facturing for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

(1) Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein as required by Section 4(a) of the Textile Fiber Products Identification Act.

(2) Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of the information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondent, as required by Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

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

IN THE MATTER OF

ERIE FOUNDRY COMPANY, ET AL.

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

Docket C-2003. Complaint, Aug. 10, 1971—Decision, Aug. 10, 1971

Consent order requiring an Erie, Pa., manufacturer and distributor of compressed air dryers, oil scrubbers, filters and related air and gas treating

equipment to cease fixing the prices and discounts at which its products may be resold, requiring any dealer to split commissions with any other distributor, prohibiting resale of its products to any customer, refusing to sell its products to non-delinquent distributors, and soliciting reports from any person as to the terms of sale of its products by its regular dealers; respondent is also prohibited from making any contract which excludes the customer from dealing with other contractors.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C., Section 41 *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, and Section 3 of the Clayton Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Van-Air, Inc., is a corporation organized on or about May 10, 1944, under the name Van Products Company, and is existing and doing business under and by virtue of the laws of the State of Pennsylvania. Van Products Company, which formally changed its name to Van-Air, Inc., during 1968, maintains its home office and principal place of business at 5700 Swanville Road, Erie, Pennsylvania.

Respondent Erie Foundry Company, the parent corporation of Van-Air, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondent Erie Foundry Company maintains its home office and principal place of business at 1253 West Twelfth Street, Erie, Pennsylvania.

Respondent Van-Air, Inc., was acquired by respondent Erie Foundry Company in 1965. At that time, Mr. James Currie, president of Erie Foundry, became a vice president of Van-Air, and Mr. Chester K. Reichert, Jr., is secretary-treasurer of both corporate respondents. Both corporations have the same five members acting as their board of directors.

PAR. 2. Respondents are engaged in the manufacture and distribution of compressed air dryers, oil scrubbers, filters and related air and gas treating equipment, as well as other products, which are marketed to distributors and dealers located throughout the United States.

The chief function of the air dryer is to dry, clean and purify compressed air so as to safeguard pneumatic equipment against increased

costs of maintenance and replacement due to corrosion, oxidation, abrasion and contamination. It is estimated that one billion dollars in losses can be attributed yearly to unsuspected corrosion, rusting, gumming, varnishing, icing and poor lubrication of air-operated equipment, which is employed in virtually all industries today.

The most commonly used drying methods are the refrigeration, regenerative and deliquescent types. Of the three, the latter two employ drying towers containing a bed of adsorbent desiccant. Van-Air, Inc., primarily manufactures and distributes deliquescent-type air dryers, but has recently entered the regenerative dryer market.

Deliquescent air dryers are of single vessel, self-contained design which operate continuously and automatically. Wet, dirty air flows into the bottom of the vessel through a centrally located inlet. A diffuser cap distributes air evenly throughout the pre-drying area. As the air expands and changes direction, the larger moisture droplets and solid particles drop into the condensate drain. In the lower area the air is also exposed to a deliquescent mist fed by the desiccant bed above. Here the chemical mist adsorbs part of the vaporous particles which also drop into the condensate, and the alkaline mist neutralizes the normal acidity of the untreated air. As air moves upward it flows through a bed of desiccant in a slow, scrubbing action. The desiccant is kept moist by deliquescence with moisture from wet air and dissolves slowly. The mist, which forms continuously, absorbs the remaining moisture from the air and drops downward to replenish the chemical barrier in the pre-drying area where it washes foreign substances downward. The processed air exits from the dryer outlet clean, sterile and nontoxic, flowing at its original velocity.

Van-Air, Inc., manufactures a desiccant called Dry-O-Lite. Dry-O-Lite, which will not impart or create a toxic condition in any normal ordinary compressed air passed through it, is manufactured by a secret method. It can be used in all deliquescent air dryers.

Van-Air, Inc., is the world's largest manufacturer of air dryers, and is the inventor of the deliquescent type. Its share of total United States sales of deliquescent air dryers is estimated at 30 percent; its estimated share of the desiccant market is 70 percent. Van-Air's gross sales are approximately $3,000,000 per annum. Gross sales of Erie Foundry Company are approximately $10,000,000 per annum.

PAR. 3. In the course and conduct of their business of manufacturing and distributing compressed air treating equipment, respondents ship such products from Pennsylvania, their state of manufacture, to distributors located in various other States throughout the United States, who engage in resale to dealers or directly to users. There is now and

has been for several years last past a constant, substantial and increasing flow of such products in "commerce" as that term is defined in the Federal Trade Commission Act, and in the Clayton Act, as amended.

PAR. 4. Except to the extent that actual and potential competition has been lessened, hampered, restricted and restrained by reason of the practices hereinafter alleged, respondents' distributors or dealers, in the course and conduct of their business of distributing, offering for sale, and selling compressed air treating products are in substantial competition in commerce with one another, and corporate respondents are in substantial competition in commerce with other firms engaged in the manufacture or distribution of compressed air treating equipment.

PAR. 5. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors agree to maintain the resale prices on respondents' compressed air treating products as established and set forth by respondents, and said distributors in turn require their own dealers to do so.

PAR. 6. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors agree to extend a fifteen (15) percent discount on resale prices to all original equipment manufacturers, as well as to extend specified quantity discounts to all customers.

PAR. 7. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors agree not to distribute, solicit or sell respondents' compressed air treating products outside of a specifically designated territory, nor to allow their own dealers to do so. Respondents rely upon their distributors to police the territorial allocation program by forwarding the serial number of foreign dryers back to Van-Air, Inc., which keeps records for ready identification.

PAR. 8. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors agree to split their profit with any other distributor into whose territory respondents' compressed air treating products are shipped, and at the rate specified by respondents.

PAR. 9. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors and their dealers are precluded from selling respondents' compressed air treating products to customers of their own choosing. More specifically, all distributors except one agree to refrain from selling such products to railroad customers and the one distributor who

is permitted to sell to railroads agrees to refrain from selling to all other commercial and industrial accounts. Other distributors or dealers are permitted to sell only to specified customers.

PAR. 10. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors are precluded from selling competitive lines of deliquescent air dryers, and desiccants.

PAR. 11. Respondents have entered into contracts, agreements, combinations or understandings with their distributors whereby said distributors and their dealers are precluded from selling Dry-O-Lite desiccant for use in competing air dryers. Only upon receipt of a completed inspection analysis report and physical inspection of the competing unit by respondents' personnel may respondents then permit their desiccant to be sold by their distributors for use in competitive dryers, and then only if it will benefit respondents from a sales viewpoint for future orders.

COUNT I

Alleging violation of Section 3 of the Clayton Act, as amended (15 U.S.C. 14).

PAR. 12. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understandings entered into or reached between and among the respondents or others not parties hereto, in contracting for the sale of air dryers and desiccants on the condition, agreement or understanding that distributors shall not deal in air dryers and desiccants of competitors, may have the effect of substantially lessening competition or tending to create a monopoly in both the air dryer and desiccant lines of commerce.

Said acts, practices, and methods of competition, and the adverse competitive effects that result therefrom, constitute violations of Section 3 of the Clayton Act, as amended.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

PAR. 13. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understandings entered into or reached between and among the respondents or others not parties hereto, to control their distributors' prices and sales territories, and to restrict and control their distributors' sales of Dry-O-Lite desic-

cant, as hereinabove alleged, are unfair methods of competition and to the prejudice of the public because they constitute an attempt by respondents to monopolize the deliquescent-type air dryer market.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute an unreasonable restraint of trade and an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

PAR. 14. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of fixing, maintaining, stabilizing or otherwise controlling the prices and discounts at which their compressed air treating products are or may be sold.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute an unreasonable restraint of trade and an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT IV

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

PAR. 15. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of, restricting the customers as to whom their distributors and dealers may resell their products.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute, an unreasonable restraint of trade and an unfair method of competition in commerce

within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

PAR. 16. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of the division or allocation of territories into which the various distributors and dealers may solicit and sell their products.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute an unreasonable restraint of trade and an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's proposed complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton Act, and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged 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 they have violated the law as alleged in the proposed complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it 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 as providing an adequate basis for appropriate disposition of the proceeding and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Erie Foundry Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1253 West Twelfth Street, in the city of Erie, State of Pennsylvania.

Respondent Van-Air, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 5700 Swanville Road, in the city of Erie, State of Pennsylvania.

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 Erie Foundry Company and Van-Air, Inc., corporations, their officers, agents, representatives, divisions, employees, successors and assigns, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale or distribution of compressed air dryers, oil scrubbers, filters, desiccant and related air and gas treating equipment in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall not:

1. Fix, maintain or otherwise control or establish the prices, discounts, commissions or other terms or conditions of sale at which such products may be resold.

2. Require any distributor or dealer to sell such products to original equipment manufacturers or to any other customer at any specified price or discount.

3. Apportion or split commissions between distributors or dealers for sales outside the selling distributor's or dealer's assigned territory.

4. Request of any distributor or dealer that such distributor or dealer pay any sum of money, or split commissions or profit on the sale of any such product, with any other distributor or dealer.

5. Require any distributor or dealer to refrain from reselling, soliciting or shipping any or all of such products in any area or territory where such distributors or dealers may independently choose to sell or ship.

6. Prohibit any distributor or dealer from reselling any or all of such products to persons, firms or businesses of their own choosing, or requiring any distributor or dealer to obtain prior ap-

proval of respondents before selling such products to any person, firm or business.

7. Establish, publish or enforce any term, condition or limitation of any kind concerning the persons or companies to which, or the territories within which, any distributor or dealer shall sell air dryers or desiccant to any purchaser or potential purchaser of such products, or require or suggest that any distributor or dealer refuse to sell desiccant directly to any purchaser or potential purchasers of such products.

8. Refuse to sell air dryers or desiccant directly to any distributor of Van-Air products: *Provided, however*, That respondents are not precluded from refusing to sell air dryers or desiccant to distributors whose accounts are delinquent.

9. Solicit reports or information from any distributor or dealer or other person concerning the price at which any distributor or dealer shall sell or shall have sold such products.

10. Solicit reports or information from any distributor or dealer or other person concerning the identity of any customer or location to which any distributor or dealer shall sell or shall have sold such products for the purpose of fixing, maintaining or controlling the prices, discounts, commissions or terms or conditions of sale at which such products may be resold; apportioning or splitting commissions between distributors or dealers; requiring any distributor or dealer to refrain from reselling, soliciting, or shipping such products in any area or territory; prohibiting any distributor or dealer from reselling such products to persons, firms or businesses of their own choosing, or to obtain the prior approval of respondents before selling such products; or prohibiting or preventing any distributor or dealer from using, dealing in, selling or distributing products supplied by any other seller.

II

It is further ordered, That respondents Erie Foundry Company and Van-Air, Inc., corporations, their officers, agents, representatives, divisions, employees, successors and assigns, directly or indirectly, through any corporate or other device, in connection with the offering for sale, sale or distribution of compressed air dryers, oil scrubbers, filters, desiccant and related air and gas treating equipment in commerce as "commerce" is defined in the Clayton Act, as amended, shall not:

1. Sell or make any contract or agreement for the sale of any such product on the condition, agreement or understanding that

the purchaser thereof shall not use, deal in, sell or distribute products supplied by any other seller.

2. Enforce, or continue in operation or effect, any requirement, condition, agreement or understanding with any purchaser which is to the effect that such purchaser shall not use, deal in, sell or distribute products supplied by any other seller.

3. Require any distributor or dealer to seek the prior approval of respondents before they may use, deal in, sell or distribute products supplied by any other seller.

III

It is further ordered, That respondent Van-Air, Inc., within sixty (60) days from the effective date of this order shall:

1. Mail or deliver a conformed copy of this order to all present.

2. Offer to reinstate any former distributor or dealer who may have been terminated or superseded for the violation of any rule, regulation or policy which contravenes any of the provisions of this order, and reinstate any such distributor or dealer who accepts such offer of reinstatement.

3. Notify all of its distributors and dealers and all competing manufacturers of deliquescent air dryers that its desiccant products will henceforth be available through its normal distribution channels to all persons wishing to purchase same, without any precondition or restriction.

4. File with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order: *Provided, however*, That the Commission may institute proceedings to enforce compliance with this order and to exact penalties for noncompliance herewith, without prior rejection of such reports, or the prior notice of any kind to respondents.

IV

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

IN THE MATTER OF

MOTHER'S AUTO SALES, INC., ET AL.

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

Docket C-2004. Complaint, Aug. 10, 1971—Decision, Aug. 10, 1971

Consent order requiring a Miami, Fla., retailer and distributor of used automobiles to cease violating the Truth in Lending Act by failing to make all material disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mother's Auto Sales, Inc., a corporation, and Thomas F. McCarson, individually and as an officer of said corporation, and David Talles, individually and as manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mother's Auto Sales, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 9750 Northwest 27 Avenue, Miami, Florida.

Respondent Thomas F. McCarson is an officer of the corporate respondent. Respondent David Talles is manager of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporation, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale and retail sale and distribution of used cars to the public.

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute a binding Used Car Order Contract, hereinafter referred to as the "Order Contract," which does not contain any required consumer credit cost disclosures, except the number and amount of installments. No other consumer credit cost disclosures are provided prior to consummation of the order contracts as required by Section 226.8(a) of Regulation Z.

By and through the use of the Order Contract, respondents fail in any consumer credit transaction to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form, and amount required by Sections 226.6 and 226.8 of Regulation Z.

PAR. 5. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their goods and services, as "advertisement" is defined by Regulation Z. These advertisements aid, promote or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods and services.

By and through the use of the advertisements, respondents state the amount of the downpayment which can be arranged in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

(i) The cash price;

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

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

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

(v) The deferred payment price.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a

copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Mother's Auto Sales, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 9750 Northwest 27th Avenue, Miami, Florida.

Respondent Thomas F. McCarson is an officer of said corporation. Respondent David Talles is manager of said corporation. They formulate, direct, and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Mother's Auto Sales, Inc., a corporation, and its officers, and Thomas F. McCarson, individually and as an officer of said corporation, and David Talles, individually and as manager of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with any extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer

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

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

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

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

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

IN THE MATTER OF

DAWN MIST CHINCHILLA, INC., ET AL.

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

Docket C-2005. Complaint, Aug. 12, 1971—Decision, Aug. 12, 1971

Consent order requiring a Des Moines, Iowa, seller and distributor of chinchilla breeding stock to cease misrepresenting that it is commercially feasible to raise chinchillas in homes, that chinchillas are hardy animals, that each pelt will sell for up to $100, that purchasers will be given assistance and regular training, and making other misrepresentations to induce the purchase of chinchilla stock; respondent is also required to insert in future contracts a provision that they may be cancelled within three days.

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 Dawn Mist Chinchilla, Inc., a corporation, and Barbara McLuen, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Dawn Mist Chinchilla, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 2125 Indianola Road, Des Moines, Iowa.

