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 respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

It is further ordered, That respondents 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

DAVID FRUIT AND COMPANY, 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-2261. Complaint, July 27, 1972.—Decision, July 27, 1972.

Consent order requiring among other things, a Lackawanna, New York, seller of furniture, jewelry and other merchandise to cease violating the Truth in Lending Act by failing to disclose to customers the annual percentage rate, the total number of payments, the method of computing penalty charges, the cash price, the unpaid balance of the cash price, the deferred payment price, the cash downpayment required, and other disclosures required by Regulation Z of the said Act. Respondent is further required to include on the face of its notes a notice that any subsequent holder takes the note with all conditions of the contract evidencing the debt.

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 David Fruit and Company, Inc., a corporation, and David Fruit, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and regulations, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent David Fruit and 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 only place of business located at 159 Ridge Road, Lackawanna, New York. Respondent David Fruit is the president and treasurer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of furniture, jewelry, and other merchandise to the public.

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

PAR. 4. Respondents, many times in the ordinary course of their business, negotiate to third parties installment sales contracts or other instruments of indebtedness executed in connection with credit purchases.

PAR. 5. Subsequent to July 1, 1969, respondents, in the ordinary course of their business as aforesaid, and in connection with the financing of their own credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing, customers to execute sales slips, also known as invoices, statemants, etc., hereinafter referred to as "the contract."

By and through the use of the contract, respondents:

(1) Fail to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of furniture, jewelry and other merchandise, as required by Section 226.8(c)(1) of Regulation Z.

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

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

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

(5) 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.

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

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

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

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

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

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

(12) Fail to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

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

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

PAR. 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 Cleveland 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 Truth in Lending Act and the regulations promulgated thereunder and violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said 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 David Fruit and 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 159 Ridge Road, Lackawanna, New York. Respondent David Fruit is the president and treasurer of the corporate respondent. He formulates, directs and controls the acts and practices 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.

494-841—73——13

ORDER

It is ordered, That respondents David Fruit and Company, Inc., a corporation, and David Fruit, individually and as an officer of said corporation, its successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with any extension or arrangement for the extension of consumer credit or any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth In Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

(1) Failing to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of furniture, jewelry and other merchandise, as required by Section 226.8 (c)(1) of Regulation Z.

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

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

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

(5) Failing 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.

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

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

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

(9) Failing to disclose the annual percentage rate, computed

in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

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

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

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

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

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

(15) 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, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

It is further ordered, That respondents 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 respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract, or other documents evidencing the indebtedness.

It is further ordered, That respondents cease and desist from:

Failing to include the following statement clearly and conspicuously on the face of any note, contract, or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

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

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

IN THE MATTER OF

PARADE FURNITURE, 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-2262. Complaint, July 27, 1972—Decision, July 27, 1972.

Consent order requiring a Buffalo, New York, retailer of furniture, appliances, and other merchandise, among other things, to cease violating the Truth in Lending Act by failing to disclose to customers the annual percentage rate, the total number of payments, the method of computing penalty charges, the cash price, and other disclosures required by Regulation Z of the said Act. Respondent is further required to include on the face of its notes a notice that any subsequent holder takes the note with all conditions of the contract evidencing the debt.

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 Parade Furniture, Inc., a corporation, and Meyer Sanin, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and regulations, and it appearing to the Commission that a proceeding by it in

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

PARAGRAPH 1. Respondent Parade Furniture, 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 only place of business located at 1041 Genesee Street, Buffalo, New York. Respondent Meyer Sanin is the president and treasurer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time past have been, engaged in the sale of furniture, appliances, and other merchandise to the public.

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

PAR. 4. Respondents many times, in the course of their business, negotiate to third parties installment sales contracts or other instruments of indebtedness executed in connection with credit purchases.

PAR. 5. Subsequent to July 1, 1969, respondents, in the ordinary course of their business as aforesaid, and in connection with the financing of their own credit sales as "credit sale" is defined in Regulation Z, have caused, and are causing, customers to execute Retail Installment Contracts, hereinafter referred to as "The Contract." Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the contract, respondents:

[1] Fail to use the term "cash price" as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of furniture, appliances, or other merchandise, as required by Section 226.8(c)(1) of Regulation Z.

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

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

[4] Fail to disclose the sum of the cash price, all charges which are

not included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

[5] Fail to use the term "annual percentage rate" as defined in Section 226.2(e) of Regulation Z, to describe the annual percentage rate of the finance charge computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

[6] Fail to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

[7] Fail to print "annual percentage rate" more conspiciously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

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

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

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 Cleveland 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 Truth in Lending Act and the regulations promulgated thereunder and violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said 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 Parade Furniture, 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 1041 Genesee Street, Buffalo, New York. Respondent Meyer Sanin is the president and treasurer of the corporate respondent. He formulates, directs and controls the acts and practices 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 Parade Furniture, Inc., a corporation, and Meyer Sanin, individually and as an officer of said corporation, its successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension or arrangement for the extension of consumer credit or any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to use the term "cash price," as defined in Section 226.2(i) of Regulation Z, to describe the purchase price of furniture, appliances, or other merchandise as required by Section 226.8(c)(1) of Regulation Z.

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

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

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

5. Failing to use the term "annual percentage rate" as defined in Section 226.2(e) of Regulation Z, to describe the annual percentage rate of the finance charge computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

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

7. Failing to print "annual percentage rate" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

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

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

10. 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, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondents 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 respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract, or other documents evidencing the indebtedness.

It is further ordered, That respondents cease and desist from:

Failing to include the following statement clearly and conspicuously on the face of any note, contract, or other instrument of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

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

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

IN THE MATTER OF

VASU D. SODHANI, DOING BUSINESS AS, INDOGREEN ENTERPRISE

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

Docket C-2263. Complaint, July 27, 1972—Decision, July 27, 1972.

Consent order requiring a Piscataway, New Jersey, importer, seller, and distributor of textile fiber products, including women's scarves, to cease, among other things, manufacturing for sale, importing, selling, or transporting any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued or amended under the provisions of the Flammable Fabrics 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 Vasu D. Sodhani, an individual trading as Indogreen Enterprise, 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 Vasu D. Sodhani is an individual trading as Indogreen Enterprise with his office and principal place of business located at 324A Carlton Avenue, Piscataway, New Jersey.

Respondent is engaged in the importation, sale and distribution of textile fiber products, including, but not limited to, ladies' scarves.

