

3. Requiring passenger automobile rental concessionaires to operate passenger automobile rental concessions in a minimum number of airports;

4. Requiring passenger automobile rental concessionaires to provide one-way passenger automobile rental service;

5. Requiring passenger automobile rental concessionaires to have a minimum number of years of experience in the passenger automobile rental business;

6. Requiring passenger automobile rental concessionaires to operate a passenger automobile rental business national in scope;

7. Requiring passenger automobile rental concessionaires to make a minimum investment as a condition precedent to obtaining or retaining a passenger automobile rental concession;

8. Requiring passenger automobile rental concessionaires to pay minimum guarantees;

9. Limiting the number of on-airport passenger automobile rental concessionaires; or

10. Having as its purpose or effect the foreclosure of competitors of respondent in the passenger automobile rental business from entering into on-airport passenger automobile rental concession agreements.

D. Conspiring, combining, or agreeing with any competitor or with any franchisee or licensee of respondent engaged in the passenger automobile rental business to obtain airport passenger automobile rental bid specifications or airport passenger automobile rental concession agreements containing any provision the purpose or effect of which is to prohibit a competitor engaged in the passenger automobile rental business at a location off airport premises from:

1. Utilizing any airport public address system for the purpose of contacting persons with passenger automobile rental reservations;

2. Utilizing, for the pick-up of persons with passenger automobile rental reservations and the discharge of passenger automobile rental customers, any public pick-up or discharge areas on airport premises;

3. Advertising on-airport premises through signs and literature;

4. Entering airport premises to meet and pick up persons with passenger automobile rental reservations, or to return and discharge passenger automobile rental customers; or

5. Installing direct line telephones within airport terminals.

II

It is further ordered, That respondent shall forthwith cease and desist from individually making any recommendation to any airport authority (an entity responsible for awarding or administering airport passenger automobile rental concession agreements) in the United States for the primary purpose of foreclosing competitors of respondent in the passenger automobile rental business from entering into on-airport passenger automobile rental concession agreements.

III

A. *It is further ordered*, That respondent shall forthwith cease and desist from individually recommending the inclusion in airport passenger automobile rental bid specifications or in airport passenger automobile rental concession agreements in the United States of any provision:

1. Requiring passenger automobile rental concessionaires to have their own national credit cards;
2. Requiring passenger automobile rental concessionaires to provide a national reservation system;
3. Requiring passenger automobile rental concessionaires to operate passenger automobile rental concessions in a minimum number of airports;
4. Requiring passenger automobile rental concessionaires to provide one-way passenger automobile rental service;
5. Requiring passenger automobile rental concessionaires to have a minimum number of years of experience in the passenger automobile rental business;
6. Requiring passenger automobile rental concessionaires to operate a passenger automobile rental business national in scope;
7. Requiring passenger automobile rental concessionaires entering into concession agreements at an airport at the same time respondent enters into a concession agreement at said airport to maintain operating facilities not reasonably proportionate to the operating facilities of respondent, as measured by the reasonably anticipated business of said concessionaires during the concession term relative to the reasonably anticipated business of respondent during said term;
8. Requiring passenger automobile rental concessionaires entering into concession agreements at an airport at the same time respondent enters into a concession agreement at said airport to pay minimum concession fees not reasonably proportionate to minimum concession fees to be paid by respondent as measured by the reasonably anticipated business of said concessionaires during the concession term relative

to the reasonably anticipated business of respondent during said term; or

9. Requiring passenger automobile rental concessionaires coming on airport during the term of respondent's concession agreement to pay, for the first two (2) years they do business on that airport, a minimum guarantee in excess of whichever is the lower of the lowest minimum guarantee or the lowest concession fees actually paid by the three respondents in this matter, or any of them, in the twelve (12) months next prior to the entry of said new concessionaires.

B. *It is further ordered*, That, for a period of five (5) years from the effective date of this order, respondent shall forthwith cease and desist from individually recommending the inclusion in airport passenger automobile rental bid specifications or in airport passenger automobile rental concession agreements in the United States of any provision:

1. Limiting to a specific number the on-airport passenger automobile rental concessions to be awarded, except that respondent shall not be precluded from inquiring as to the number of on-airport passenger automobile rental concessions to be awarded during the term of any concession agreement, and seeking and obtaining an agreement from an airport authority that said concessions to be awarded shall not exceed such number;

2. Prohibiting off-airport passenger automobile rental businesses from utilizing any airport public address system for the purpose of contacting persons with passenger automobile rental reservations, except that to the extent that such use shall be available to any off-airport passenger automobile rental business, respondent may seek and obtain an agreement that it will be afforded equal treatment under similar terms;

3. Prohibiting off-airport passenger automobile rental businesses from utilizing, for the pick-up of persons with passenger automobile rental reservations and the discharge of passenger automobile rental customers, pick-up areas on airport premises available to other off-airport commercial entities or to on-airport concessionaires other than passenger automobile rental businesses for the purpose of customer pick-up and discharge, except that to the extent that such use shall be available to any off-airport passenger automobile rental business, respondent may seek and obtain an agreement that it will be afforded equal treatment under similar terms; or

4. Prohibiting off-airport passenger automobile rental businesses from advertising on airport premises through signs and literature, except that to the extent that such advertising may be permitted by an airport authority, respondent may seek and obtain an agreement that it will be afforded equal treatment under similar terms.