Respondent Barbara McLuen is an individual and an officer of the corporate respondent. She formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Her address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, the respondents have made, and are now making, numerous statements and representations by means of advertisements, oral statements and the display of promotional materials to prospective purchasers by their salesmen, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, the expected return from the sale of their pelts and/or animals and the training assistance to be made available to purchasers of respondents' chinchillas.

Typical and illustrative, but not all inclusive of the said statements

and representations made in respondents' advertisements and promotional materials are the following:

Preferred Producers Contract

DAWN MIST CHINCHILLA, INC., AGREES:

1. To buy all descendants of the chinchillas purchased from Dawn Mist Chinchilla, Inc., * * *.

2. To pay the sum of One Hundred Dollars ($100) per pair for said offspring.

* * * * * * *

5. That only clean animals in smooth condition and in normal good health will be involved under the terms of this agreement.

* * * * * * *

THIS AGREEMENT shall be in effect for a period of five (5) years * * * thereafter * * * renewed annually, providing both parties are in agreement as to the terms and conditions.

* * * * * * *

WARRANTIES AND SERVICES

1. * * * stock originally purchased are guaranteed for a full FOUR (4) years against fatalities * * * replacement shall be made for 25% of the original purchase price.

* * * * * * *

4. Regular inspections and professional advice * * *.

5. Availability of pick up and refrigerated transportation of 8 month old animals designated for priming, pelting, and dressing.

* * * * * * *

Chinchilla care is so simple and enjoyable many herds are taken care of by mothers and children while the fathers go about their regular work.

* * * * * * *

Starting With 4 Females, 1 Male. Assuming Your Females Produce An Average Of 2 Offspring Yearly * * *.

5th YEAR: Your 64 Females Would Produce—
128 Offspring Yearly * * *

That's A Gross Income Of $6,400 A Year

(Based on Preferred Producer Contract at $100 per pair.)

* * * * * * *

Starting With 8 Females and 2 Males * * *

5th YEAR: Your 128 Females Would Produce—
256 Offspring Yearly * * *

That's A Gross Income of $12,800 A Year

* * * * * * *

Dramatic growth in only six years has put the Chinchilla market in the multi-million dollar bracket * * * A stronger market is expected in the years ahead.

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, made by respondents in their advertising and promotional material, separately and in connection with the oral statements and representations made by their salesmen and representatives, the respondents have represented and are representing, directly or by implication, that:

1. It is commercially feasible to breed and raise chinchillas from breeding stock purchased from respondents in homes, basements, or spare bedrooms, and large profits can be made in this manner.

2. The breeding of chinchillas from breeding stock purchased from respondents, as a commercially profitable enterprise, requires no previous experience in the breeding, raising and caring for such animals.

3. Chinchillas are hardy animals and are not susceptible to disease.

4. Purchasers of respondents' breeding stock will receive very good, top quality, or highest prime chinchillas.

5. Female chinchillas purchased from respondents and their female offspring will produce two to three litters per year.

6. Female chinchillas purchased from respondents and their female offspring will produce at least two offspring per litter if not more.

7. Pelts from the offspring of female chinchillas purchased from respondents will sell at a number of various prices with the representations ranging from as low as $20 a piece to as high as $100 a piece.

8. Purchasers of respondents' breeding stock receive periodic service calls from respondents' service personnel.

9. Purchasers of respondents' breeding stock are given guidance in the care and breeding of chinchillas through periodic rancher meetings, newsletters, and training bulletins.

10. The respondents will promptly fulfill all of their obligations and requirements set forth in or represented directly or by implication to be contained in the guarantee applicable to each and every chinchilla.

11. Respondents will purchase, through the "Preferred Producers Contract," all of the clean animals in smooth condition and in normal good health raised by purchasers of respondents' chinchilla breeding stock at the price agreed to in the contract.

12. A purchaser starting with four females and one male of respondents' breeding stock will earn at least $6,400 per year after 4 years of operation.

13. The demand for chinchillas has experienced dramatic growth, and an even stronger market is expected in the years ahead.

PAR. 6. In truth and in fact:

1. It is not commercially feasible to breed or raise chinchillas from breeding stock purchased from respondents in homes, basements, or

spare bedrooms, and large profits cannot be made in this manner. Such quarters or buildings, unless they have adequate space and the requisite temperature, humidity, ventilation and other necessary environmental conditions, are not adaptable to or suitable for the breeding or raising of chinchillas on a commercial basis.

2. The breeding of chinchillas from breeding stock purchased from respondents, as a commercially profitable enterprise, requires specialized knowledge in the breeding, raising and care of said animals, much of which must be acquired through actual experience.

3. Chinchillas are not hardy animals and are susceptible to pneumonia and other diseases.

4. Chinchilla breeding stock sold by respondent is not very good, top quality, or the highest prime.

5. Each female chinchilla purchased from respondents and each female offspring will not produce two to three litters per year, but generally less than that number.

6. Each female chinchilla purchased from respondents and each female offspring will not produce at least two offspring per litter, but generally less than that number.

7. Pelts sold on the open market sell at an average price which is below $20.

8. Purchasers of respondents' breeding stock do not receive the represented number of service calls from respondents' service personnel but generally less than that number.

9. Purchasers of respondents' breeding stock are given little if any guidance in the care and breeding of chinchillas.

10. Respondents do not in fact promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in the guarantee applicable to each and every chinchilla.

11. Respondents seldom, if ever, through the "Preferred Producers Contract," or any other plan, purchase all of the clean animals in smooth condition and in normal good health raised by purchasers of respondents' chinchilla breeding stock at the agreed to price.

12. A purchaser of four females and one male of respondents' chinchilla breeding stock cannot reasonably expect to earn profits of at least $6,400 per year after four years of operation, but substantially less than that amount.

13. Purchasers of respondents' breeding stock cannot expect a great demand for the offspring of and pelts from respondents' chinchillas.

Therefore, the statements and representations as set forth in Para-

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

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

1. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading, and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading, or deceptive acts and practices.

2. In a substantial number of instances, through the use of the false, misleading, and deceptive statements and representations set out in Paragraphs Four and Five above, respondents have been able to induce customers into signing a contract with the respondents on the respondents' initial contact with the customer. In such a situation, it is highly improbable that the customer was able to seek out independent advice or make an independent decision on whether or not he should enter into the contract and therefore, had to rely heavily on the advice and information given to him by the respondents.

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

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of chinchilla breeding stock.

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

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute,

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

Decision and Order

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

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

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

1. Respondent Dawn Mist Chinchilla, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa with its office and principal place of business located at 2125 Indianola Road, Des Moines, Iowa.

Respondent Barbara McLuen is an individual and officer of said corporation. She formulates, directs, and controls the acts and practices of said corporation, and her address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Dawn Mist Chinchilla, Inc., a corporation, and its officers, and Barbara McLuen, individually and as an

officer of said corporation, trading under said corporate name or under any trade name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products or service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. It is commercially feasible to conduct a profitable chinchilla business in homes, basements, or in spare bedrooms or that large profits can be made in this manner.

2. Breeding chinchillas as a commercially profitable enterprise requires no previous experience in their breeding, raising, and care.

3. Chinchillas are hardy animals and are not susceptible to disease.

4. Purchasers of respondents' chinchilla breeding stock will receive very good, top quality, or highest prime chinchillas or any other grade or quality of chinchillas unless purchasers do actually receive chinchillas of the represented grade and quality.

5. Each female chinchilla purchased from respondents, and each female offspring can be expected to produce two to three litters per year; or, that the number of litters produced by each of such female chinchillas is any number in excess of the number generally produced by respondents' breeding stock.

6. Each female chinchilla purchased from respondents, and each female offspring, will produce two or more offspring per litter; or, that the number of offspring produced by each of such female chinchillas is any number in excess of the number generally produced by respondents' breeding stock.

7. Purchasers of respondents' breeding stock can expect to receive $20 up to $100 for each chinchilla pelt produced; or, that purchasers of respondents' breeding stock will receive for chinchilla pelts any price in excess of that usually received for pelts of offspring produced by respondents' breeding stock.

8. A serviceman will call periodically to give assistance, bring and pick up animals, and provide supplies; or, misrepresent in any manner the services available to purchasers of respondents' breeding stock.

9. Purchasers of respondents' breeding stock are given guidance in the care and breeding of chinchillas through periodic rancher meetings, newsletters, and training bulletins, or misrepresent in

any manner the guidance available to purchasers of respondents' breeding stock.

10. Breeding stock purchased from respondents is guaranteed or warranted without clearly and conspicuously disclosing the nature and extent of the guarantee, the manner in which the guarantor will perform thereunder and the identity of the guarantor.

11. Responents' chinchillas are guaranteed unless respondents do in fact promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in any guarantee or warranty applicable to each and every chinchilla.

12. Respondents will purchase, through the "Preferred Producers Contract," all of the clean animals in smooth condition and in normal good health raised by purchasers of respondents' chinchilla breeding stock at the price agreed to in the contract or for any other price, unless respondents do in fact purchase all the offspring offered by said purchasers at the prices and on the terms and conditions represented, and unless respondents fully explain those terms and conditions orally and in writing in laymen's terms before a purchase is made.

13. A purchaser starting with four females and one male of respondents' breeding stock will earn at least $6,400 per year after four years of operation; or, that the earnings from the sale of respondents' breeding stock is any amount in excess of the amount generally earned by purchasers of respondents' breeding stock.

14. Chinchillas or chinchilla pelts are in great demand or that purchasers of respondents' breeding stock can expect to sell the offspring or the pelts of the offspring of respondents' chinchillas because said chinchillas or pelts will be in great demand.

It is further ordered, That respondents do forthwith cease and desist from misrepresenting in any manner the chinchilla ranching operation which respondents have to offer to prospective purchasers including statements as to assistance, training, service, advice, earnings, profits, demand, and the quality of the animals.

It is further ordered, That respondents:

A. Cease and desist from assigning, selling, or otherwise transferring respondents' notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against any assignee or subsequent holder of such note, contract or other such documents evidencing the indebtedness.

B. Include the following statement clearly and conspicuously on the face of any note, contract, or other evidence of indebtedness executed by or on behalf of respondents' customers:

"*Notice*"

"Any holder of this instrument takes it subject to all rights and defenses which would be available to the purchaser in any action arising out of the contract or transaction which gave rise to the debt evidenced hereby, notwithstanding any contractual provisions or other agreement waiving said rights or defenses."

C. Shall cease and desist from contracting for any sale which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of consummation of the transaction.

D. Disclose, orally prior to the time of sale, and in writing on any conditional sales contract, promissory note or other instrument executed by the buyer with such conspicuousness and clarity as likely to be observed and read by such buyer that the buyer may rescind or cancel the sale by directing or mailing a notice of cancellation to respondents' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale.

E. Provide a separate and clearly understandable form which the buyer may use as a notice of cancellation.

F. Refund immediately all monies to customers who have requested contract cancellation in writing within three (3) days from the execution thereof.

G. Shall forthwith distribute a copy of this order to each of its operating divisions and to all present and future salesmen and other persons engaged in the sale of the respondents' products or services and to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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

I. Shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

CARTE BLANCHE CORPORATION

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

Docket C-2006. Complaint, Aug. 13, 1971—Decision, Aug. 13, 1971

Consent order requiring a major credit card service with headquarters in Los Angeles, Calif., to cease misrepresenting that any excess payment by a cardholder will be applied to the customer's account so as to decrease the amount of finance charges imposed, misrepresenting that no affirmative action by cardholder is required to so credit excess payments, and failing to clearly incorporate a statement on its monthly bills that excess payments will be credited against customer's deferred airline contract.

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 Carte Blanche Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Carte Blanche 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 3460 Wilshire Boulevard, Los Angeles, California.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, and sale of memberships in a credit card service known as "Carte Blanche" to individuals and business enterprises. Each member cardholder pays an annual membership fee which entitles him to charge purchases and services sold or rendered by many hotels, motels, gasoline service stations, airlines, gift shops, retail stores and similar establishments throughout the United States.

PAR. 3. In the course and conduct of its credit card service, respondent now sells, and for some time last past has sold, from its place of business in the State of California, its credit card service to purchasers thereof located in various other States of the United States, and maintains and at all times mentioned herein has maintained, a substantial course of trade in said credit card service in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent contracts with sellers of goods and services to accept its "Carte Blanche" credit card in lieu of cash. Respondent pays the seller for purchases made by its member cardholders and bills the individual cardholders monthly for those purchases.

By the terms of respondent's agreement with its cardholders, all amounts are due and payable at the time the billing statement is received, except certain amounts reflecting the purchase of airline tickets, which may be paid in monthly installments if the cardholder so elects. A finance charge is imposed on the unpaid balance of any amount reflecting an airline ticket purchase which is paid in monthly installments.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing its cardholders to make payments in excess of the minimum installment due, respondent makes the following statements on its monthly billing statement sent to member cardholders:

AIRLINE CHARGES

EXPLANATION OF EXTENDED PAY PLAN

If you purchased air transportation and requested billing under the airline extended pay plan, monthly installments are billed as follows:

AMOUNT OF INDIVIDUAL TICKET	MONTHLY INSTALLMENT
$600 or less	1/12th (min. $10 per mo.)
$600.01 to $900	1/18th
$900.01 or more	1/24th

Larger payments may be made, or the entire remaining balance may be paid at any time without penalty.

A monthly FINANCE CHARGE imposed at the periodic rate of 1½ percent of the unpaid balance at billing date is added in accordance with tariff filed by airline. This is an ANNUAL PERCENTAGE RATE OF 18 PERCENT.

Default in any payment due may, at our option, render the entire balance due.

PAR. 6. Through the use of the statements set forth in Paragraph Five, respondent has represented, directly or by implication:

1. That any monthly amount paid to respondent which exceeds the sum of amounts past due, total current charges, and the minimum installments due on deferred airline contracts, would be credited to the unpaid balance on deferred airline contracts.

2. That the excess payment, as aforesaid, would be applied so as to decrease the amount of finance charges imposed.

3. That no affirmative action would be required on the part of the customer to insure that such excess payments would be applied so as to reduce finance charges imposed.

PAR. 7. In truth and in fact:

1. Amounts paid which exceed the sum of past due amounts, total current charges, and the minimum installments due on deferred airline contracts, are credited against total current charges, excluding the balance due on deferred airline contracts.

2. Excess payments are not applied so as to reduce finance charges; rather, a credit balance is created which in no way reduces finance charges that are imposed on the balance due on deferred airline contracts.

3. In order for excess payments to be credited to the unpaid balance in any deferred airline contract account, the customer must inform respondent in writing or otherwise of his affirmative desire to have such payments so credited, before they will be applied so as to reduce the amount of finance charges imposed.

As a result of the practice set forth above, a customer who submits a monthly payment in excess of the sum of amounts past due, total current charges, and the minimum installments due on deferred airline contracts incurs finance charges which he would not incur if payments were in fact allocated as represented in Paragraphs Five and Six.