PAR. 2. Respondent is now and for some time last past has been engaged in the importation, 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 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 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 New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and Flammable Fabrics Act; and

Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the 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 considerd 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 Vasu D. Sodhani, is an individual trading as Indogreen Enterprise.

Respondent is engaged in the purchase and sale, and importation of textile fiber products, including, but not limited to, ladies' scarves with his office and principal place of business located at 324A Carlton Avenue, Piscataway, New Jersey.

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 Vasu D. Sodhani, individually and trading as Indogreen Enterprise or under any other trade name, and respondent's 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" 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 scarves which gave rise to the complaint, of the flammable nature of said scarves and effect the recall of said scarves from such customers.

It is further ordered, That the respondent herein either process the scarves 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 scarves.

It is further ordered, That the respondent herein shall, within ten (10) days after service upon him of this order, file with the Commission an interim 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 scarves which gave rise to the complaint, (2) the number of said scarves in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said scarves and effect the recall of said scarves from customers, and of the results thereof, (4) any disposition of said scarves since December 16, 1971, and (5) any action taken or proposed to be taken to bring said scarves into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said scarves, 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 respondent 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 the order to cease and desist contained herein.

IN THE MATTER OF

NATIONAL BISCUIT COMPANY

Docket 5013. Order, August 1, 1972.

Order setting aside Commission's order of April 26, 1954; reinstating order of February 23, 1944, as consent order; and dismissing the Commission's order issued April 14, 1967, directing compliance hearings—all pursuant to a decision of the Court of Appeals, Fifth Circuit, dated May 19, 1972.

ORDER

The United States Court of Appeals for the Fifth Circuit, on May 19, 1972, having issued its opinion and judgment setting aside the order to cease and desist issued by the Commission on April 26, 1954, which modified Paragraph 3 of the order to cease and desist issued on Febru-

ary 23, 1944, and the Court having dissolved its order of January 24, 1968, staying enforcement hearings which had been initiated by Commission order of April 14, 1967:

It is ordered, That the Commission's order of April 26, 1954, be set aside and the Commission's order to cease and desist issued February 23, 1944, be, and it hereby is, reinstated as a consent order.

It is further ordered, That the Commission's Order Directing Compliance Hearings issued April 14, 1967, be vacated and the enforcement hearings instituted by said order are hereby terminated and dismissed.

Commissioner MacIntyre not participating.

IN THE MATTER OF

PEACH RUG 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-2264. Complaint, Aug. 2, 1972—Decision, Aug. 2, 1972.

Consent order requiring, among other things, an Athens, Ga., manufacturer of carpets and rugs to cease manufacturing, importing or selling any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued or amended under the provisions of the Flammable Fabrics 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 Peach Rug Company, Inc., a corporation, trading as Associated Rug Mills of Georgia, and Armcor Carpet Mills, and Herman B. Upchurch, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Peach Rug Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Herman B. Upchurch, is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at 8 Hull Road, Box 1112, Industrial Park, Athens, Georgia.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture for sale, sale and offering for sale, in commerce, 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 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 carpets and rugs Styles Derby and Hialeah subject to Department of Commerce Standard For The Surface Flammability of Carpets and Rugs (DOC FF 1–70).

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 therafter 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 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 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 Peach Rug Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

Respondent Herman B. Upchurch is an officer of the said corporation. He formulates, directs, and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with the office and principal place of business of respondents located at 8 Hull Road, Box 1112, Industrial Park, Athens, Georgia.

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 Peach Rug Company, Inc., a corporation, trading as Associated Rug Mills of Georgia, and Armcor Carpet Mills, or under any other name or names, its successors and assigns, and its officers, and respondent Herman B. Upchurch, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, 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" 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 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 give rise to this complaint, of the flammable nature of said products and effect the 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 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 identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) 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, (5) any disposition of said products since March 6, 1972, and (6) 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 to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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

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.

Complaint

IN THE MATTER OF

BORMAN FOOD STORES, INC., ET AL.

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

Docket 8789. Complaint, July 10, 1969—Decision, Aug. 3, 1972.

Order dismissing the complaint, as to two respondents, which charged two Salinas, Calif., purchasers and sellers of fresh fruits and vegetables as "ground" or "field" brokers, with violation of Sec. 2(c) of the Clayton Act, as amended, by receiving and accepting brokerage, commissions, or other compensation from sellers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, (15 U.S.C. Section 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Borman Food Stores, Inc., hereinafter referred to as "Borman," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its office and principal place of business located at 12300 Mark Twain, Detroit, Michigan.

PAR. 2. Respondent Borman has been and is now engaged primarily in the retailing of food products and other articles for personal and household use and operates a large number of retail stores, including supermarkets, drug stores and department stores. As of January 27, 1968, Borman operated approximately 89 supermarkets in the State of Michigan. Respondent Borman is also engaged in the manufacture and sale of dairy products. Borman's volume of business is substantial, totalling in excess of $300 million annually, as of January 27, 1968.

PAR. 3. Respondent P & R Brokerage Co. hereinafter referred to as "P & R," is a partnership organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 12 East Gabilan Street, Salinas, California.

Respondent Frank V. Condello, an individual, is a partner in respondent P & R Brokerage Co., and is located at the same address.

In his capacity as a partner, he is actively engaged in the purchase and sale of fresh fruits and vegetables. He formulates, directs and

controls the acts, practices and policies of respondent P & R, including the acts and practices hereinafter described.

PAR. 4. Respondent P & R has been and is now engaged in business primarily as a "ground" or "field" broker effecting sales of fresh fruits and vegetables by sellers located in the State of California, and purchases by buyers located in various States of the United States other than the State of California. In such capacity, respondent has demanded and received commissions, brokerage or other compensation in connection with effecting purchases and sales of fresh fruits and vegetables. The annual volume of business of P & R, in its capacity as a "ground" or "field" broker in effecting purchases and sales of fresh fruits and vegetables, is substantial.

PAR. 5. Respondent P & R, in the course and conduct of its business as a "ground" or "field" broker, has been and is now effecting sales of fresh fruits and vegetables by sellers located in the State of California and purchases by buyers located in various States of the United States other than the State of California in commerce, as "commerce" is defined in the Clayton Act. Said respondent has transported or caused such products to be transported from the sellers' places of business to the buyers' places of business located in other states. Thus, there has been, at all times mentioned herein, a continuous course of trade in commerce in effecting purchases and sales of such products by said respondent P & R.