C. *It is further ordered*, That respondent shall forthwith cease and desist from enforcing or insisting on the enforcement of any provision in an existing airport passenger automobile rental concession agreement that requires other airport passenger automobile rental concessionaires to meet any of the criteria set forth in subparts 1 through 6 of paragraph III A of this order.

IV

It is further ordered, That respondent shall forthwith cease and desist from knowingly providing false information to any airport authority for the purpose of: (1) foreclosing competitors of respondent from entering into on-airport passenger automobile rental concession agreements; or (2) effecting or accomplishing any of the activities enumerated in paragraph III B hereinabove.

V

It is further ordered, That, at each airport in the United States where respondent has an existing on-airport passenger automobile rental concession agreement containing a renewal option, respondent is prohibited from exercising said renewal option, except for those airports listed under respondent's name in Appendix A hereto, at which airports respondent will have, as of the date respondent must exercise said renewal option, a wholly or partially unamortized capital investment in facilities used in connection with said airport concession; *provided, however*, that nothing herein shall be construed to prohibit respondent from negotiating for, or entering into, new on-airport passenger automobile rental concession agreements in such situations where respondent is prohibited from exercising said renewal options.

VI

It is further ordered, That respondent, except as otherwise prohibited by this order, may: (1) communicate, negotiate, or contract with an airport authority with respect to any matter affecting duties, obligations, rights or privileges of respondent as a passenger automobile rental concessionaire, notwithstanding any incidental effect on other competitors of respondent in the passenger automobile rental business, and with respect to fair and equitable "most favored nations" clauses; and (2) communicate with, agree with, and otherwise do business with its licensees or franchisees.

VII

It is further ordered, That respondent shall furnish a copy of this

order together with a letter in the form attached hereto as Appendix B to each airport at which respondent has an existing on-airport concession agreement within sixty (60) days of the effective date of this order.

VIII

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

IX

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order, and that respondent shall thereafter furnish such other written reports and information relating to this order as may be requested in writing.

Commission Dole did not participate by reason of absence.

APPENDIX A

The Hertz Corporation

Greenville - Spartanburg Airport, Greenville, South Carolina
Kanawha County Airport, Charleston, West Virginia
Tallahassee Municipal Airport, Tallahassee, Florida
Portland International Airport, Portland, Maine
Municipal Airport, Mobile, Alabama

Avis Rent-A-Car System, Inc.

Eglin Field Airport, Fort Walton Beach, Florida
Toledo Express Airport, Toledo, Ohio
Reno International Airport, Reno, Nevada
Monterey Peninsula Airport, Monterey, California
Asheville Municipal Airport, Asheville, North Carolina
Portland International Airport, Portland, Maine

National Car Rental System, Inc.

Eglin Field Airport, Fort Walton Beach, Florida
Toledo Express Airport, Toledo, Ohio
Bates Field—Mobile Municipal Airport, Mobile, Alabama

Reno International Airport, Reno, Nevada
Monterey Peninsula Airport, Monterey, California

APPENDIX B

[Airport Authority]

Enclosed is a copy of a Consent Order entered into by [name of respondent] In the Matter of Hertz Corporation, et al., Docket No. 9033 before the Federal Trade Commission.

You are hereby notified that [name of respondent] does not advocate or insist upon the inclusion, in airport passenger automobile rental bid specifications or airport passenger automobile rental concession agreements, of any provision requiring on-airport passenger automobile rental concessionaires: (1) to have their own national credit cards; (2) to provide a national reservation system; (3) to operate passenger automobile rental concessions in a minimum number of airports; (4) to provide one-way passenger automobile rental service; or (5) to have a minimum number of years of experience in the passenger automobile rental business; or of any provision the primary purpose of which is to foreclose competitors of [name of respondent] in the passenger automobile rental business from entering into on-airport passenger automobile rental concession agreements.

[Name of respondent] does, however, insist upon its rights, in the course of bidding or negotiating for airport passenger automobile rental concessions, to seek and obtain adequate space and facilities for its own operations, and to seek and obtain a commitment from an airport: (1) as to the number of on-airport passenger automobile rental concessions said airport intends to grant; (2) as to said airport's policies with respect to the terms and conditions pursuant to which said airport (a) has granted or will grant on-airport passenger automobile rental concessions to others, or (b) has permitted or will permit off-airport passenger automobile rental businesses to have access to airport facilities and passengers; and (3) as to said airport's policy with respect to buyouts by the airport or by another concessionaire of [name of respondent]'s unamortized facilities at the termination of its concession agreement.