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

PAR. 8. In the conduct of its business, and at all times mentioned herein, respondent has been and is, engaged in substantial competition, in commerce, with corporations and firms engaged in the sale of memberships in and operation of credit card services of the same general kind and nature as those of respondent.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements were and are true and into the use of respondent's credit card service by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Carte Blanche Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3460 Wilshire Boulevard, Los Angeles, California.

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

ORDER

It is ordered, That respondent Carte Blanche Corporation, a corporation, and respondent's officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, and sale of its credit card service memberships, and in connection with the advertising and disclosure of the credit terms offered by it by representations made on monthly billing statements or elsewhere, in commerce, as "commerce"

is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any monthly amount paid to respondent which exceeds the sum of amounts past due, total current charges, and the minimum payment or payments due on any deferred airline contract account or accounts, will be credited to the unpaid balance outstanding on deferred airline contract accounts, unless the conditions under which those amounts will be so credited are clearly disclosed.

2. Representing, directly or by implication, that any excess payment made by the customer will be applied to the customer's account so as to decrease the amount of finance charges imposed, unless the conditions under which said excess payments will be so applied are clearly disclosed.

3. Representing, directly or by implication, that no affirmative action is required by the customer so that excess payments will be applied to the balance on which a finance charge is imposed, unless no such action is in fact required.

4. Failing to clearly and conspicuously incorporate the following statement in its monthly periodic statement provided to customers who utilize the deferred airline payment plan:

> Any payment made in excess of the "amount due" shown on this statement will be applied against the unpaid "new balance" of your deferred airline contract, unless specific request is made for alternate treatment of such a payment.

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondent responsible for formulating the corporate policy of respondent in the offering for sale, or sale of respondent's products or services, in the billing of respondent's member cardholders and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or the transfer of that portion of respondent's business affected hereby to any subsidiary.

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

IN THE MATTER OF

COQUETTE FROCKS, INC., ET AL.

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

Docket C-2007. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971

Consent order requiring a New York City manufacturer of bridesmaids dresses and party dresses to cease misbranding its textile fiber products and furnishing false guaranties.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and Textile Fiber Products Identification Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Coquette Frocks, Inc., a corporation, and Edward J. Impastato and Bernard F. Fontana individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification 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 Coquette Frocks, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Edward J. Impastato and Bernard F. Fontana are officers of the corporate respondent. Their address is 1385 Broadway, New York, New York.

Respondents are engaged in the manufacture of bridesmaids dresses and party dresses.

PAR. 2. Respondents are now and for some time last past have been, engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products but not limited thereto were textile fiber products, namely dresses with labels which failed:

1. To disclose the true generic names of the fibers present.
2. To disclose the percentage of said fibers.
3. To show the name or other identification issued and registered by the Commission, of the manufacturer of the product, or one or more persons subject to Section 3 with respect to such product.

PAR. 4. Certain of said textile fiber products were further misbranded by respondents in that sample swatches used to promote or effect sales of respondents dresses were not labeled to show the information required under the Textile Fiber Products Identification Act and the rules and regulations thereunder in violation of Rule 21 of said rules and regulations.

PAR. 5. Respondents have furnished false guaranties that certain of their textile fiber products were not misbranded or falsely invoiced in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 6. The acts and practices of the respondents as set forth above were and are, in violation of the Textile Fiber Products Identification 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.

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 Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification 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 rule; 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Coquette Frocks, 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 1385 Broadway, New York, New York.

Respondent Edward J. Impastato is an officer of said corporation and his address is the same as that of said corporation.

Respondent Bernard F. Fontana is an officer of said corporation and his address is the same as that of said corporation.

Respondents are engaged in the manufacture of bridesmaids and party dresses.

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 Coquette Frocks, Inc., a corporation, and its officers, and Edward J. Impastato and Bernard F. Fontana, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported,

after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to affix labels to such textile fiber products showing in a clear, legible and conspicous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

2. Failing to affix labels showing the respective fiber content and other required information to samples, swatches or specimens of textile fiber products subject to the aforementioned Act which are used to promote or effect sales of such textile fiber products.

B. Furnishing false guaranties that textile fiber products are not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That respondents 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 this order.

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

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

IN THE MATTER OF

MRS. HYO KYUNG PARK TRADING AS S. J. PARK, ETC.

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

Docket C-2008. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971

Consent order requiring a Jackson Heights, N.Y., individual selling and distributing fabrics, including a certain lightweight white cotton organdy fabric designated as "Style Sanosa," imported from Switzerland, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mrs. Hyo Kyung Park, individually and trading as S. J. Park and Seung J. Park, hereinafter referred to as respondent, has violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Mrs. Hyo Kyung Park is an individual trading as S. J. Park and Seung J. Park with her office and principal place of business located at 35–20 Leverich Street, Jackson Heights, New York.

The respondent is engaged in the business of selling and distributing products, including a certain lightweight white cotton organdy fabric, designated as "Style Sanosa."

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, fabric, as the terms "commerce," and "fabric" are defined in the Flammable Fabrics Act, as amended, which fabric failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such fabric mentioned hereinabove was a lightweight white cotton organdy fabric, designated as "Style Sanosa," imported from Switzerland.

PAR. 3. The aforesaid acts and practices of respondent were and are in violation of the Flammable Fabrics Act, as amended, 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, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a

copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the 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 agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order;

1. Respondent Mrs. Hyo Kyung Park is an individual trading under the name of S. J. Park and Seung J. Park, with her office and principal place of business located at 35-20 Leverich Street, Jackson Heights, New York.

Respondent is engaged in the business of selling and distributing textile fiber products, including a certain lightweight cotton organdy fabric, designated as "Style Sanosa," imported from Switzerland.

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

ORDER

It is ordered, That the respondent Mrs. Hyo Kyung Park, individually and trading as S. J. Park and Seung J. Park, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or

shipment in commerce, any product, fabric or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" or "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material, fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondent notify all of her customers who have purchased or to whom has been delivered the fabric which gave rise to this complaint of the flammable nature of said fabric and effect recall of such fabric from such customers.

It is further ordered, That the respondent herein either process the fabric which gave rise to the complaint so as to bring it into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric.

It is further ordered, That the respondent herein shall, within ten (10) days after service upon her of this order, file with the Commission a special report in writing setting forth the respondent's intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the fabric which gave rise to the complaint, (2) the amount of such fabric in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said fabric and effect recall of said fabric from customers, and of the results thereof, (4) any disposition of such fabric since August 1970, and (5) any action taken or proposed to be taken to bring said fabric into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric, and the results of such action. Such report shall further inform the Commission whether or not respondent has in inventory any product, fabric or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondent shall submit samples of not less than one square yard in size of any such product, fabric or related material with this report.

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

IN THE MATTER OF

ALBERT MAGASIN TRADING AS PARIS SALES COMPANY

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

Docket C-2009. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971

Consent order requiring a Los Angeles, Calif., individual importing and distributing ladies' and misses' wearing apparel, including ladies' scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Albert Magasin, an individual trading and doing business as Paris Sales Company, hereinafter referred to as respondent, has violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Albert Magasin is an individual, trading and doing business under the name of Paris Sales Company, with his principal office and place of business located at 110 East 9th Street, Los Angeles, California.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the importation and distribution of ladies' and misses' wearing apparel, including, but not limited to, ladies' scarves.

PAR. 3. Respondent is now and for some time last past has been engaged in the sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, products, as the terms "commerce," and "product" are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were ladies' and misses' scarves.

PAR. 4. The aforesaid acts and practices of respondent were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

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

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

1. Respondent Albert Magasin is an individual, trading and doing business as Paris Sales Company. He is engaged in the importation and sale of women's wearing apparel, including ladies' scarves, with his office and principal place of business located at 110 East 9th Street, Los Angeles, California.

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

ORDER

It is ordered, That the respondent, Albert Magasin, individually, and trading and doing business as Paris Sales Company, or any other name or names, and the respondent's agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondent notify all of his customers who have purchased or to whom have been delivered the products which gave rise to the complaint, of the flammable nature of said products, and effect the recall of said products from such customers.

It is further ordered, That the respondent herein shall either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondent herein shall, within ten (10) days after service upon him of this order, file with the Commission a special report in writing setting forth the respondent's intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since August 27, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondent has in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight

of two ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondent shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

IN THE MATTER OF

WEISNER TEXTILE COMPANY, ET AL.

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

Docket C-2010. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971

Consent order requiring an Oakland, Calif., wholesaler of women's accessories, including ladies' scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Weisner Textile Company, a partnership, and James A. Springer and Frances B. Springer, individually and as copartners of said partnership, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Weisner Textile Company is a partnership existing and doing business in the State of California. Respondents James A. Springer and Frances B. Springer are copartners in said partnership. Respondents are wholesalers of women's accessories with their office and principal place of business located at 1807 East Fourteenth Street, Oakland, California.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale or offering for sale, in commerce, and have intro-

duced, delivered for introduction, transported or caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which failed to conform to an applicable standard or regulation continued in effect, issued, or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were ladies' scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; 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 complaints should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Weisner Textile Company is a partnership existing and doing business in the State of California.

Respondents James A. Springer and Frances B. Springer are co-partners of the partnership respondent.

Respondents are engaged in the business of wholesaling women's accessories, including, but not limited to, women's scarves. Their office and principal place of business is located at 1807 East Fourteenth Street, Oakland, California.

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

ORDER

It is ordered, That respondents Weisner Textile Company, a partnership and James A. Springer and Frances B. Springer individually and trading as Weisner Textile Company, or under any other name, or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabrics, or related material; or manufacturing for sale, selling or offering for sale any product made of fabric or related material which has been shipped and received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of said products, and effect recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the

identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products, since October 16, 1969, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

IN THE MATTER OF

FIBERTEX MILLS, INC., ET AL.

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

Docket C-2011. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971

Consent order requiring a Dalton, Ga., wholesaler of textile fiber products, namely carpet yarns, to cease misbranding its textile fiber products, failing to maintain adequate records, and misusing the word "mills" as part of its trade name.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Fibertex Mills, Inc., a corporation, and Irving N. Funk, individually and as an officer of said corporation,

hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification 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 Fibertex Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. The respondent corporation maintains its office and principal place of business at 1108 North Hamilton Street, Dalton, Georgia.

Respondent Irving N. Funk is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. His address is the same as that of the corporate respondent.

Respondents are engaged in the wholesaling of textile fiber products, namely carpet yarns.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products without labels.

PAR. 4. Respondents have failed to maintain and preserve proper records showing the fiber content of their textile fiber products, in that said respondents substituted stamps, tags, labels, or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act and failed to maintain and preserve such records as would show the information set forth on the stamps, tags, labels or other identification removed by them, together with the names of the person or persons from whom such textile fiber products were received, in

accordance with Rule 39(b) of the rules and regulations and Section 6(b) of the Textile Fiber Products Identification Act.

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification 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.

PAR. 6. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, including carpet yarn, when sold, to be shipped from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondents.

PAR. 8. In the course and conduct of their business, the aforesaid respondents, on their invoices, refer to the corporate respondent as "Fibertex Mills, Inc.," thus stating or implying that said corporate respondent is a manufacturer of the carpet yarn which it sells. In truth and in fact, the corporate respondent performs no manufacturing functions whatever, but operates exclusively as a wholesaler of said products. Thus the aforesaid representation is false, misleading and deceptive.

PAR. 9. There is a preference on the part of many members of the public to buy products directly from mills or factories in the belief that by doing so certain advantages accrue to them, including lower prices.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers into the erroneous and mistaken belief that such statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Eight and Ten, were and are, all to the prejudice and injury of the public and of respondents' competitors and consti-

tuted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Decision and Order

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Fibertex Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Its office and principal place of business is located at 1108 North Hamilton Street, Dalton, Georgia.

Respondent Irving N. Funk is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. The address of Irving N. Funk is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Fibertex Mills, Inc., a corporation and its officers and Irving N. Funk individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding such textile fiber products by failing to affix a stamp, tag, label or other means of identification to each such textile fiber product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve, as required by Section 6(b) of the Textile Fiber Products Identification Act, as well as Rule 39(b) of the regulations promulgated thereunder, such records of the fiber content of textile fiber products as will show the information set forth on the stamps, tags, labels, or other identification removed by respondents, together with the name or names of the person or persons from whom such textile fiber products were received, when substituting stamps, tags, labels or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Fibertex Mills, Inc., a corporation, and its officers and Irving N. Funk, individually and as an officer of said corporation, and respondents' representatives, agents and empoyees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of yarns or other products in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

(1) Directly or indirectly using the word "mills" or any other word or term of similar import or meaning in or as a part of

respondents' corporate or trade name or representing in any other manner that respondents perform functions of a mill or otherwise manufacture or process the yarns or other products sold by them unless or until respondents own, operate, or directly or absolutely control the mill, factory or manufacturing plant wherein said yarn or other products are manufactured.

(2) Misrepresenting in any manner that respondents have mills, factories or manufacturing plants where their products are manufactured.

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

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

In the Matter of

IRVING BERGER trading as THE MAC GREGOR TIE COMPANY

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

Docket C-2012. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971

Consent order requiring a New York City individual who manufactures, sells and distributes textile fiber products, including neckties, to cease misbranding his textile fiber products.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Irving Berger, individually and trad-

ing as The MacGregor Tie Company, hereinafter referred to as respondent, has violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification 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 Irving Berger is an individual trading as The MacGregor Tie Company, with his office and principal place of business located at 29 West 30th Street, New York, New York.

Respondent is engaged in the business of manufacturing, selling and distributing textile fiber products, including but not limited to, neckties.

PAR. 2. Respondent is now and for some time last past has been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products; and has sold, offered for sale, delivered, transported and caused to be transported, textile fiber products, which have been offered for sale in commerce; and has sold, offered for sale, delivered, transported and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely neckties of which contained substantially different amounts and types of fibers than as represented.

PAR. 4. Certain of said textile fiber products were misbranded by respondent in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed:

1. To disclose the true generic names of the fibers present; and

2. To disclose the percentages of such fibers by weight.

PAR. 5. The acts and practices of respondent as set forth above were, and are, in violation of the Textile Fiber Products Identification 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification 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 agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Irving Berger is an individual trading under the name of The MacGregor Tie Company with his office and principal place of business located at 29 West 30th Street, New York, New York. He is engaged in the business of manufacturing, selling and distributing textile products, including, but not limited to, neckties.

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

ORDER

It is ordered, That the respondent Irving Berger, individually and trading as The MacGregor Tie Company or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce, or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying any textile fiber product as to the name or amount of constituent fibers contained therein.

2. Failing to affix labels to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

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

IN THE MATTER OF

ANDREW JACKSON TRADING COMPANY, INC., ET AL.

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

Docket C-2013. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971

Consent order requiring a Charlotte, N.C., importer and seller of novelty items such as artificial flowers and ornaments, and wearing apparel in the form

of ladies' scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Andrew Jackson Trading Company, Inc., a corporation, and Andrew Jackson Sales, Inc., a corporation, and Andrew J. Nicholson, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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. Respondents Andrew Jackson Trading Company, Inc., and Andrew Jackson Sales, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of North Carolina. Their address is 115 Remount Road, Charlotte, North Carolina.