PAR. 6. In the course and conduct of its business for the past several years, respondent Borman has purchased, distributed and resold, and is now purchasing, distributing and reselling, food products and other articles for personal and household use, including fresh fruit and vegetables, in commerce, as "commerce" is defined in the Clayton Act, which it purchased from sellers located in several States of the United States other than the State of Michigan in which respondent Borman is located. Borman purchases these food products including fresh fruits and vegetables, and causes them to be transported from the growing areas or packing plants of sellers located in various States of the United States to Borman's warehouse and retail stores in the State of Michigan. Thus, there has been and is now a continuous course of trade in commerce in the purchase and resale of said food products by respondent Borman.

PAR. 7. In the course and conduct of its business, respondent Borman has been and is now utilizing the services of respondent P & R as a "ground" or "field" broker in the purchase of fresh fruits and vegetables from numerous sellers. Respondent P & R performs valuable services for respondent Borman and other buyers by furnishing information concerning market conditions, by maintaining contact with

various sellers, by inspecting and selecting specified qualities and quantities of fresh fruits and vegetables, and by negotiating purchases of said products at the most favorable prices. Respondent P & R, in performing the services enumerated above, has been and is now acting as an agent or representative of respondent Borman and other buyers. In such capacity, P & R is subject to and under the direct or indirect control of Borman and other buyers of fresh fruits and vegetables in transactions with sellers. In connection with such transactions, respondent P & R has been and is now collecting and receiving brokerage, commissions or other compensation from sellers of fresh fruits and vegetables.

PAR. 8. Respondent Borman and other buyers have received and are now receiving valuable "ground" or "field" broker services from respondent P & R without paying, either directly or indirectly, any brokerage, commissions or other compensation to said broker. At the same time, respondent P & R has been and is now collecting and receiving directly or indirectly, brokerage, commissions or other compensation from sellers, when, in fact, it has been and is now acting for or in behalf of respondent Borman and other buyers, or has been and is now subject to the direct or indirect control of respondent Borman and other buyers.

PAR. 9. The aforesaid acts and practices of respondents and each of them in receiving and accepting, directly or indirectly, anything of value as a commission, brokerage or other compensation or any allowance or discount in lieu thereof from sellers, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Commissioners Elman and Nicholson dissenting.

DISSENTING STATEMENT OF COMMISSIONER ELMAN

Issuance of these complaints is regrettable; the violations charged are trivial, the effectiveness of the Commission's action dubious. Instead of taking this opportunity to re-examine and reassess its administration of the Robinson-Patman Act, to reconsider the policy goals that it is attempting to implement, and to review the success of its enforcement activities, undertakings that have recently been urged upon it by both the Task Force on Antitrust Policy established by President Johnson [1] and the similar body convened by President

[1] White House Task Force Report on Antitrust Policy, submitted July 5, 1968, released May 21, 1969, reprinted in Antitrust & Trade Regulation Report, number 411, part II, May 27, 1969 [hereinafter cited as Neal Task Force Report].

Nixon,[2] the Commission has mechanically and automatically ground out the instant complaints.

I

Although "the Robinson-Patman amendments by no means represent an exemplar of legislative clarity,"[3] their essential purpose is clear and important to the functioning of a competitive economy. The "guiding ideal" of the Robinson-Patman Act was "the preservation of equality of opportunity as far as possible to all who are usefully employed in the service of distribution and production. * * *"[4] "In short," as the Supreme Court stated in the *Sun Oil* case,[5] "Congress intended to assure, to the extent reasonably practicable, that businessmen at the same functional level would start on equal competitive footing so far as price is concerned."

None will quarrel with this basic purpose of the Act. The questions that have arisen concern the Act's breadth of language, its seeming inconsistencies,[6] and its implementation and extension, particularly by the Federal Trade Commission, in a way that may have deleterious effects on the very competitive process that the Act was intended to preserve and promote. The Commission has distorted the Robinson-Patman Act and extended it far beyond its basic premise. A statutory instrument intended to be used skillfully and carefully like a scalpel has been wielded as a bludgeon.

For example, the Commission's literal-minded enforcement of the Act has tended to rigidify prices in oligopolistic markets by preventing the kind of sporadic, unsystematic price concessions that may be the first step toward more general price reductions in such industries.[7] The Commission's actions in the gasoline industry seem to have had this effect, dampening emerging price competition and causing gasoline marketers to engage in game promotions and other gimmicks, instead of reducing prices, as a means of attracting customers.

New or potential entrants to a market may find that the inertia of established trade relationships can be overcome only by selectively re-

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[2] Task Force Report on Productivity and Competition, submitted March 1969, reprinted in Antitrust & Trade Regulation Report, number 413, June 10, 1969 [hereinafter cited as Stigler Task Force Report].

[3] *Federal Trade Commission* v. *Fred Meyer, Inc.*, 390 U.S. 341, 349 (1968). See *Automatic Canteen Co.* v. *Federal Trade Commission*, 346 U.S. 61, 65 (1953) ("precision of expression is not an outstanding characteristic of the Robinson-Patman Act").

[4] H.R. Report No. 2287, 74th Cong., 2d Sess. 6 (1936).

[5] 371 U.S. 505, 520 (1963).

[6] See, *e.g.*, *Federal Trade Commission* v. *Fred Meyer, Inc.*, 390 U.S. 341, 359–60 (1968) (Harlan, J., dissenting), asserting that "the statute imposes a hodgepodge of confusing, inconsistent, and frequently misdirected restrictions" (footnotes omitted).

[7] See, *e.g.*, Neal Task Force Report 9.

ducing prices to buyers in that market.[8] Such temporary promotional activities constitute an important form of competition and may be the only means by which a new entrant can come into an existing market. Insistence on price uniformity in such situations may deter new entry, entrench existing competitors, and vitiate emerging competition. But this is precisely the result the Commission has reached in enforcing the Act.[9]

Competition and efficiency in distribution have been impaired by the Commission's enforcement of the Act. There is no question that a bona fide functional discount or allowance to customers, offered and paid on a proportionally equal basis as compensation for warehousing and similar services rendered to the manufacturer, may increase efficiency, decrease costs, expand service to the consumer, and reduce prices. Such nondiscriminatory distribution methods promote competition, encourage innovation, benefit the consuming public, and thus advance the basic goals of the antitrust laws. Yet, "the Commission has in recent years waged a vigorous war against 'functional discounts,' which are discounts offered to middlemen who perform certain distributive functions (such as warehousing) that other middlemen, who are not given the discounts, do not perform." [10]

In the automotive parts cases,[11] for example, the Commission has striven mightily to prevent small jobbers from adopting new marketing methods—in particular, affiliating with or forming warehouse distributors to enable them better to compete with their larger, more fully integrated competitors. These new organizations performed warehousing and related functions which helped promote efficiency in distribution but the Commission has repeatedly held that they are not entitled to be compensated for their services on the same basis as their integrated competitors. Neither competition nor the small businessmen whom the Robinson-Patman Act was intended to protect were served by the Commission's actions.