Respondent Andrew J. Nicholson is an officer of the corporate respondents. He formulates, directs and controls the acts, practices and policies of said corporate respondents including those hereinafter set forth.

Respondents are engaged in the importation and sale of novelty items such as artificial flowers and ornaments, and wearing apparel in the form of ladies' scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and the importation into the United States and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were ladies' scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and decep-

tive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Decision and Order

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Andrew Jackson Trading Company, Inc., and Andrew Jackson Sales, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of North Carolina with their office and principal place of business located at 115 Remount Road, Charlotte, North Carolina.

Respondent Andrew J. Nicholson is an officer of said corporations. He formulates, directs, and controls the policies, acts and practices of the corporate respondents and his address is the same as that of said corporate respondents.

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 Andrew Jackson Trading Company, Inc., a corporation, and its officers, and Andrew Jackson Sales, Inc., a corporation, and its officers, and Andrew J. Nicholson, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to the complaint, of the flammable nature of said products, and effect the recall of said products from such customers.

It is further ordered, That respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the product which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since September 3, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material

having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

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

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

IN THE MATTER OF

BOND STORES, INCORPORATED

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

Docket C-2014. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971

Consent order requiring a New York City seller and distributor of ladies', men's and children's wearing apparel and accessories, including women's fake fur coats, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bond Stores, Incorporated, a corporation hereinafter referred to as the respondent, has violated the provisions of said Acts, and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Bond Stores, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland.

The proposed respondent is engaged in the business of the sale and distribution of products, namely ladies', men's and children's wearing apparel and accessories, including but not limited to women's fake fur coats. Its principal and executive offices are located at Fifth Avenue at 35th Street, New York, New York.

PAR. 2. The respondent is now and for some time last past has been engaged in the sale and offering for sale, in commerce and the importation into the United States and has sold or delivered after sale or shipment in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, products, as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were women's fake fur coats.

PAR. 3. The aforesaid acts and practices of respondent were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Division of Textiles and Furs, Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

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

and waivers and other provisions as required by the Commission's rules; and

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

1. Respondent Bond Stores, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland.

Respondent is engaged in the business of the sale and distribution of products, namely ladies', men's and children's wearing apparel and accessories, including but not limited to women's fake fur coats. Its principal and executive offices are located at Fifth Avenue at 35th Street, New York, New York.

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

ORDER

It is ordered, That the respondent Bond Stores, Incorporated, a corporation, and its officers and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" or "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to any applicable standard or regulations continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That the respondent notify all of its stores to whom have been delivered the products which gave rise to the complaint, of the flammable nature of said products, and effect recall of said products from such stores and, if identified, their customers.

It is further ordered, That the respondent herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondent herein shall, within ten (10) days after service upon it of this order, file with the Commission a special report in writing setting forth the respondent's intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products and of results thereof, (4) any disposition of said products since January 19, 1971, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Upon request of the Commission the respondent shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

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

470-883—73——17

IN THE MATTER OF

ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

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

Docket C-2015. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971

Consent order requiring a baking company with headquarters in Rye, N.Y., and its advertising agency with headquarters in New York City to cease disseminating any advertisement of its bread which implies that its consumption will reduce body weight, misrepresenting that such bread is lower in calories if the slices are thinner than ordinary, and misrepresenting the role of such product in controlling body weight; respondents are also required in advertising its "Profile" bread to devote 25 percent of the expenditures in each market area for a period of one year to stating affirmatively that "Profile" bread is not effective in weight reduction.

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 ITT Continental Baking Company, Inc., a corporation, and Ted Bates & Company, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent ITT Continental Baking Company, 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 Halstead Avenue, Rye, New York.

PAR. 2. Respondent Ted Bates & 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 principal office and place of business located at 666 Fifth Avenue, New York, New York.

PAR. 3. Respondent ITT Continental Baking Company, Inc., is now, and for some time last past has been, engaged in the manufacture, sale and distribution of a certain bakery product designated "Profile" bread which comes within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Ted Bates & Company, Inc., is now, and for some time last past has been, an advertising agency of ITT Con-

tinental Baking Company, Inc., and now and for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of the bakery product of ITT Continental Baking Company, Inc., including "Profile" bread, which comes within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its aforesaid business respondent ITT Continental Baking Company, Inc., causes the said bakery products, when sold, to be transported from its places of business located in various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent ITT Continental Baking Company, Inc., maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of their said businesses, respondents ITT Continental Baking Company, Inc., and Ted Bates & Company, Inc., have disseminated, and caused the dissemination of, certain advertisements concerning the said bakery products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in magazines and newspapers, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said products, and have disseminated, and caused the dissemination of, advertisements concerning said bakery products by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said bakery products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical of the statements and representations regarding said Profile Bread in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:

(a) Three television commercials depict various scenes of young, slender women. In one such commercial the woman is pictured walking on a beach, disrobing to her bathing suit and strolling along to display a profile of a trim and youthful figure. Superimposed on her

figure are two slices of Profile and then a picture of her eating a slice of Profile. In the final scene the young woman is shown with a man leaning over her teaching her to play a guitar. Another of these commercials intersperses shots of the physique of a slender young woman shown in her makeup mirror and a full length mirror, with pictures of slices of Profile bread, a loaf of Profile bread and scenes of the young woman with a young man and picking out a bicycle in a store with a little boy. A third such commercial intersperses scenes of a slender young woman in a ballet class, walking through the city, and in formal attire on an apartment balcony with shots of slices of Profile bread and loaves of Profile bread. During all these commercials the audio portion is as follows:

How do some women stay so slender and young looking? Many follow the Profile Bread Plan. Thirty minutes before lunch and dinner eat two slices of Profile bread toasted or plain. Like any good protein–carbohydrate food, Profile helps curb your appetite * * * helps prolong your slender years. Profile—tender, oven-fresh slices with golden sesame seeds. Remember you don't have to be on a diet to love Profile bread.

(b) Two television commercials open with a profile of a young, slender woman and the overprinted language "What's 'The Profile'?" Next the young woman is shown surrounded by young men followed by the overprinted language "How can you keep 'The Profile'?" Then a loaf of Profile bread is pictured next to the Profile bread menu planner leaflet, followed by a picture of a young woman eating a slice of Profile with her meal. The final frames show the young woman in a romantic scene with a young man. The commercial ends with a picture of two loaves of Profile bread. In one such commercial the audio portion is as follows:

What's "The Profile"? "The Profile" is a look that really gets looked at. When you have "The Profile," you've got a lot going for you. How can you keep "The Profile"? By following the Profile Bread Menu Planner available at your grocers. The Profile Plan can help you keep slender. And delicious Profile has no artificial sweeteners. What have you got to lose * * * except tomorrow's weight.

(c) A newspaper advertisement pictures a profile of a young, slender woman with the following copy:

What's "The Profile"? It's a look that really gets looked at. How can you keep "The Profile"? Follow the Profile Bread Menu Planner available at your grocer's. Help yourself keep "The Profile" with the Profile Bread Menu Planner and fresh delicious Profile Bread. What have you got to lose except tomorrow's weight.

PAR. 8. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication, that:

(a) Said Profile bread is lower in calories than ordinary bread.

(b) Changing the usual diet by consuming two slices of Profile bread before lunch and dinner will result in a loss of body weight without rigorous adherence to a reduced calorie diet.

(c) Said Profile bread is of special and significant value for use in weight control diets.

PAR. 9. In truth and in fact:

(a) Said Profile Bread is not lower in calories than ordinary bread.

(b) Changing the usual diet by consuming two slices of Profile Bread before lunch and dinner will not result in a loss of body weight without rigorous adherence to a reduced caloric diet. A guide to low calorie menu planning made available by respondent ITT Continental Baking Company, Inc., to consumers who request it from their grocers specifically states that the basic principle of reducing body weight by diet is to provide all needed nutrients—protein, vitamins and minerals—in a diet which does not furnish enough calories to meet energy needs. This guide points out that such reduced calorie modification of a normal diet requires close adherence to reduced daily calorie allowances, sometimes requiring will power to resist exceeding these allowances.

(c) Said Profile Bread is not of special and significant value for use in weight control diets. A guide to low calorie menu planning made available by respondent ITT Continental Baking Company, Inc., to consumers who request it from their grocers specifically points out that Profile Bread is included in the low calorie diets recommended simply because bread makes an important contribution to overall nutritional requirements, chiefly as a good source of the B-Vitamins. This guide also shows five other good sources of B-Vitamins with similar calorie values, one of which is enriched white bread, listed as containing 62.5 calories per slice. Although Profile Bread is purportedly thinly sliced for fewer calories, an average slice of Profile Bread provides 58 calories, only 4.5 calories less per slice than a slice of enriched white bread listed in this guide.

Therefore, the advertisements referred to in Paragraph Seven were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act and the statements and representations set forth in Paragraphs Seven and Eight were, and are, false, misleading and deceptive.

PAR. 10. In the course and conduct of its aforesaid business respondent ITT Continental Baking Company, Inc., had certain surveys of consumer attitudes conducted on its behalf. Typical and illustrative

of the findings from these consumer surveys reported to respondent ITT Continental Baking Company, Inc., but not all inclusive thereof, are the following: that one of the aforesaid television commercials for said Profile Bread had a strong impact on potential diet bread users by sharpening the focus of the product's "diet" bread image through teaching that said Profile Bread contains a lot fewer calories than regular white bread.

Therefore, respondent ITT Continental Baking Company, Inc., on the basis of these survey findings, and other facts and survey findings not specifically set out herein, knew or had reason to know or should have known that certain of the aforesaid advertisements constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. The continued dissemination of certain of the aforesaid advertisements which respondent ITT Continental Baking Company, Inc., knew or had reason to know or should have known were false advertisements constituted and now constitutes "unfair or deceptive acts or practices."

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive and unfair statements, representations, acts and practices and the dissemination of the aforesaid "false advertisements" has had and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said bakery products of respondent ITT Continental Baking Company, Inc., by reason of said erroneous and mistaken belief.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent ITT Continental Baking Company, Inc., has been and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of food products of the same general kind and nature as that sold by respondent.

PAR. 13. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Ted Bates and Company, Inc., has been, and now is, in substantial competition, in commerce, with other advertising agencies.

PAR. 14. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute, unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Decision and Order

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been served with notice of the Commission's determination to issue its complaint charging them with violation of Sections 5 and 12 of the Federal Trade Commission Act and with a copy of the complaint the Commission intended to issue, together with a form of order the Commission believed warranted in the circumstances; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the 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 they had reason to believe that the respondents have violated the said Act, and that complaint should issue stating their charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days and having received and considered comments, now in further conformity with the procedure prescribed in Section 2.34(b) of their rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent ITT Continental Baking Company, 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 Halstead Avenue, in the city of Rye, State of New York.

Respondent Ted Bates & Company 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 666 Fifth Avenue, New York, New York.

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

ORDER

I. *It is ordered*, That respondent ITT Continental Baking Company, Inc., a corporation, and respondent Ted Bates & Company, Inc., a corporation, either jointly or individually, and respondents' officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any bread product designated by the trade name "Profile," or any other bread product of respondent ITT Continental Baking Company, Inc., for which dietary claims for weight reduction are made, do forthwith cease and desist from directly or indirectly:

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

a. That the consumption of any such product is in any way necessary or essential for, or provides substantial benefits toward reducing or controlling body weight or that any person can rely on the consumption of any such product for reducing or controlling body weight;

b. That any such product is lower in calories than ordinary bread if such calorie reduction is in any way attributable to the thinner slices of such bread;

c. That the use of any such product for appetite appeasement will cause a loss of body weight without adherence to a reduced calorie diet;

d. Any characteristic, property, quality, use or result of use of any such product which respondents know or have reason to know or should know by means of any marketing surveys, marketing reports, commercial attitudinal tests, commercial recall tests, or any other tests or surveys creates a misleading impression upon consumers or potential consumers of any such product.

2. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which misrepresents in any manner the role of any such product in a diet for reducing or controlling body weight.

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

prohibited in Paragraph 1 above or the misrepresentations prohibited in Paragraph 2 above.

II. *It is further ordered*, That respondents ITT Continental Baking Company, Inc., a corporation, and respondent Ted Bates & Company, Inc., a corporation, either jointly or individually, shall forthwith cease and desist for a period of one year from the date this order becomes final from disseminating or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for any bread product designated by the trade name "Profile," unless not less than 25 percent of the expenditures (excluding production costs) for each media in each market be devoted to advertising in a manner approved by authorized representatives of the Federal Trade Commission that Profile is not effective for weight reduction, contrary to possible interpretations of prior advertising. In the case of radio and television advertising, such approved advertising is to be disseminated in the same time periods and during the same seasonal periods as other advertising of Profile bread; in the case of print advertising such advertising is to be disseminated in the same print media as other advertising of Profile Bread.

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 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 effect compliance obligations arising out of the order.

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

IN THE MATTER OF

AMERICAN BRANDS, INC.

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

Docket 8799. Complaint, Sept. 29, 1969—Decision, Aug. 20, 1971

Consent order requiring a major cigarette manufacturer with headquarters in New York City to cease advertising that its cigarettes are low in tar without

clearly disclosing material tar and nicotine content data; tar and nicotine content shall be determined by the testing methods employed by the Federal Trade Commission.

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 American Brands, Inc., a corporation, hereinafter referred to as the respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent American Brands, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 245 Park Avenue, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising, sale and distribution of cigarettes including brands designated "Pall Mall Gold" 100's, "Pall Mall Menthol" 100's, and "Lucky Filters."

PAR. 3. Respondent transports and causes said cigarettes, when sold, to be transported from its places of business in the State of Virginia, and elsewhere, to purchasers thereof located in various other States of the United States and the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cigarettes in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its cigarettes, the respondent has made, and is now making numerous statements and representations in advertising including, but not limited to, advertisements broadcast on radio and television and inserted in magazines, newspapers and other advertising media with respect to the tar content of said cigarettes. Typical and illustrative of said statements and representations, but not all inclusive thereof are the following:

TELEVISION: Good Rich Flavor—Lower in "Tar".

RADIO: MAN: Here's good news for *particular* people * * * people who demand *both*—good taste and mildness from their cigarette. The newest U.S. Government figures show Pall Mall (Sic) Gold lower in tar than ever before. Lower in tar than the best selling filter king. You make out better at both ends

*Reported as amended by hearing examiner's order of October 24, 1969. Respondent's name was incorrectly stated in the complaint as "The American Tobacco Company."

with Big Tip Pall Mall (Sic) Gold. Tastier, Milder, Pall Mall (Sic) Menthol, too.

NEWSPAPERS: And the average puff gives you 26 percent less "tar" than a non-filter cigarette.

By such statements and others of similar import comprising a comprehensive national advertising campaign and by failing to disclose facts which are material in the light of these statements and which consumers need to make an informed judgment, respondent has represented and created the impression that its cigarettes are low in tar when in truth and in fact its Pall Mall Gold 100's and Lucky Filters contain approximately 20 and 21 milligrams of tar, amounts which rank them 56th and 77th higher among the 122 brands tested than the brand containing the lowest tar level of 4 milligrams.

PAR. 5. By representing its cigarettes as being low in tar when in fact they contain five times the amount of tar found in the lowest yielding brand tested and rank above the midpoint on a tar-yield spectrum running from a low of 4 milligrams to a high of 36 milligrams, respondent has engaged in and practiced falsehood and deception.

PAR. 6. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of cigarettes of the same general kind and nature as those sold by respondent.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's product by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on September 29, 1969, charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and respondent having been served with a copy of that complaint; and

The Commission having duly determined upon motion duly certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provisions of Section 2.34(d) of its rules, that the consent order procedure shall not be available after issuance of complaint; and

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

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent American Brands, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 245 Park Avenue, in the city of New York, State of New York.

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

ORDER

I

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

Stating in advertising that any cigarette manufactured by it, or the smoke therefrom, is low or lower in "tar" by use of the words "low," "lower," or "reduced" or like qualifying terms, unless the statement is accompanied by a clear and conspicuous disclosure of:

1. The "tar" and nicotine content in milligrams in the smoke produced by the advertised cigarette; and

2. If the "tar" content of the advertised brand is compared to that of another brand or brands of cigarette, (a) the "tar" and nicotine content in milligrams of the smoke produced by that brand or those brands of cigarette, and (b) the "tar" and nicotine content in milligrams of the lowest yield domestic cigarette: *Provided*, That a comparison to a class of cigarettes, or to many or most of the cigarettes of a class, shall not be deemed a comparison to another brand or brands of cigarette.

II

For the purposes of Paragraph I of this order:

1. The term "tar" shall mean the total particulate matter in the mainstream smoke of cigarettes as determined by the testing method employed by the Federal Trade Commission in its testing of the smoke of domestic cigarettes; and

2. The term "nicotine" shall mean total alkaloids as nicotine in the mainstream smoke of cigarettes as determined by the testing method employed by the Federal Trade Commission in its testing of the smoke of domestic cigarettes.

III

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

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

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

IN THE MATTER OF

SOL WIZAN TRADING AS UNITED FURNITURE CO.

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

Docket C-2016. Complaint, Aug. 20, 1971—Decision, Aug. 20, 1971

Consent order requiring a Los Angeles, Calif., individual trading as a firm selling and distributing furniture and other merchandise at retail to cease violating the Truth in Lending Act by failing to properly use on its installment contracts the terms "cash price," "unpaid balance of cash price," "amount financed," "deferred payment price," "total of payments," failing to disclose the "annual percentage rate," and all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulations promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sol Wizan, individually, and trading as United Furniture Co., hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sol Wizan is an individual trading as United Furniture Co., at 4480 Whittier Boulevard, Los Angeles, California.

PAR. 2. Respondent is now and for many years has been engaged in the offering for sale, sale, and distribution of furniture and other merchandise to the public through retail stores.

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

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of his business and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused and is causing his customers to execute retail installment conditional sales contracts. Respondent has made no other written disclosures in order to comply with the Truth in Lending Act. By and through the use of these contracts, respondent:

1. Fails to clearly, conspicuously, and in meaningful sequence make the required disclosures, as prescribed by Section 226.6(a) of Regulation Z.

2. Fails to use the term "cash price" to describe the cash price of the goods sold by him, as prescribed by Section 226.8(c)(1) of Regulation Z.

3. Fails to use the term "unpaid balance of the cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.

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

5. Fails to use the term "amount financed" to describe the amount financed, as prescribed by Section 226.8(c)(7) of Regulation Z.

6. Fails to disclose the sum of the cash price and the finance charge, and to describe the sum as the "deferred payment price," as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

7. Fails to use the term "total of payments" to describe the sum of the payments, as prescribed by Section 226.8(b)(3) of Regulation Z.

8. Fails to disclose the annual percentage rate with an accuracy to the nearest quarter of one percent, as prescribed by Section 226.5(b)(1) of Regulation Z.

9. Fails to make the disclosure required by Section 226.8(b)(5), as prescribed by Sections 226.8(a) and 226.801 of Regulation Z.

PAR. 5. By and through the acts and practices set forth above, respondent failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondent has 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 Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, the Truth in Lending Act and the implementing regulation promulgated thereunder; and

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

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

1. Respondent Sol Wizan is an individual trading as United Furniture Co., at 4480 Whittier Boulevard, Los Angeles, California.

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

ORDER

It is ordered, That respondent Sol Wizan, individually, and trading as United Furniture Co., and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to clearly, conspicuously, and in meaningful sequence make the required disclosures, as prescribed by Section 226.6(a) of Regulation Z.

2. Failing to use the term "cash price" to describe the cash price of the goods sold by him, as prescribed by Section 226.8(c)(1) of Regulation Z.

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

4. Failing to use the term "unpaid balance" to describe the sum of the "unpaid balance of cash price" and all other charges which are included in the amount financed but which are not part of the finance charge, as prescribed by Section 226.8(c)(5) of Regulation Z.

5. Failing to use the term "amount financed" to describe the amount financed, as prescribed by Section 226.8(c)(7) of Regulation Z.

6. Failing to disclose the sum of the cash price and the finance charge, and to describe the sum as the "deferred payment price," as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

7. Failing to use the term "total of payments" to describe the sum of the payments, as prescribed in Section 226.8(b)(3) of Regulation Z.

8. Failing to disclose the annual percentage rate with an accuracy to the nearest quarter of one percent, as prescribed by Section 226.5(b)(1) of Regulation Z.

9. Failing to make all the required disclosures in one of the following three ways, in accordance with Section 226.8(a) or 226.801 of Regulation Z:

(a) Together on the contract evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or

(b) On one side of a separate statement which identifies the transaction; or

(c) On both sides of a single document containing on each side thereof the statement "Notice: See other side for important information," with the place for the customer's signature following the full content of the document.

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

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

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commis-

sion a report in writing, setting forth in detail the manner and form in which he has complied with this order.

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

IN THE MATTER OF

NATIONAL BISCUIT COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a) OF THE CLAYTON ACT

Docket 5013. Complaint, July 20, 1943—Decision, Aug. 23, 1971

Order and opinion denying exceptions filed by respondent to evidentiary ruling and conclusion of hearing examiner; adopting as the Commission's the hearing examiner's findings and conclusion; and directing that the order to cease and desist issued on Feb. 23, 1944* (38 F.T.C. 213), be treated as a consent order.

Mr. John M. Siemien and *Mr. Henry M. Banta* for the Federal Trade Commission.

Covington and Burling, Wash., D.C., by *Mr. J. Randolph Wilson* and *Mr. Peter B. Archie* for respondent.

CERTIFICATION OF RECORD AND REPORT CONTAINING FINDINGS AND RECOMMENDATION BY WILLIAM K. JACKSON, HEARING EXAMINER

MARCH 19, 1971

PRELIMINARY STATEMENT

By order dated July 1970, the Commission directed that hearings be held in this matter to determine whether or not the Order to Cease

*On May 19, 1972, the United States Court of Appeals for the Fifth Circuit (459 F. 2d 1023) rendered its decision accepting the Federal Trade Commission's determination that the cease-and-desist order issued against Nabisco in 1944 was a consent order. The court rejected Nabisco's contention that the matter should be remanded to the Commission for resolution of additional issues raised in the petition for review. The court agreed with the Commission that none of these additional issues were ripe for consideration either by the court or the Commission and that, accordingly, the Commission's 1954 order (50 F.T.C. 932) should be set aside and its 1967 compliance hearing (71 F.T.C. 1674) should be terminated.

The Federal Trade Commission on August 1, 1972, issued its order in compliance with the foregoing decision (81 F.T.C. 196).

and Desist issued on February 23, 1944 [38 F.T.C. 213], against respondent was a consent order.

Several prehearing conferences were held by the hearing examiner with the parties for the purpose of resolving certain procedural matters, exchanging lists of witnesses and documents which the parties intended to use in the hearing, ruling on certain requests for discovery and the issuance of subpoenas *duces tecum*.

On September 25, 1970, the hearing examiner granted respondent's motion requiring the production of certain documents from the Commission's files. Counsel for the Commission appealed from said order, but the appeal was denied by the Commission on December 18, 1970. Compliance with the hearing examiner's order for production was completed by Commission counsel, on February 5, 1971.

Thereafter, evidentiary hearings were held on February 19 and 22, 1971, in Washington, D.C., and the record has been closed. On March 9, 1971, the parties filed proposed findings of fact and conclusions.

SUMMARY OF THE PROCEEDINGS

The record of the proceedings consists of 161 pages of testimony (Tr. 1–161), four exhibits for the Commission (CX A through CX D), and four exhibits for the respondent (RX AA, RX BB, RX DD, and RX EE). Counsel for the Commission in presenting their case-in-chief called no witnesses and relied solely on the documentary evidence submitted. Respondent in presenting its defense called two witnesses: George A. Mitchell, former comptroller and executive vice president of National Biscuit Company, retired (Tr. 32–81), and John T. Haslett, former trial attorney with the Federal Trade Commission (Tr. 102–159), both of whom actively participated in the events leading up to and surrounding the issuance of the February 23, 1944, cease and desist order against respondent. Commission counsel called no rebuttal witnesses.

FINDINGS OF FACT

Nature of Proceeding: Complaint and Answer

1. The Commission issued its complaint in Docket 5013 on July 20, 1943, alleging that National Biscuit Company (hereinafter "Nabisco") had sold crackers and cookies at discriminatory prices in violation of Section 2(a) of the Clayton Act as amended. (RX BB, 1108–1114.) The only price discriminations challenged in the complaint were those arising from a particular quantity discount which was

graduated from 1 percent up to 4½ percent and was based on customers' monthly purchases of Nabisco cookies and crackers. (RX BB, 1110–1112.) It was called a "headquarters discount" (RX BB, 1110; Tr. 33), pursuant to which chain stores were permitted to aggregate or "lump" the purchases of all of their individual retail stores to determine their rate of discount. (RX BB, 1125–1127.)

2. John T. Haslett was a trial attorney on the Commission's staff in 1943 with a position entitled "Principal Trial Attorney;" Mr. Haslett drafted the complaint in Docket 5013 and was thereafter placed in charge of the proceedings on behalf of the Commission. Mr. Haslett's superiors on the Commission's staff were Mr. William T. Kelley, who held the position and title of "Chief Counsel," and Mr. Walter B. Wooden, who was the "Assistant Chief Counsel." (Tr. 107–108.)

3. On September 25, 1943, Nabisco filed an answer in Docket 5013 denying the material allegations of the complaint and alleging defenses based on cost justification and meeting competition. (RX BB, 1115–1122.)

Negotiation of Settlement Agreement Between Nabisco's Representatives and Commission's Trial Staff

4. On July 28, 1943, counsel for the respondent conferred with Mr. Haslett by telephone and advised that there was a possibility of stipulating the full facts in this proceeding and then the respondent submitting cost data in an effort to justify the cumulative quantity discount. Respondent's counsel requested a conference with Mr. Haslett within the near future in New York with the view of obviating the necessity of taking testimony. (CX A, 0680, Tr. 109–110.)

Sometime prior to October 11, 1943, attorney John T. Haslett of the Commission's trial staff attended a conference with three representatives of Nabisco, *i.e.*, the vice president in charge of sales (Mr. Frank Montgomery), the comptroller (Mr. George A. Mitchell), and general counsel (Mr. George H. Coppers); such conference concerned the possibility of settling the case in Docket 5013 by Nabisco's submitting a detailed accounting cost justification of the headquarter's discount schedule challenged in the complaint. (CX A, 0682; Tr. 111–112.)

5. Thereafter, Nabisco accumulated its cost figures to attempt to justify the challenged headquarters discounts, and arrangements were made for Mr. Haslett, together with a Commission accountant, to survey those cost figures at a further conference in New York with representatives of Nabisco sometime during the first week of November 1943. (CX A, 0682; Tr. 37.)

6. By October 13, 1943, Mr. William J. Warmack, a Commission accountant, was instructed to work with attorney John T. Haslett in the Nabisco matter, Docket 5013. (CX A, 0683; Tr. 111.)

7. Beginning in November 1943 and continuing through the end of 1943, there were several conferences between the representatives of Nabisco and the representatives of the Federal Trade Commission. In addition to the Nabisco representatives identified in Paragraph 4 above, Nabisco's outside attorneys (Messrs. John W. Davis and Edwin Foster Blair) attended some of the meetings. The Commission's representatives were Messrs. Haslett and Warmack. All of the persons attending such meetings are now deceased, except for Mr. George A. Mitchell and Mr. John T. Haslett, both of whom appeared as witnesses herein. (Tr. 34–36; 110.)

8. At one of the earlier meetings, Nabisco's comptroller (Mr. Mitchell) and the Commission's accountant (Mr. Warmack) reviewed Nabisco's cost justification for the pre-1944 headquarters discounts challenged in the complaint, and both concluded that some of the challenged discounts were justified by the cost data, whereas others were only partially cost justified. (Tr. 37–38.)

9. At a subsequent meeting of the parties in November 1943, Mr. Haslett, the Commission's attorney, suggested that if Nabisco would be willing to develop and adopt a new discount schedule acceptable to him and Mr. Warmack, it might then be possible to reach an overall settlement of the proceeding in Docket 5013. (Tr. 112–113.) Mr. Haslett further suggested that such a new discount system should provide for a substantial reduction in the purchase volume requirements for the headquarters discount and should include a new and separate store discount payable on the per-store purchases of customers (rather than on the "lumped" purchases of all stores in a chain), thereby extending discounts to many additional customers previously not receiving discounts. (Tr. 113–114.) Mr. Haslett believed that if the suggested new discount schedule were to be adopted, Nabisco's cost justification data would in great measure support the resulting price differences, and that any remaining unjustified price differences would be so small they would not have the required effect of adversely affecting competition. (Tr. 113–114.)

10. In response to Mr. Haslett's suggestion, Nabisco developed the details of a proposed new system of discounts along the lines suggested by Mr. Haslett, and thereafter several additional conferences were held between Nabisco's representatives and Messrs. Haslett and Warmack to review the proposed new discount schedule and the cost justification data for that schedule. (Tr. 38–40, 114.)

11. Nabisco's cost justification data showed that the proposed new discounts were not completely cost justified, but were more nearly cost justified than the pre-1944 headquarters discount challenged in the complaint. (Tr. 39–40, 132.)

12. The series of meetings in November and December of 1943, relating to Nabisco's proposed new discount schedule and cost justification data, culminated in a settlement agreement between Nabisco's representatives and the Commission's trial staff consisting of Messrs. Haslett and Warmack. (Tr. 42, 114.) The settlement agreement was reflected in four draft documents: a Stipulation as to the Facts, Proposed Findings and Conclusion, a Proposed Cease and Desist Order, and a Proposed Report of Compliance. (Tr. 42–44, 114–115.) All of these documents were put into written form and both sides had a complete set of documents. (Tr. 116.) Mr. Haslett testified that the compliance report was negotiated first (Tr. 115), and that he considered it the most important document because without agreement on a satisfactory compliance report there would be no point in agreeing on anything else. (Tr. 105, 115, 149–150.)