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[8] See, *e.g.*, *National Dairy Prods. Corp.*, F.T.C. Docket No. 8548 (June 28, 1967) (dissenting opinion [71 F.T.C. 1443]); Edwards, *The Price Discrimination Law* 637 (1959) [hereinafter cited as Edwards]; Henderson, *The Federal Trade Commission* 251–52 (1924); Neal Task Force Report 9.

[9] See, *e.g.*, *National Dairy Products, Corp.*, F.T.C. Docket No. 8548 (June 28, 1967 [71 F.T.C. 1333]); cf. *Sunshine Biscuits, Inc.*, 59 F.T.C. 674 (1961), *reversed*, 306 F. 2d 48 (7th Cir. 1962).

[10] Stigler Task Force Report X–3; see, *e.g.*, Report of the Attorney General's National Committee to Study the Antitrust Laws 207–09 (1955); Annual Report of the Council of Economic Advisers 109 (1969).

[11] See, *e.g.*, *Alhambra Motor Parts*, F.T.C. Docket No. 6889 (December 17, 1965 [68 F.T.C. 1039]); *Purolator Prods., Inc.*, F.T.C. Docket No. 7850 (April 3, 1964), order enforced, 352 F. 2d 874 (7th Cir. 1965), *cert. denied*, 389 U.S. 1045 (1968); *National Parts Warehouse*, F.T.C. Docket No. 8039 (December 16, 1963 [63 F.T.C. 1692]), order enforced sub. nom. *General Auto Supplies, Inc.* v. *Federal Trade Commission*, 346 F. 2d 311 (7th Cir.), *cert pet. dismissed*, 382 U S. 923 (1965).

Undaunted, the Commission has more recently held that stocking dealers, those retailers who maintain an inventory of the manufacturer's product, may not be compensated by the manufacturers for performing this service. In effect, the Commission declared that since some of the manufacturer's customers—*i.e.*, the non-stocking dealers—would not provide the services or facilities that the manufacturer requested in the interest of promoting more economical distribution, the manufacturer could not reimburse the stocking dealers, who were ready, willing, and able to furnish such services or facilities. Functional compensation could not be paid to customers who had earned it by performing services the manufacturer needed unless it was also paid to other customers who had not earned and had performed no services at all. Here too the Robinson-Patman Act was converted into an anti-competition, antiefficiency, anticonsumer statute.[12]

The Commission's insistence that the law requires payment for services or facilities that are of no value is pervasive. Sections 2(c)–(e) of the Act have been applied to discourage experimentation with marketing techniques and further rigidify existing distribution arrangements.[13] Manufacturers have been forced to choose between paying for promotional activities of no value to them or abandoning cooperative advertising that they found necessary and profitable.[14]

Similarly, as the instant complaints show, the brokerage clause has been given an expansive reading by the Commission. As interpreted, it has become a "featherbedding guarantee" for brokers in many industries, preventing buyers or sellers from developing more efficient, less costly methods of distribution.[15] Here again, in addition to being anticompetitive, the Commission's actions have penalized the very small businessmen the Act was intended to help.[16]

Finally, the statutory defenses of meeting competition [17] and, perhaps to a lesser extent, cost justification [18] have been given unduly

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[12] See Advisory Opinion Digest No. 263 (July 9, 1968) and accompanying dissenting opinions.

[13] See, *e.g.*, Neal Task Force Report 9; Annual Report of Council of Economic Advisers 109 (1969).

[14] See, *e.g.*, *House of Lords, Inc.*, F.T.C. Docket No. 8631 (January 18, 1966) (dissenting opinion 10–23 [69 F.T.C. 84–97]); Edwards 629–30.

[15] Cf. *Henry Broch & Co.* v. *Federal Trade Commission*, 363 U.S. 166, 180 (1960) (dissenting opinion).

[16] See, *e.g.*, *National Retailer-Owned Grocers, Inc.*, 60 F.T.C. 1208, 1241 (1962) (dissenting opinion), *reversed*, 319 F. 2d 410 (7th Cir. 1963).

[17] See, *e.g.*, *Sunshine Biscuits, Inc.*, 59 F.T.C. 674, 681 (1961) (dissenting opinion), *reversed*, 306 F. 2d 48 (7th Cir. 1962); *American Oil Co.*, 60 F.T.C. 1786, 1824–26 (1962) (dissenting opinion), *reversed*, 325 F. 2d 101 (7th Cir. 1963), *cert. denied*, 377 U.S. 954 (1964); *Callaway Mills Co.*, F.T.C. Docket No. 7634 (February 10, 1964) (dissenting opinion [64 F.T.C. 743–759]), *reversed*, 362 F. 2d 435 (5th Cir. 1966).

[18] See, *e.g.*, Report of the Attorney General's National Committee to Study the Antitrust Laws 170–76 (1955); Neal Task Force Report 10, 20, citing *Federal Trade Commission* v. *Standard Motor Prods., Inc.*, 371 F. 2d 613 (2d Cir. 1967); cf. Edwards 611–13; *Automatic Canteen Co.* v. *Federal Trade Commission*, 346 U.S. 61, 68–69 (1953).

narrow constructions. A requirement of precision in cost accounting and an unrealistic obligation to check and verify competitive offers have been imposed where the statute requires no such degree of certainty. These decisions too have tended to stifle rather than promote price competition.

Even this brief survey [19] indicates that there are substantial problems with the Robinson-Patman Act, both in its textual difficulties and in its administration by the Commission which has tended to magnify rather than eliminate the problems. The Commission has failed to see the Robinson-Patman Act in the context of overall antitrust and economic policy and has made no effort to harmonize it with the philosophy and purposes of the antitrust laws. The Commission today compounds these problems by adhering to its established pattern and automatically issuing the instant complaints instead of using this opportunity to respond to the increasing calls—by economists, lawyers and businessmen who share the Commission's desire for a strong antitrust policy but want to insure the rationality, consistency and wisdom of that policy—for fundamental review and reappraisal of where we are and where we are going under the Robinson-Patman Act.

II

When the Commission first issued these complaints for consent negotiations, two members of the Commission expressed considerable doubts about the validity of the Commission's economic theory. We pointed out the inflationary impact that these cases would have if the Commission's economics were right, and the results that could be anticipated from litigation. These cases involve what is essentially a private controversy as to whether buyers or sellers should pay brokerage in the fruit and vegetable industry; there is no economic or competitive injury from the practice—similar to that used in compensating real estate brokers and advertising agencies—of having the broker's commission paid out of the selling price. Moreover, since these brokers perform services for sellers as well as buyers, these cases do not involve the use of "phony" brokerage, or price concessions given to favored large buyers which are disguised as brokerage to avoid the proscriptions of Section 2(a). It was this practice that Section 2(c) was designed to outlaw.[20]

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[19] For a more extensive discussion of many of these issues see *The Robinson-Patman Act and Antitrust Policy: A Time for Reappraisal*, 42 U. Wash. L. Rev. 1 (1966).

[20] Sections 2(d) and (c) were similarly intended to prevent circumvention of Section 2(a) but have been applied broadly and indiscriminately by the Commission.

Curiously, two other members of the Commission who voted for issuance of the complaints accepted this basic analysis. They agreed that if their economic analysis was sound, lettuce prices would be increased but they argued that "such factors should [not] determine whether the Commission enforces" Section 2(c) because, they said, the Commission should not be concerned about "the optimum allocation of resources among growers, distributors and consumers." That there was no competitive injury from these practices they also deemed irrelevant, since Section 2(c) "makes no reference to competitive injury." In their view, "the statutory scheme is plain" and it would "frustrate the legislative intent" for the Commission not to issue these complaints. Although it was recognized that "of course, an increase in cost of .4¢ on every head of lettuce sold in the country would be a significant amount," and that if these proceedings had any economic impact it would be an inflationary one, the majority members believed that the Commission had no discretion in the matter and was compelled to proceed with these complaints, even though their issuance might be antithetical to fundamental national policies declared by the President and Congress.

These cases thus continue a long, but scarcely venerable, tradition. The language of the Robinson-Patman Act is given application beyond any reasonable bounds and without regard to the effect of such action on the competitive process and public policy. The Supreme Court has admonished that particularly in Robinson-Patman cases, "invocation of mechanical word formulas cannot be made to substitute for adequate probative analysis." [21] The instant complaints, however, fly in the face of that admonition, exalting form over substance and substituting talismanic word formulas for intelligent legal and economic analysis. The sorry results of this literal-minded, mechanical approach to law enforcement have already been described. It is instructive to consider what will be the predictable outcome of these complaints. Recent history provides a good guide.

One distinct possibility is that the complaints will engender years of fruitless litigation, peripheral to the merits of the proceeding, and will ultimately be dismissed on the ground of staleness. The *Associated Merchandising Corp.*[22] (AMC) litigation is illustrative. The investigation in that case traced back to the 1930's and 1940's—just as the instant matters trace back to the 1950's when the Commission was first asked to intervene to help the sellers in this industry—when the Commission first became concerned about group-buying practices

[21] *Federal Trade Commission* v. *Sun Oil Co.*, 371 U.S. 505, 527 (1963) (footnote omitted).

[22] F.T.C. Docket No. 8651 [74 F.T.C. 1555].

in the department store industry and entered orders to deal with the problem. In 1959 the Commission began a new investigation which led to the issuance of a complaint in April 1964 against AMC, a buying group, Aimcee Wholesale Corp. (AWC), its wholly-owned subsidiary, and the numerous individual department store stockholders. I dissented from the issuance of the complaint, which charged that respondents acting collectively had induced and received preferential prices and discriminatory discounts from suppliers. It was my view that the allegedly illegal practices were symptomatic of a larger problem concerning buying practices in the department store industry—a problem that would not have been cured by issuing the complaint and that would be better handled in a broad, industrywide proceeding designed to elicit all the relevant facts. Moreover, the Commission's staff had indicated that it was not prepared to prove its case and had not even adverted to the serious problem of the burden of coming forward with evidence on the question of cost justification.[23]

Respondents submitted a proposed consent order which would have terminated all the group-buying practices challenged in the complaint. It would not have included a provision binding the department store respondents acting in their individual capacity, as opposed to collectively, not to violate 2(f). However, there was no evidence that these stores had the power, acting individually, to engage in such practices, the complaint did not allege anything on this subject and complaint counsel proposed to offer evidence bearing only on the group-buying issue. The Commission rejected the settlement and issued the complaint for adjudication on October 6, 1964. I again dissented.

Years of litigation ensued, most of it directed to discovery questions. It is unnecessary to recount the unhappy details here save to note that over my repeated dissent the Commission twice more rejected consent settlement offers that gave promise of ending at once the practices charged in the complaint and included order provisions never previously obtained in a Robinson-Patman case.

Late in 1968, some four-and-a-half years after the AMC complaint issued and more than nine years after the investigation began, the case was still not ready for trial on the merits and promised to continue at least until the mid or late 1970's. The Commission, in its myopia, stubbornly refused to compromise in any way its rigid insistence on an order cast in the specific language of Section 2(f). It persisted in wanting to handle this economic problem—a problem of in-

[23] See *Automatic Canteen Co.* v. *Federal Trade Commission*, 346 U.S. 61 (1953) (holding that this burden is on the Commission in a 2(f) case); *Suburban Propane Gas Co.*, F.T.C. Docket No. 8672 (June 3, 1968) (dissenting opinion [73 F.T.C. 1276]).

dustrial organization and structure—as a simple matter of illegal conduct by a few individuals. Unwilling to face reality or to accept anything less than what it considered total victory, the Commission finally—and unanimously—withdrew the complaint in December 1968.[24] No order was entered covering any of the practices charged in the complaint. Ten years of fruitless battle, much of it carried on over my dissent, at an expense of millions of dollars wound up in absolutely nothing but a mountain of paper.