13. The parties arrived at an agreement to the draft settlement documents only after an extensive "give-and-take" negotiation and discussion as to the meaning of the words and the effect of the various restrictions upon Nabisco. (Tr. 116.)

14. In connection with his negotiating authority, Mr. Haslett represented to Nabisco's representatives that Mr. Haslett had no power to bind the Commission to accept the negotiated settlement but that Mr. Haslett did have authority to recommend to the Commission, through his staff superiors, that the negotiated settlement be accepted or rejected. After he had reached a final settlement agreement with Nabisco's representatives, Mr. Haslett represented that he would in fact recommend that the settlement be approved by the Commission and that such recommendation would go to his immediate superior, Mr. William T. Kelley, the Commission's Chief Counsel. (Tr. 116–117.)

15. Nabisco's representatives were not completely satisfied with Mr. Haslett's representations concerning his negotiating authority and therefore requested a meeting with Mr. Kelley to obtain his concurrence in the negotiated settlement before Nabisco would agree to settle the case. (RX DD, 1147–1148; Tr. 117.)

Acceptance of Settlement Agreement by Commission's Chief Counsel

16. Thereafter, Mr. Haslett returned to Washington and conferred at length with the Chief Counsel, Mr. Kelley, concerning all of the documents reflecting the negotiated settlement agreement. Mr. Kelley

expressed his concurrence with the settlement negotiated by Mr. Haslett, and Mr. Kelley further agreed to the requested meeting with Nabisco's representatives. (Tr. 118.)

17. On January 31, 1944, representatives of both parties met in Mr. Kelley's office at the Federal Trade Commission in Washington, D.C. (Tr. 118.) Nabisco was represented by Messrs. John W. Davis, Edwin Foster Blair, and George H. Coppers. The Commission was represented by Messrs. William T. Kelley, Walter B. Wooden, and John T. Haslett. All of these men are now deceased except for Mr. Haslett. (Tr. 107, 110, 118.)

18. Prior to the meeting of January 31, 1944, Mr. Haslett had drafted an undated and unsigned memorandum to transmit the settlement papers to the Commission in the event that the parties reaffirmed their concurrence in the settlement agreement as previously negotiated. (Tr. 118–119.) This draft memorandum was intended to carry out the understanding that Mr. Haslett's superiors at the Commission would approve the settlement and join in the recommendation that the settlement be accepted by the Commission. Both this draft memorandum and the four documents reflecting the proposed settlement agreement negotiated by Mr. Haslett were all in Mr. Kelley's office at the meeting on January 31, 1944. (Tr. 119.) The four documents reflecting such settlement agreement were the same as those previously exchanged by the parties, and included a stipulation as to the facts, proposed findings of fact and conclusion, a proposed cease and desist order, and a proposed report of compliance. All of these documents were reviewed and discussed by the representatives of both parties attending the meeting on January 31, 1944. (Tr. 119.)

19. At the beginning of the meeting in Mr. Kelley's office on January 31, 1944, none of the documents identified in Paragraph 18 above were signed by either party. After the representatives of both parties had reaffirmed their concurrence in the proposed settlement, the following events occurred: The transmittal memorandum was sent out of the room by Mr. Kelley to his secretary and returned to the room with the date of January 31, 1944, having been inserted (CX A, 0684); Nabisco's representatives signed the stipulation as to the facts along with representatives of the Commission; and Mr. Kelley signed the transmittal memorandum with its attachments consisting of the then signed stipulation as to the facts, the negotiated findings and conclusion, and the negotiated cease and desist order. (Tr. 118–121.) Under the then prevailing practice (see findings 36–42 below), the specific document containing the negotiated compliance report was not forwarded to the Commission until the agreed-upon cease and desist order

was entered. (Tr. 149–150.) However, the Chief Counsel's transmittal memorandum of January 31, 1944, accurately set forth the substance of the negotiated compliance report which Nabisco agreed to file upon acceptance by the Commission of the package settlement. (CX A, 0684; Tr. 154–155.)

Representations Made to Nabisco by Commission's Staff on "Package" Nature of Settlement

20. In the negotiations leading up to the settlement agreement, Mr. Haslett negotiated all four of the separate documents reflecting the settlement agreement "as a unit, as a single unit" and "as an integrated whole." (Tr. 116, 138.) Mr. Mitchell, one of Nabisco's representatives in the negotiations, understood that the documents "were all to be treated together as one package." (Tr. 44.)

21. Mr. Haslett represented to Nabisco that the Commission would either accept or reject the settlement agreement "in whole." (Tr. 139.) Messrs. Kelley and Wooden, who were Mr. Haslett's superiors and who were the highest ranking members of the Commission's staff immediately below the Commissioners themselves, made similar representation to Nabisco. (Tr. 148–149.)

22. The representations of the Commission's staff concerning the "package" nature of the settlement were made to Nabisco orally. (Tr. 153.) This was in accordance with the then prevailing informal practice of the Commission. (Tr. 155–156.)

Acceptance of Settlement Agreement by Commission

23. Following the Chief Counsel's transmittal of the proposed settlement on January 31, 1944, a Commission directive of February 2, 1944, instructed William L. Pack, a Special Legal Assistant to the Commission, to review the proposed findings and cease and desist order included in the settlement papers forwarded with the Chief Counsel's memorandum. (CX A, 0685.) Mr. Pack suggested "a few minor changes as to form" both in the negotiated findings and cease and desist order; none of these proposed minor changes affected the substance of the negotiated findings and cease and desist order, but Mr. Pack nevertheless sought Mr. Haslett's approval of them. (CX A, 0685, 0805–0808; Tr. 126–127.) Mr. Haslett then discussed the proposed minor changes as to form with Nabisco's representatives who advised Mr. Haslett that they had no objections; Mr. Haslett likewise had no objections, and hence Mr. Pack's proposed minor changes as to form were approved. (Tr. 127.)

24. On February 5, 1944, Mr. Pack addressed a memorandum to the Commission in which he expressed general approval of the settlement papers and called attention to the "few minor changes as to form * * * in both the findings and the order" which had "been discussed with Mr. Haslett, the trial attorney, and meet with his approval." (CX A, 0685.)

25. In the meantime, the matter had been assigned to Commissioner Ayres for his evaluation and recommendation. After receiving Mr. Pack's memorandum, Commissioner Ayres addressed a memorandum to the Commission dated February 17, 1944, recommending that the settlement documents "be approved and issued." (CX A, 0686.)

26. In a memorandum dated February 18, 1944, the Secretary of the Commission officially advised the Chief Counsel, the Special Legal Assistants and the Chief of the Records Division that the Commission had accepted and approved the stipulation as to the facts, the proposed findings as to the facts and conclusion, and the proposed cease and desist order, whereupon such order and findings were officially entered of record under date of February 23, 1944 [38 F.T.C. 213]. (CX A, 0687; RX BB, 1129–1137.) The Secretary's memorandum dated February 18, 1944, included two main paragraphs. (CX A, 0687.) The first was a typewritten paragraph which dealt specifically and properly, with the stipulation as to the facts; the second paragraph was part of a mimeographed or printed form dealing with the findings and order, and although the Secretary of the Commission had attempted to adjust the form language (by striking out certain provisions thereof) to fit the particular situation, the remaining form language still included erroneous statements and was not fully applicable to the settlement involved. (Tr. 128–129.)

27. The cease and desist order, the findings of fact and conclusion, and the stipulation as to the facts were officially entered by the Commission in February 1944, and were verbatim identical to the settlement documents which had accompanied Mr. Kelley's transmittal memorandum of January 31, 1944, after allowing for Mr. Pack's minor changes as to form. (RX BB, 1129–1137; CX A, 0805–0808; Tr. 122–124.)

28. Although the cease and desist order allowed Nabisco 60 days after February 23, 1944, within which to file a report of compliance, Nabisco proceeded promptly to file a report of compliance dated March 1, 1944. (RX EE, 1151–1153.) On the same date, March 1, 1944, Mr. Haslett drafted a memorandum addressed to the Commission recommending that Nabisco's compliance report should be accepted by the Commission, and such memorandum was approved and signed

by the Chief Counsel and Assistant Chief Counsel. (CX A, 0690–0691; Tr. 131.)

29. Nabisco's compliance report dated March 1, 1944, included no cost justification data. (RX EE, 1151–1153.) The reason was that Nabisco had previously given all of its cost data to the Commission accountant, Mr. Warmack, in the course of the settlement negotiations, and although such data did not fully cost justify the new discount which Nabisco submitted as compliance with the cease and desist order, it was the understanding of both parties that the settlement agreement permitted Nabisco to use the new discount as long as any noncost-justified portion of the new headquarters discount would not have the adverse competitive effect required under the Act. (Tr. 41, 131–132.)

30. In a letter dated March 8, 1944, the Secretary of the Commission advised Nabisco that its compliance "report has been received and filed." (RX EE, 1154.) This was the language used by the Commission at the time to indicate that the report had been accepted and approved. (Tr. 46, 133.)

31. The Commission's letter of March 8, 1944, also stated that "The receipt and filing of this report is not to be construed as indicating approval by the Commission or a determination by it that the report shows compliance with the provisions of the order to cease and desist." (RX EE, 1154.) It was Nabisco's understanding that the quoted language was included in the letter of March 8, 1944, to confirm that under the settlement agreement, the Commission would not be bound forever to accept the new discount system negotiated in the settlement if future conditions changed, *i.e.*, if the company changed its distribution system or something else unusual should happen. (Tr. 47.) The representative of the Commission who had negotiated the settlement agreement had the same understanding of the quoted language in the Commission's letter of March 8, 1944. (Tr. 133–134.)

32. In a letter dated September 20, 1967, Mr. Haslett undertook to state the facts relating to his participation in the events of 1943–1944 in Docket 5013; the letter described a series of negotiations between Mr. Haslett and Nabisco's representatives, culminating in an overall "consent settlement package" which was approved by the Commission's Chief Counsel and thereafter adopted by the Commission. (RX DD, 1146–1150.) Mr. Haslett's letter of September 20, 1967, was sent both to respondent's counsel herein and to the then general counsel of the Federal Trade Commission, Mr. James McI. Henderson. (Tr. 134.) At the hearings herein, Mr. Haslett's testimony was in substance the same as the facts set forth in his prior letter, and Mr.

Haslett further testified that he had recently reread his letter of September 20, 1967, and found the statements therein to be true and correct. (Tr. 137–138.)

Commission's Formal Rules and Informal Practice on Settlements during Relevant Period

Formal Rule on Admission Answers

33. The Commission's formal Rules of Practice in 1943–1944 did not specifically provide for documents expressly labelled "negotiated settlement" or "consent order." (Tr. 103–104, 143.)

34. Rule IX of the Commission's formal Rules of Practice, July 11, 1943, authorized a respondent to file a pleading commonly called an "admission answer." (CX C, 1183–1184; Tr. 143–144.) Throughout the relevant period from 1943 up to approximately 1952, the Commission's formal Rules included provisions substantially similar to Rule IX of July 11, 1943. (Tr. 24–25.)

35. In 1943–1944 an admission answer was used in two different types of situations. In one situation, the respondent could file an admission answer, consisting of a simple statement to the effect that the respondent "admits all the material facts of the complaint to be true" (Tr. 144), and then run the risk of any order that the Commission might enter. In the second type of situation, however, an admission answer could be part of an overall settlement agreement negotiated pursuant to the Commission's then prevailing informal practice described below. (Tr. 104.)

Informal Practice on Settlements

36. In 1943–1944, there was used within the Commission an informal practice pursuant to which settlement agreements, complete with an agreed to order to cease and desist, were negotiated by the Commission's staff and then submitted to the Commission for either acceptance or rejection as a package. (Tr. 104–105.)

37. Stated in summary fashion, the Commission's practice on settlements involved the following steps and procedures: The Commission's Trial Attorney in charge of the case would negotiate with opposing counsel the specific wording and meaning of four documents: a stipulation of facts (or alternatively an admission answer), proposed findings of fact and conclusions, a proposed order to cease and desist, and a proposed report of compliance; all four documents were negotiated as a part of an overall package agreement. (Tr. 104–105.) The package agreement would then be presented to the Commission's

Chief Counsel who, if he concurred, would transmit the papers to the Commission under cover of a transmittal memorandum noting that the Chief Counsel had "approved" the papers and recommended acceptance by the Commission. (Tr. 105.) The Commission's staff would orally assure respondent's counsel that the package agreement would either be accepted or rejected by the Commission as a whole. (Tr. 141–142.) Upon receipt of the transmittal memorandum, the individual Commissioners would have before them all of the negotiated documents, except the negotiated compliance report which might be summarized in the Chief Counsel's transmittal memorandum instead of being attached as a separate document. (Tr. 105–106, 151–152.) In due course, the Commission would by minute order, assign the case to one of the Commissioners for review and recommendation, and would also refer the papers to a group of lawyers, known as "Special Legal Assistants," who served as experts for the Commissioners in reviewing findings, orders and stipulations. (Tr. 104–105.) After one of the Special Legal Assistants had submitted an evaluation of the papers, the matter would then be returned to the Commissioner assigned to the case who would normally address a memorandum to the other Commissioners, recommending either acceptance or rejection of the package. (Tr. 106.) Under such informal practice, the Commission either accepted the settlement in full or rejected it in full. If accepted, the settlement papers would be officially approved and issued by the Commission exactly as negotiated. If rejected, the informal practice in 1943 was that the entire settlement would be withdrawn and would no longer have any effect, and the parties would then either engage in further negotiations or resume litigation. (Tr. 106, 140–141.)

38. The four written documents (reflecting a settlement agreement negotiated under the informal practice described above) were sufficient to carry out the agreement when approved by all concerned, but both the Commission and respondent relied upon certain oral assurances that the other party would honor the "package" nature of the settlement. (Tr. 44, 147–148.) For example, in the Nabisco settlement, the respondent relied upon oral assurances of the Commission's Chief Counsel and Trial Attorney that the settlement "would be sent to the Commission as a package" and that it was the Commission's "normal procedure" to "either accept the package as an integrated whole or reject it as such." (Tr. 148–149.) Similarly, the Commission relied upon oral assurances of respondent's counsel that Nabisco would adopt the agreed-upon method of compliance and submit the negotiated compliance report after entry of the agreed-upon cease and desist order. (Tr. 151.)

39. Such oral assurances were acceptable by both sides in the Nabisco settlement agreement because they were made by counsel of "unimpeachable integrity." Nabisco was represented by Mr. John W. Davis, whose word "was as good as his bond, and so was Bill Kelley's," the Chief Counsel of the Commission. (Tr. 152.)

40. The Nabisco settlement agreement "wasn't anything unusual." (Tr. 141.) The Commission's Trial Attorney in the Nabisco proceeding "handled many cases for the Commission on the same basis." (Tr. 145.) The informal settlement practice "was normal procedure," including the oral representations as to the package nature of a settlement. "Everybody did it." (Tr. 156.) Based on extensive experience as a Commission trial attorney from 1939 to 1945, Mr. Haslett suggested that one could find no instance where the Commission "accepted in part and rejected in part" a package settlement. Instead, the Commission "did one or the other thing and this was normal procedure." (Tr. 148.) Similarly, to characterize the oral nature of the package feature of the settlement as "sloppy" would be to "characterize the Commission's procedures, which everyone used at that time, as sloppy. If it [the practice] was sloppy, it was generally sloppy and not in this particular [Nabisco] case." (Tr. 142.)

41. The Commission's Trial Attorney, Mr. Haslett, testified that "I was authorized by Mr. Kelley and Mr. Wooden, my superiors," to negotiate the settlement agreement with Nabisco in accordance with the informal practice previously described. (Tr. 144.) Moreover, "the Commission knew I [Mr. Haslett] was doing it and every other attorney was doing the same thing." (Tr. 144.)

42. Throughout the 6-year period of Mr. Haslett's service as a trial attorney for the Commission, he never once heard of any instance where the Commission reprimanded a staff attorney for making oral representations to a respondent that the Commission would accept or reject a negotiated settlement on a package basis. (Tr. 149.)

Commission Recognition of Informal Consent Settlement Practice in Other Contemporaneous Proceedings

43. In other Commission cases both before and after with the proceeding against Nabisco in Docket 5013, the parties followed the same informal settlement practice invoked in the Nabisco case, and the Commission's ultimate actions in such contemporaneous cases were all consistent with the informal practice as previously described in findings 36 through 42.

National Tea Settlement

44. The Commission's complaint in Docket 5648 charged National Tea Company [46 F.T.C. 829] with a Robinson-Patman violation (RX BB, 1091–1095), and National Tea then filed its original answer amounting to a general denial of the alleged violation. (RX BB, 1091–1092.)

45. Thereafter, counsel for National Tea and the Commission's staff attorneys engaged in extensive negotiations which resulted in an overall settlement agreement which was partly oral and partly written. The written portion of the settlement agreement consisted of three separate documents: a Motion to Withdraw Answer, a substitute Admission Answer, and a negotiated Order to Cease and Desist. (CX A, 0990.) In a transmittal letter forwarding these settlement documents to the Commission Trial Attorney, counsel for National Tea noted that the Trial Attorney's superior, the Director of Bureau of Litigation, had not yet approved of the settlement, and the transmittal letter then stated the understanding was that if the Bureau of Litigation disapproved of the settlement, the Commission's Trial Attorney would "hold and not file" the settlement papers. (CX A, 0990.)

46. A few days later the Commission's Trial Attorney addressed a letter to counsel for National Tea and stated: "Mr. Whitely, Director of the Bureau of Litigation, is in agreement * * * and will approve my memorandum to the Commission." (RX AA, 0995.) The Trial Attorney was referring to a memorandum which he prepared to transmit the settlement papers to the Commission; such memorandum summarized the background of the case and stated that there was attached a "draft of proposed order recommended to the Commission as being * * * adequate for the disposition of the instant matter * * *." (RX BB, 1091.) The Trial Attorney's transmittal memorandum did not reveal that the admission answer and proposed order were part of an overall package settlement agreement; and made no mention whatsoever of the staff's oral assurances that the Commission would treat the settlement as a package. (RX BB, 1091–1092.)

47. At the Commission level, the National Tea settlement papers were referred to a Special Legal Assistant who had not been informed that the admission answer and proposed order were part of an overall settlement package, and this Legal Assistant then recommended a cease and desist order broader in scope than the negotiated order. (CX A, 0978–0981.) In due course the broader order was mistakenly entered by the Commission. (RX BB, 1099–b.)

48. National Tea then filed a "Petition Requesting Modification of Commission's Order" (RX BB, 1096–1099), asking the Commission to

conform its cease and desist order to the agreed-upon order. The petition described the settlement procedures followed in National Tea, which procedures were almost identical to those in the National Biscuit settlement. Thus, National Tea alleged that there "were extended conferences between counsel for the Commission and counsel for the respondent," and, as a result of such conferences, "an order * * * was drafted by counsel for both parties" and that the agreed-upon order was thereafter "submitted to the Commission as part of a memorandum filed by counsel for the Commission." National Tea also alleged that it "withdrew its denial answer * * * and submitted in lieu thereof its substitute answer admitting all of the material allegations of fact set forth in the complaint," while "relying upon the agreement with counsel of the Commission upon the terms of the proposed order." National Tea asserted that it took such a "course of action * * * in the expectation that the Commission would adopt and approve the order as agreed upon between counsel." (RX BB, 1096, *et seq.*)

49. The Commission's Trial Attorney then filed an answer to National Tea's petition; such answer did not dispute any of the allegations in National Tea's petition; instead, the Trial Attorney supported the request for entry of a modified order "in accord with the terms of the order hereto proposed," *i.e.*, the previously agreed-upon order. (RX BB, 1100–1101.)

50. National Tea's Petition for Modification was initially assigned to Commissioner Carson who had taken his oath of office as a Commissioner only a few months before. (47 F.T.C. at ii.) Commissioner Carson circulated an internal memorandum in which he asserted that "it is well known and understood that the Commission is not bound by agreements or proposals between counsel, who take their chances that the Commission will use its authority and discretion to make necessary changes in proposed orders." Commissioner Carson then stated that National Tea's "contention [on the consent-order-package] therefore lacks merit," and he recommended that National Tea's Petition for Modification should therefore be denied. (CX A, 0974.) Upon further reflection, however, Commissioner Carson prepared a second memorandum in which he repudiated his prior recommendation and urged the Commission to enter an "order which will satisfy and be in harmony with the agreement negotiated by our trial counsel and counsel for respondent." (CX A, 0976.) Commissioner Carson concluded his second memorandum with the recommendation "to the Commission that the case be returned for settlement in accordance with the final agreement between our trial counsel and counsel for respondents." (CX A, 0976.)

51. Commissioner Carson explained that he was repudiating his earlier recommendation that National Tea's consent order contention be rejected, because "I * * * have since had an opportunity to go into the merits of the matter." (CX A, 0976.) Such "opportunity" was provided by a comprehensive memorandum from Commissioner Mason (who was then beginning his second term on the Commission at about the same time as Commissioner Carson arrived). (CX A, 0978–0981.) Commissioner Mason's memorandum explained the full background; it began by noting that "the Tea case settlement was worked out on the basis of surrounding facts which we Commissioners and the trial staff were very conscious of, but which were wholly unknown to the Special Legal Assistants" who had prepared the broader order entered by "mistake." (CX A, 0978, 0980.) Commissioner Mason went on to inform Commissioner Carson that the Commission's "trial counsel * * * negotiated with National Tea an agreed order which struck down instantly the specific practice we were concerned with * * * [and hence the] Commission must weigh the practical advantage of an immediate [narrow order] * * * against a long and expensive trial aimed at a general order blanketing other practices * * *." (CX A, 0979.) Commissioner Mason assured Commissioner Carson that "These are the facts which the Special Legal Assistants [who had prepared the broad order contrary to the settlement agreement] are not in a position to be conscious of." (CX A, 0980.) Commissioner Mason further observed that "it is a great mistake in the settlement of cases to interpose the judgment of people [Special Legal Assistants] who are not informed as to the facts surrounding the offer and settlement," and such a "mistake" had occurred in the National Tea case. Accordingly, Commissioner Mason urged Commissioner Carson to withdraw his earlier memorandum recommending rejection of National Tea's consent-order contention and to "adopt the trial division's recommendation" for entry of the agreed-upon order. (CX A, 0980.) Commissioner Carson then prepared his second memorandum which followed these suggestions of Commissioner Mason. (CX A, 0976.)

52. After Commissioner Carson had circulated his second memorandum recommending that the Commission honor the "settlement * * * agreement between our trial counsel and counsel for the respondents" (CX A, 0976), the Commission vacated its prior broader order and entered the agreed-upon narrow order [47 F.T.C. 1314]. (RX BB, 1106–1107.) The Commission's accompanying opinion expressly recited that respondent's Admission Answer had been filed "with the understanding and upon the condition that the proceeding would be disposed of by the issuance of an order to cease and desist sub-

stantially in the form submitted" and that hence the original broad order "should be modified to the extent necessary to make it conform with the order agreed upon by counsel for the respondent and counsel in support of the complaint." The Commission's opinion also explained that the oral assurance concerning the package nature of the settlement "was not reflected in the record at the time of the original order." (RX BB, 1102–1103.)

The United Buyers Settlement

53. The Commission in Docket 3221 charged United Buyers Corp. [34 F.T.C. 87] with violations of Section 2(c) of the Clayton Act as amended, and there followed a series of preliminary settlement negotiations. (RX AA, 0033, 0034, 0091, 0092.) At one point in the negotiations, United Buyers attempted to follow a procedure (different from the informal settlement practice described in Findings 36 through 42 above) under which the Commission would give its separate approval of a proposed compliance report in *advance* of submitting an overall settlement package, but the Commission refused to follow such a procedure. (CX A, 0022.)

54. Settlement discussions continued, however, and United Buyers proposed "closing the case through the medium of an admission answer consenting to entry of an appropriate order to cease and desist * * *." (RX AA, 0178.) Specifically, United Buyers proposed an order "which would be so written that it would prohibit U.B.C. from rebating brokerage to buyers [as charged in the complaint] but would permit U.B.C. to continue collecting brokerage from sellers for services rendered" as permitted by the proposed compliance report. (RX AA, 0189.) Counsel for the two parties then reached an overall settlement agreement in accordance with United Buyers' proposal, whereupon stipulations were signed by United Buyers and then forwarded to the Commission for approval. (RX AA, 0034.)

55. Thereafter, the Commission entered the agreed-upon cease and desist order against United Buyers. (RX AA, 0237; RX BB, 1080–1083.) United Buyers then issued a press release announcing that the litigation had been settled upon a "satisfactory basis" and that the order was the "outgrowth of the stipulation" and was "in the general form which was anticipated." (RX AA, 0273, 0286–0287.)

56. Two days after the order was entered, United Buyers filed the previously agreed-upon compliance report (RX AA, 0238), and the report was promptly approved by the Commission. (RX AA, 0269.)

57. Almost five years later, the Commission entered an "Order Requiring Additional Reports of Compliance" (RX BB, 1057), and

shortly thereafter the Commission's staff filed a "Motion to Modify Order to Cease and Desist" which, if granted, would have substantially enlarged the scope of the original cease and desist order. (RX BB, 1058–1060.) United Buyers objected on the basis of the 1941 settlement agreement. (RX BB, 1062–1064.) However, during oral argument before the Commission on the modification issue, United Buyers consented to a portion of the proposed modification but continued to object to the remainder. (RX BB, 1079–a, 1079–b.) The Commission thereafter entered a modified order [43 F.T.C. 619] which included the changes consented to by United Buyers but excluded the proposed changes as to which United Buyers did not consent. (Compare RX BB at 1059 with RX BB at 1087.)

58. An internal memorandum by a Trial Attorney in the *United Buyers* case asserted that the Commission had issued instructions to the Chief Counsel that stipulations as to the facts and admission answers "are not to be undertaken upon any conditions such as advance approval of proposed methods of operation for the future." (CX A, 0023.) Another letter from a Commission attorney reminded the United Buyers that he had not undertaken "to bind the Commission with respect to terms and effect of the order to cease and desist which, presumably, it would enter upon your filing of an admission answer." (CX A, 0181.) These and similar documents in the *United Buyers* case do not refute the existence of the informal settlement practice previously described; such documents merely show that the Commission would not approve of a proposed compliance report in advance of submission of an overall settlement package and that the Commission's staff could not bind the Commission in advance to accept a settlement package.

The Manhattan Brewing Settlement

59. In the Manhattan Brewing proceeding (Docket 4572) [35 F.T.C. 828], the Commission's complaint attacked under Section 5 of the Federal Trade Commission Act respondent's use of the trade name "Canadian Ace" for beer which was not in fact brewed in Canada. After the respondent had originally filed an answer denying the alleged violation, counsel held settlement negotiations but apparently there was "no commitment at this time on either side * * *." (CX A, 0395.) Thereafter, following additional negotiations, the respondent withdrew its original answer and filed a substitute admission answer, whereupon the Trial Attorney transmitted the usual papers to the Commission with no indication of settlement negotiations. (CX A, 0396.) The Commission then proceeded to enter its original cease

and desist order which was different from the proposed order transmitted to the Commission. (CX A, 0398–0400.)

60. Immediately after the original cease and desist order was entered, Manhattan Brewing filed a "Petition for Modification of Order" alleging that the Commission's Trial Attorney had orally assured Manhattan Brewing that the admission answer would be used only for an order that would permit the use of the name "Canadian Ace" so long as the label stated specifically "that such products did not come from Canada." (RX BB, 1088–a—1088–o.)

61. After the Commission's Trial Attorney acknowledged the possibility of a "genuine misunderstanding" concerning the negotiations between counsel (RX AA, 0407), the Commission vacated the original cease and desist order [35 F.T.C. 828].

62. The case then went to trial and ultimately the Commission entered an order to cease and desist [37 F.T.C. 376] substantially the same as the original order which had been set aside. (RX AA, 0426; CX A, 0421–0425.)

63. Manhattan Brewing then appealed to the United States Court of Appeals for the 7th Circuit, and while the case was pending on appeal, Manhattan Brewing made another offer of settlement in which Manhattan promised to drop the appeal in return for entry of a modified order. This offer was described in an internal memorandum by one of the Commissioners as an offer conditioned upon the Commission's acceptance in advance of "a complete report of compliance." (RX AA, 0456–0457.) The Chief Counsel of the Commission sent a memorandum to the Chairman, explaining that the Commission lacked jurisdiction to modify the outstanding cease and desist order as long as the appeal was pending in court. (RX AA, 0464.)

64. While the appeal was still pending, the Commission initially declined to accept Manhattan's proposed settlement by virtue of a 2 to 2 tie vote, with Commissioner Mason not participating because of his then recent appointment to the Commission. (RX AA, 0468.) A few weeks later, after Commissioner Mason had an opportunity to read "all the testimony" and consider the arguments and briefs, he prepared a memorandum of January 14, 1946, in which he concluded that he "would not vote for the present order" then before the Court of Appeals. (RX AA, 0491.) On January 16, 1946, the Court of Appeals dismissed the pending appeal on Manhattan's motion. (RX AA, 0475.) Shortly thereafter, the Commission reopened the proceeding and entered a modified order [42 F.T.C. 226] in a form acceptable to Manhattan Brewing by virtue of a 3 to 2 vote, with Commissioner Mason casting the deciding vote. (RX AA, 0494–0495.)