Yet, the Commission has learned nothing from this quixotic crusade. There is now pending within the Commission, before a hearing examiner, another hoary 2(f) case, *Suburban Propane Gas Corp.*,[25] which also dates to 1959. Many of the Commission's mistakes in the *AMC* matter have been repeated in *Suburban Propane*.[26]

It should be obvious that the instant complaints fit neatly into the *AMC-Suburban Propane* tradition, with one difference: the violations here alleged are far more trivial than the violations alleged in those cases, and the public interest in these matters is far less. Nevertheless, these complaints too give promise of spawning years of costly but unnecessary litigation.

Suppose, however, that instead of degenerating into inconclusive litigation the outcome of these cases is a Commission victory. What will be the result? As I pointed out in my earlier dissenting opinion on these matters, the probable impact of these cases will be to force a mere change in bookkeeping:

> If, for example, the current market price is $1.75, the seller deducts 10¢ brokerage and his net price is $1.65. Assuming the same market conditions, the only effect of the orders in these cases would probably be that the buyer would pay the 10¢ brokerage, leaving the seller with the same net price of $1.65. * * * However, while the economic impact might be zero, the cost to the Commission in time, money, and manpower would be considerable.

Again, history confirms the view that these complaints will not result in any public benefit. In addition to the examples cited in part I of this opinion, there is the Commission's action in the wearing apparel cases. Rather than undertake the kind of economic inquiry necessary to ascertain and evaluate the facts concerning competition in the department store industry, the Commission issued hundreds of orders, most of them pursuant to consent agreements, against small apparel manufacturers, suppliers of the large retail outlets, to eliminate alleged

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[24] *Associated Merchandising Corp.*, F.T.C. Docket No. 8651, order withdrawing complaint (December 18, 1968 [74 F.T.C. 1555]).

[25] F.T.C. Docket No. 8672 [77 F.T.C. 189].

[26] See, *e.g.*, dissenting opinions accompanying order denying interlocutory appeal (September 20, 1968 [74 F.T.C. 1606]), and order allocating burden of coming forward with the evidence (June 3, 1968 [73 F.T.C. 1269]).

violations of 2 (d) and (e).[27] If these orders have stimulated competition in the apparel manufacturing or department store industries, or if they have had any procompetitive effect, it is not discernible.

More directly in point is the outcome of the Commission's famous *Herzog* case.[28] There the Commission was "successful" in litigating a 2(c) case against a broker whose position was entirely analogous to that of the brokers in the instant matters. The Commission "won" the case in the Court of Appeals, largely because the respondent had filed an admission answer which the court regarded as constituting a stipulation that Herzog was the buyer's agent and not an independent broker. Subsequently, it became clear that resident buyers (brokers) in the fur industry, like real estate brokers and the present broker respondents, perform a useful economic function, beneficial to buyers and sellers and that who paid their commission is a matter of indifference to the public interest. As a result, the Commission, by minute of April 2, 1951, reaffirmed on November 22, 1966, determined that enforcement of the *Herzog* order would not be in the public interest. This decision it did not, of course, publicly announce.

Thus, the Commission apparently believes it has no discretion when it comes to squandering scarce resources on bringing such a proceeding and litigating it, but has ample discretion thereafter, once everyone's time and funds have been wasted, to consider the public interest and to drop the matter if necessary. Since the instant matters seem clearly parallel to *Herzog*, it is pertinent to ask whether, if the Commission eventually issues an order, after arduous and expensive litigation, on the ground that there has been a technical violation of Section 2(c), the public interest and economic realities will dictate that this order, too, not be enforced.

The answer to that question may be conjectural but one fact is clear: as far as the public we are supposed to represent is concerned, the outcome of these proceedings will be "heads you win, tails we lose." Whether the Commission "wins" or "loses" this case, the public interest will suffer. Public funds will have been squandered on proceedings which can have no conceivable value in promoting competition or the interests of consumers or even the interests of those private parties at whose behest the Commission has acted.

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[27] See *Abby Kent Co.*, F.T.C. Docket No. C-328 (August 9, 1965) (dissenting opinion [68 F.T.C. 407-414]).

[28] *Jack Herzog & Co.*, 35 F.T.C. 71 (1942), *aff'd*, 150 F.2d 450 (2d Cir. 1945); see generally Edwards 147-52.

III

One other aspect of these matters is worthy of mention. As I have noted, the Commission apparently believes it has a mandatory statutory duty to act in these matters. The prevailing idea seems to be that the Commission may not exercise any discretion but is compelled to issue complaints despite the manifest disharmony of the complaints, again accepting the Commission's economic assumptions for purposes of analysis, with fundamental economic policies pursued by the President and Congress.

I do not agree, of course, with the Commission's premise. However, it seems to me that if the Commission really believes that it has no choice or discretion under a statute and believes that it must enforce it in a way designed and calculated to achieve absurd results, it has an obligation to inform Congress of the anomalies it has found in the statute. Not only has the Commission made no effort to do this but, when its policies and actions are challenged as wasteful and bizarre, it points to Congress and blames the legislature for enacting foolish statutes.

It is particularly unfortunate that the Commission has shirked its obligations to Congress at the present time. As is indicated in part I, both the Johnson and Nixon White House Task Force Reports have severely criticized the Commission's unintelligent administration of the Robinson-Patman Act. The conclusions of these bodies are obviously entitled to serious consideration, reflecting as they do the consensus of a diverse group of economists and lawyers who are of differing antitrust philosophies. These respected voices thus join the growing demand for a new look at the Robinson-Patman Act and its implementation to determine its proper place in antitrust policy.[29] Yet, the Commission, the body charged with primary responsibility for enforcing the Act, has shunned this opportunity to take the lead in the important process of re-examining the Act and harmonizing it with the overall objectives of antitrust.

Instead of offering this kind of thoughtful economic analysis, which everyone but the Commission seems to agree is timely, and essential, the Commission wastes its resources on these cases. To be sure, the Commission avows that it eschews the numbers game—simply counting the number of complaints issued—as a measuring rod for agency performance, but what has been substituted for it? The number of complaints has diminished but the Commission has not channeled its

[29] See, *e.g.*, *The Robinson-Patman Act and Antitrust Policy: A Time for Reappraisal*, 42 U. Wash. L. Rev. 1 (1966); Final Report of the National Commission on Food Marketing 107 (1966); Edwards 627–57.

resources to the other areas—like reappraisal of the Robinson-Patman Act—that cry out for attention. The paucity of complaints merely reflects the fact that more investigations are closed (because of age, staleness, etc.) with no action taken. The Commission still indiscriminately opens numerous investigations of alleged Robinson-Patman violations and pursues them at considerable expense, but now it at least has the good sense to close most of them without issuing complaints. The time has come to call a halt to this pernicious cycle, to re-evaluate the Commission's enforcement program under the Robinson-Patman Act, to take inventory of the successes and failures of the Act, and to make an informed and reasoned report to Congress and the public.