65. At a later date, the Commission requested the Attorney General of the United States to institute a civil penalty proceeding against Manhattan Brewing for an alleged violation of the modified order; the Commission's letter informed the Attorney General that Manhattan Brewing had "filed a waiver of hearing and consent to the entry of modified findings and order." (RX AA, 0640, 0643.)

CONCLUSIONS

1. The Commission's Rules of Practice did not provide for a formal consent procedure in 1943/44, but as a matter of fact an informal settlement procedure was utilized at that time by the staff and relied upon by the respondent's counsel in this matter.

2. The informal settlement procedure utilized by the staff in 1943/44 was not binding upon the Commission, but in practice it was generally followed by the Commission.

RECOMMENDATION

Under these circumstances, the Order to Cease and Desist issued on February 23, 1944, should be treated as a consent order.

CERTIFICATION

The record consisting of 161 pages of testimony (Tr. 1–161), four exhibits for the Commission (CX A through CX D), and four exhibits for the respondent (RX AA, RX BB, RX DD, and RX EE), together with the briefs, proposed findings, and conclusions submitted by the parties are hereby certified to the Commission.

Opinion of the Commission

AUGUST 23, 1971

This matter is before the Commission on the Certification of Record and Report Containing Findings and Recommendation of the hearing examiner, from which respondent has filed exceptions. The hearing examiner's findings and recommendation contained in the report are based on evidentiary hearings held in response to a Commission order of July 30, 1970, directing that the hearings be conducted "in accordance with the opinion [of the court in *National Biscuit Company* v. *Federal Trade Commission*, 400 F. 2d 270 (5th Cir. 1968)], for the sole and limited purpose of receiving testimony and other evidence concerning the question as to whether [a Commission] order to cease and desist, issued on February 23, 1944 [against National Biscuit

Company] was a consent order." The examiner's ultimate recommendation is that the 1944 order to cease and desist "should be treated as a consent order." We agree.

Respondent does not appeal from the examiner's ultimate recommendation, nor does it take exception to the substance of the findings and conclusions of the examiner. Respondent excepts first to the examiner's ruling excluding " ' so called' post-1944 compliance evidence," which respondent seeks to have admitted to show that "the original settlement was negotiated on the understanding of both parties that the order would permit compliance based on lack of competitive effect," and, second, to the examiner's conclusion that the "informal settlement procedure utilized by the staff in 1943/44 was not binding upon the Commission, but in practice it was generally followed by the Commission," which respondent maintains requires clarification.

As to its first exception, respondent does not contend that the excluded evidence affected the ultimate finding (*i.e.*, that the Commission treated the 1944 order as a consent order). Indeed, as we have noted, neither respondent nor Commission counsel have taken exception to this finding.

Instead, respondent contends that the remand proceeding was intended to settle a further factual question: Was the original settlement negotiated on the understanding of both parties that the 1944 order would permit compliance based on lack of competitive effect? Very clearly, the remand proceeding was not intended to reach this issue, as a reading of the court's description of the purpose of the remand proceeding demonstrates:

> The threshold issue, acknowledged by both parties, concerns the Commission's cease and desist order entered against Nabisco in 1944 following negotiations between representatives of both parties. Nabisco argues that this order resulted from a consent settlement. The Commission denies this. The other legal issues presented by the petition have, as a starting point, the assumption that the 1944 order is or is not a consent order. Yet the facts necessary for resolution of this threshold issue have never been developed in a hearing before the Commission. They should be. We therefore remand this proceeding to the Federal Trade Commission to permit both parties to adduce evidence concerning the facts which brought about the 1944 cease and desist order. The Commission has never ruled on whether the original order was a consent order, despite Nabisco's specific requests in 1954 and again in 1967 that it do so. Nabisco is entitled to its day in court, but first in an FTC hearing—not merely through briefs and oral argument in the Court of Appeals. *National Biscuit Company* v. *Federal Trade Commission*, 400 F. 2d 270, 271 (5th Cir. 1968).

Later in the decision, the court pointed out the "other legal issues presented by the petition," including the question raised now by respondent concerning the competitive effects of its discount sched-

ule. The court made it clear, however, that the "starting point" is a resolution of the question as to whether the 1944 order is or is not a consent order. As previously stated, that determination has been made and the 1944 order will be treated as a consent order. This being the only issue before the Commission upon the court's remand, we agree with the examiner that the post-1944 compliance evidence, which can only bear on the interpretation of the order, should properly be excluded from the record. Accordingly, respondent's first exception is rejected.

Respondent's second exception, as noted, goes to the meaning of the examiner's conclusion that the informal settlement procedure utilized by the staff in 1944 was not binding upon the Commission. Respondent seeks to be assured that this conclusion does *not* mean that "the Commission was not bound by the settlement agreement *after* it had accepted the settlement package," and proposes that the Commission substitute the examiner's conclusions with the following:

> 2. The settlement agreement negotiated herein under the informal settlement procedure utilized by the staff in 1943–1944 was not binding upon the Commission before its acceptance by the Commission, but after acceptance by the Commission, the agreement did become binding as a consent settlement under the practice as it was generally followed by the Commission at the time.

Respondent's concern as to the meaning of the examiner's second conclusion appears inappropriate both because the subject conclusion of the examiner did not deal specifically with the question of the binding nature of the 1944 order once it was accepted by the Commission, and because, as respondent notes in its brief to the Commission, "doubtlessly the hearing examiner intended no such interpretation of conclusion No. 2, in light of the recommendation that the 1944 order should be treated as a consent order." Therefore, it appears unnecessary to substitute the conclusion urged by respondent for the examiner's conclusion No. 2.

An appropriate order adopting the hearing examiner's findings and recommendation will be issued.

Commissioner MacIntyre did not participate in this matter.

Order Adopting Findings and Recommendation of Hearing Examiner

The Court of Appeals for the Fifth Circuit, having remanded this matter to the Commission in an opinion of August 19, 1968 [8 S.&D. 796], for hearings on the issue whether a 1944 cease and desist order issued by the Commission against respondent was a consent order, and

The Commission, by order of July 30, 1970 [77 F.T.C. 1637], having directed that evidentiary hearings be conducted for the purpose of receiving testimony and other evidence to determine said issue; and

The hearing examiner having held such hearings and, on March 19, 1971, having certified the record of the proceedings, together with his findings and recommendation, and respondent, on June 1, 1971, having excepted to an evidentiary ruling and a conclusion of the examiner; and

The Commission, for the reasons set forth in the accompanying opinion, having determined that respondent's exceptions should be denied, and that the recommendation of the examiner should be adopted:

It is ordered, That the exceptions filed by respondent to the evidentiary ruling and conclusion of the examiner be, and they hereby are, denied.

It is further ordered, That the hearing examiner's findings and conclusion be, and they hereby are, adopted as the findings and conclusions of the Commission.

It is further ordered, That the order to cease and desist issued on February 23, 1944 [38 F.T.C. 213], be, and it hereby is treated as a consent order.

Commissioner MacIntyre not participating.

IN THE MATTER OF

BLACKSTONE SCHOOL OF LAW, INC., ET AL.*

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

Docket 5906. Complaint, July 18, 1951—Decision, Aug. 23, 1971

Order modifying an order of February 10, 1971, 78 F.T.C. 307, which required respondent to clearly disclose the limited utility of its law courses and its law degrees, staying enforcement of the latter provision (Paragraph 3), until the Commission rules on a similar question *In the Matter of La Salle Extension University*, Docket No. 5907. The Commission by its order of June 24, 1971, 78 F.T.C. 1272, issued its order in Docket No. 5907 without a similar proscription. Paragraph 3 of the February 10, 1971, modified cease and desist order in Docket No. 5906 is herewith set aside.

*Formerly Blackstone College of Law, Inc.

ORDER SETTING ASIDE PROVISION IN CEASE AND DESIST ORDER

On February 10, 1971 [78 F.T.C. 307], the Commission issued an order to cease and desist modifying a June 29, 1954 [50 F.T.C. 1070], order against Blackstone College of Law, Inc. Paragraph 3 of the modified order proscribes,

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

The modified order further provides that enforcement of said Paragraph 3 be stayed "unless and until the Commission disposes of the Order to Show Cause proceeding in Docket 5907 by a modified order containing a substantially similar proscription, or in the event that the order issued in Docket 5907 has a less strict proscription than Paragraph 3, respondent herein will be bound by a similar provision in substantially the same form."

The Commission, on June 24, 1971, having issued its order in Docket 5907 [78 F.T.C. 1272] without a proscription similar in content to Paragraph 3 of the above modified order:

It is ordered, That Paragraph 3 of the February 10, 1971, modified Commission cease and desist order be, and it hereby is, set aside.

IN THE MATTER OF

HILLMAN JEWELERS, INC., ET AL.

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

Docket C-2017. Complaint, Aug. 24, 1971—Decision, Aug. 24, 1971

Consent order requiring six retail jewelry firms in four Indiana cities engaged in advertising and selling watches, jewelry, diamonds and other merchandise at retail to cease violating the Truth in Lending Act by failing to use on their installment contracts the terms: "cash downpayment," "trade-in," "total downpayment," "unpaid balance of cash price," "amount financed," "finance charge," "deferred payment price," and other terms and conditions required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe

that Hillman Jewelers, Inc., a corporation, Hillman's of Vincennes, Inc., a corporation, Hillman's of Greencastle, Inc., a corporation, Hillman's of Crawfordsville, Inc., a corporation, Hillman's of Meadows Center, Inc., a corporation, Hillman's of Honey Creek Square, Inc., a corporation, and Allen Felstein and John Thompson, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hillman Jewelers, Inc., is an Indiana corporation organized on January 25, 1935, with its principal office and place of business located at 612 Wabash Avenue, Terre Haute, Indiana.

Respondent Hillman's of Vincennes, Inc., is an Indiana corporation organized on September 30, 1957, with its principal office and place of business located at 231 Main Street, Vincennes, Indiana.

Respondent Hillman's of Greencastle, Inc., is an Indiana corporation organized on May 11, 1962, with its principal office and place of business located at 15 North Indiana, Greencastle, Indiana.

Respondent Hillman's of Crawfordsville, Inc., is an Indiana corporation organized on February 22, 1967, with its principal office and place of business located at Boulevard Mall, Crawfordsville, Indiana.

Respondent Hillman's of Meadows Center, Inc., is an Indiana corporation organized on March 30, 1960, with its principal office and place of business located at 11 Meadows Center, Terre Haute, Indiana.

Respondent Hillman's of Honey Creek Square, Inc., is an Indiana corporation organized on June 24, 1966, with its principal office and place of business located at Honey Creek Square, Terre Haute, Indiana.

Respondents, Allen Felstein and John Thompson are officers of the corporate respondents. They formulate, direct and control the acts and practices hereinafter set forth. Their address is 612 Wabash Avenue, Terre Haute, Indiana.

PAR. 2. Respondents are now and for some time last past have been engaged in the advertising and offering for sale, and sale of watches, jewelery, diamonds and other merchandise at retail to the public.

PAR. 3. Since July 1, 1969, in the ordinary course and conduct of their business as aforesaid, respondents have regularly extended consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their

credit sales as "credit sale" is defined in Regulation Z, have entered into retail installment contracts with their customers, hereinafter referred to as "the contract." Respondents make no consumer credit cost disclosures other than on the contract.

By and through the use of the contract, respondents:

1. Fail to disclose the amount of cash downpayment and fail to describe that amount as the "cash downpayment," as required by Section 226.8(c) (2) of Regulation Z.

2. Fail to disclose the amount of any downpayment in property and fail to describe that amount as the "trade-in," as required by Section 226.8(c) (2) of Regulation Z.

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

4. Fail to use the term "Unpaid Balance of Cash Price" to describe the difference between the cash price and the "total downpayment" as required by Section 226.8(c) (3) of Regulation Z.

5. Fail to use the term "amount financed" to describe the amount of credit of which the customer will have the actual use, as required by Section 226.8(c) (7) of Regulation Z.

6. Fail to use the term "finance charge" to describe the total cost of credit determined in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c) (8) (i) of Regulation Z.

7. Fail to use the term "deferred payment price" to describe the sum of the "cash price," the "finance charge" and all other charges which are not part of the finance charge but which are included in the "amount financed."

8. Fail, in some instances, accurately to disclose the annual percentage rate, computed to the nearest one quarter of one percent in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(c) (2) of Regulation Z.

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

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

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

12. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and fail to provide a statement of the amount or method of computation

of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all jurisdictional facts set forth 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order;

1. Respondent Hillman Jewelers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 612 Wabash Avenue, Terre Haute, Indiana.

Respondent Hillman's of Vincennes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 231 Main Street, Vincennes, Indiana.

Respondent Hillman's of Greencastle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 15 North Indiana, Greencastle, Indiana.

Respondent Hillman's of Crawfordsville, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at Boulevard Mall, Crawfordsville, Indiana.

Respondent Hillman's of Meadows Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 11 Meadows Center, Terre Haute, Indiana.

Respondent Hillman's of Honey Creek Square, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at Honey Creek Square, Terre Haute, Indiana.

Respondent Allen Felstein is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

Respondent John Thompson is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Hillman Jewelers, Inc., a corporation, Hillman's of Vincennes, Inc., a corporation, Hillman's of Greencastle, Inc., a corporation, Hillman's of Crawfordsville, Inc., a corporation, Hillman's of Meadows Center, Inc., a corporation, Hillman's of Honey Creek Square, Inc., a corporation, and their officers, and Allen Felstein and John Thompson, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the amount of any cash downpayment or failing to describe such amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

2. Failing to disclose the amount of downpayment in property or failing to describe that amount as the "trade-in," as required by Section 226.8(c)(2) of Regulation Z.

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

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

5. Failing to disclose the amount of credit as defined in Section 226.2(d) of Regulation Z of which the customer will have the actual use or failing to disclose that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

6. Failing to disclose the amount of the "finance charge," determined in accordance with Section 226.4 of Regulation Z, or failing to describe that amount as the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

7. Failing to use the term "deferred payment price" to describe the sum of the "cash price," the "finance charge," and all other charges which are not part of the finance charge but are included in the "amount financed," as required by Section 226.8(c)(8)(ii) of Regulation Z.

8. Failing to accurately disclose the "annual percentage rate," computed to the nearest one quarter of one percent in accordance with Section 226.5 of Regulation Z, or failing to describe that rate as the "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z.

9. Failing to disclose the date the finance charge begins to accrue if different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

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

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

12. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the

obligation or failing to provide a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

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

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

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

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

IN THE MATTER OF

S. L. SAVIDGE, INC.

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

Docket C-2018. Complaint, Aug. 24, 1971—Decision, Aug. 24, 1971

Consent order requiring a Seattle, Wash., corporation engaged in selling new and used automobiles to cease violating the Truth in Lending Act by failing to include in the finance charge the premiums for credit life insurance, failing to disclose the accurate annual percentage rate, and making other representations in violation of Regulation Z of said Act. Respondent is also forbidden to misrepresent that its credit terms are "easy" or that a buyer will be allowed to select his own credit terms.