The Commission performs a disservice to the public interest in ignoring these larger questions and squandering its resources on these trivial brokerage cases. I dissent.*

July 10, 1969

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*It is sad, but not surprising, that the only response to this dissent should consist of a personal attack on me, charging me with merely "giving lip service to the intention of Congress" and having "an obvious antipathy toward the Robinson-Patman Act."

Before joining the Commission and as an assistant to the Solicitor General, I successfully argued the Commission's position before the Supreme Court in such major Robinson-Patman Act cases as *Federal Trade Commission* v. *Anheuser Busch, Inc.*, 363 U.S. 536 (1960), and *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950). Where was my "antipathy" to the Act at that time?

Similarly, when I wrote opinions for the Commission reflecting an expansive interpretation of the Robinson-Patman Act, in such cases as *Foremost* (62 F.T.C. 1344 (1963), *affirmed*, 348 F. 2d 674 (5th Cir. 1965)); *Continental Baking* (FTC Docket No. 7630 (December 31, 1963 [63 F.T.C. 2071])); and *Sunbeam* (FTC Docket No. 7409 (January 11, 1965 [67 F.T.C. 20])), I do not recall being charged at that time with "antipathy" to the Act.

If dissents from erratic and irrational Commission interpretations of the Robinson-Patman Act are to be equated with "antipathy" to the statute, what does one say about the Justices of the Supreme Court and the judges of the various courts of appeals who over the past eight years have upheld my dissenting position—finding it, and not the majority's interpretation, to be in accord with the intention of the Congress—in such cases as *Fred Meyer, Inc.*, FTC Docket No. 7492 (March 29, 1963) (opinion concurring in part and dissenting in part [63 F.T.C. 74–7]), modified, 359 F. 2d 351 (9th Cir. 1966), *reversed*, 390 U.S. 341 (1968); *Callaway Mills, Co.*, FTC Docket No. 7634 (February 10, 1964) (dissenting opinion [64 F.T.C. 743–59]), *reversed*, 362 F. 2d 435 (5th Cir. 1966); *Fry Roofing Co.*, FTC Docket No. 7908 (July 23, 1965) (concurring opinion [68 F.T.C. 266–9]), *affirmed*, 371 F. 2d 277, 281–87 (7th Cir. 1966); *Forster Mfg. Co., Inc.*, 62 F.T.C. 852, 923 (1963) (dissenting opinion), *reversed*, 335 F. 2d 47 (1st Cir. 1964), *cert. denied*, 380 U.S. 906 (1965); *Borden Co.*, FTC Docket No. 7474 (February 7, 1964) (dissenting opinion [64 F.T.C. 573–81]), *reversed*, 339 F. 2d 953 (7th Cir. 1964); *American Oil Co.*, 60 F.T.C. 1786, 1814 (1962) (dissenting opinion), *reversed*, 325 F. 2d 101 (7th Cir. 1963), *cert. denied*, 377 U.S. 954 (1964); *Central Retailer-Owned Grocers, Inc.*, 60 F.T.C. 1208, 1241 (1962) (dissenting opinion), *reversed*, 319 F. 2d 410 (7th Cir. 1963); *The Nuarc Co.*, 61 F.T.C. 375, 394 (1962) (dissenting opinion), *reversed*, 316 F. 2d 576 (7th Cir. 1963); *Sunshine Biscuits, Inc.*, 59 F.T.C. 674, 681 (1961) (dissenting opinion), *reversed*, 306 F. 2d 48 (7th Cir. 1962); and *Shulton, Inc.*, 59 F.T.C. 106, 114 (1961) (dissenting opinion), *reversed*, 305 F. 2d 36 (7th Cir. 1962).

It would appear that the *ad hominem* attack now being made finds me in good company.

I join Commissioner Nicholson in expressing despair for the Commission's future enforcement of the Robinson-Patman Act, as well as the other important statutes which

DISSENTING STATEMENT OF COMMISSIONER NICHOLSON

It was not long after I joined the Commission that it became apparent to me that a thorough review of both the Commission's enforcement of the Robinson-Patman Act and the statute's provisions was long overdue.[1] However, I was of the opinion that the Commission, itself, would conduct such a re-evaluation. In this respect, I was encouraged by the persistency of Commission efforts in recent years to reevaluate its policies and procedures and make necessary changes.

For one brief moment, it appeared that this general re-evaluation would finally focus on Robinson-Patman enforcement.[2] Today's action, however, has shattered the illusion. Apparently, Robinson-Patman policy is the Commission's "sacred cow." While willing to approach enforcement of its other statutes with rationality and a concern with ultimate result, the Agency has reserved a different approach for the price discrimination statute—mechanical.

Since the Commission appears either incapable or unwilling to review internally its Robinson-Patman Act responsibilities in the light of modern day business realities, it is now apparent that this appraisal should come from without the Agency.

July 10, 1969

SEPARATE STATEMENT OF COMMISSIONER DIXON

The issuance of these complaints has given Commissioner Elman an opportunity to castigate not only the present Commission but its predecessors over the past 33 years for their enforcement of the Robinson-Patman Act. And his sweeping indictment would necessarily include the numerous court decisions which also reflect what Commissioner Elman characterizes as a "literal-minded" interpretation of the Act. It seems, however, that the dissenting statement is not so much an attack upon the Commission's interpretation of the Robinson-Patman Act as it is an attack upon the Act itself. But the argument is not a novel one. It has been made before by Commissioner Elman and will undoubtedly be made again whenever a majority of the Commission proceeds contrary to his views.

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the Congress has entrusted to its stewardship. The only encouraging sign is that knowledge of the Commission's failures and deficiencies under its present management is no longer confined to a relatively small segment of the bar and the business community, but is increasingly becoming a matter of widespread public concern. One's faith must be that where there is knowledge and understanding, there is hope for reform.

[1] See, *Antitrust: Sound and Fury?*—Remarks before the Section of Antitrust Law, 91st Annual Meeting of American Bar Association, August 7, 1968.

[2] In April, the Commission voted to reevaluate, through a trade regulation rule proceeding, the problem of functional discounts to stocking dealers. See Advisory Opinion Digest No. 333 (April 18, 1969). See also Advisory Opinion Digest No. 263 (July 9, 1968), and accompanying dissenting opinions.

Insofar as I can determine from reading the dissenting statement, Commissioner Elman's approach to enforcing the Robinson-Patman Act is essentially a negative one. While giving lip service to the intention of Congress to assure "that businessmen at the same functional level would start on equal competitive footing so far as price is concerned," [1] he would apparently ignore discriminations causing secondary line injury, as well as various practices expressly prohibited by Sections 2(c), 2(d) and 2(e), if enforcement of the Act would in any way impede competition at the primary level. In short, it would seem that he would resolve all "conflicts" between the Robinson-Patman Act and the antitrust laws against the purpose for which the Robinson-Patman Act was passed.

In the present case, there have been numerous complaints that the challenged practices have had serious anticompetitive effects. If these allegations are true, the practices would certainly violate Section 2(c). Commissioner Elman's characterization of the matter as "trivial" merely reflects an obvious antipathy toward the Robinson-Patman Act.
July 10, 1969

SEPARATE STATEMENT OF COMMISSIONER MACINTYRE

My decision to vote for the issuance of these complaints is based upon my conviction that their issuance is justified. However, I have grave doubts that the Commission as it is now constituted will find itself able to resolve the issues presented by these complaints. I say that because it is obvious that some members of the Commission are not in sympathy with some provisions of the laws entrusted to this Commission. These complaints are based on one of those provisions. It is my view that opposition to a law should be directed to the Congress. Unless and until Congress should repeal a law, it should be obeyed. The legislative function should not be usurped by the expedient of administrative rescission.

The current policy split at the Commission level on matters of this kind, in my view, operate as perhaps the principal deterrent to the Commission's fulfillment of its mission. This makes it difficult indeed for the staff of the Federal Trade Commission to pursue a coherent policy in presenting matters to the Commission for its consideration. The voting patterns of individual Commissioners speak more eloquently than the words of any of us. Consequently, for those who would have an interest in such records, I would invite a *full examina-*

[1] *Federal Trade Commission* v. *Sun Oil Company*, 371 U.S. 505–520 (1963).

tion of the Commissioners' votes in this area for the past eight years on the issuance of complaints and orders. The question of whether our decisions are governed by the statutory text or by our individual value judgments would seem worthy of Presidential and Congressional inquiry.

July 10, 1969

Certification of Motion to Dismiss Respondents P & R Brokerage Co. and Frank V. Condello From Further Prosecution Under the Complaint

By David H. Allard, Hearing Examiner:

Respondents P & R Brokerage Co., a partnership, and Frank V. Condello, individually and as partner in P & R Brokerage Co., have filed a motion that it would be "in the interests of justice and in the public interest" to dismiss the complaint [1] with regard to them at this time or effective on October 31, 1972. Since the motion clearly is addressed to the Commission's administrative discretion, the examiner certifies the matter to the Commission.

Condello is the partner in charge of P & R Brokerage Co., a brokerage business operated in Salinas, California. He is the only partner actively engaged in the brokerage business under the name P & R Brokerage Co. The other partners are residents of Arizona and their business interests apparently are not involved in the proceeding. Under the partnership agreement, a 4-month notice of retirement is required. Condello has officially given that notice and the effective date of his retirement is October 31, 1972.[2] On that date, P & R Brokerage Co. will cease to exist as a brokerage business in Salinas, California, and Condello has no intention of engaging in the business again.

Counsel supporting the complaint argue that the relief sought is untimely because it is grounded on an event to take place in the future and they also point out that the motion fails "to address itself to protection of the public interest against substantive continuation, or resumption of the practices charged in the complaint."

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[1] Respondent Borman Food Stores, Inc., did not timely file an answer to the complaint. By virtue of such default, an examiner's initial decision was filed on May 26, 1972, under the provisions of Section 3.12(c) of the Commission's Rules of Practice.

[2] According to Condello's affidavit, he is retiring because of his advancing age (70 plus years) and poor health; the emotional strain caused by the Commission bringing formal charges against him in spite of the fact that he had been attempting to obtain clarification from the Commission for upwards of 10 years about his operations in light of Section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act (answer to complaint, pages 5–33); and the recent deaths of his wife and two of his brothers-in-law who had been his partners.

It is the examiner's recommendation that the motion be granted, conditioned on the respondents filing a certification by November 10, 1972, which would attest to Condello's retirement, the cessation of P & R Brokerage Co. as a business entity, as well as Condello's intention not to re-enter the business or for P & R Brokerage to come alive in a new form. Based on the representations made in the affidavit, the examiner concludes there is no reasonable basis for believing that respondents' purposes are anything but bona fide and that respondents' intention is not to circumvent the law. If the respondents comply with the suggested proviso of the dismissal order, there would be no successor business entity to be liable for violation of a Commission order. In this regard, then, there is, in effect no concrete case before the Commission, only an abstract controversy—"sterile as abstract controversies usually are." *Regal Knitwear Co.* v. *NLRB*, 324 U.S. 9, 15 (1945).

Counsel supporting the complaint cite *Crowell-Collier Publishing Company*, 70 F.T.C. 977, as an example to illustrate the proposition that the Commission is disinclined "to forego entry of an appropriate cease and desist order simply because respondents have terminated their business after the issuance of complaints." In contrast to *Crowell-Collier*, here there is no indication that respondent has abused or reasonably could be expected to abuse the public by creating a new business entity to resume the assailed practices. Since counsel supporting the complaint apparently feel that the affidavit is incomplete in some ways, as an alternative, the Commission might consider referring the matter back to the examiner to take a further deposition of Mr. Condello for the limited purpose of providing counsel with the opportunity to explore the uncertainties outlined in their answer to respondents' motion.

July 26, 1972.

Order Dismissing Complaint as to Respondents Frank V. Condello and P & R Brokerage Co.

This matter is before the Commission on the hearing examiner's certification of respondents Frank V. Condello's, as an individual, and P & R Brokerage Co.'s motion to dismiss the complaint as to them. In an affidavit accompanying said motion, Frank V. Condello avers that because he is in ill health, over 70 years of age, and under strain caused by the present litigation and several deaths in his family, he plans to retire on October 31, 1972, from the brokerage business, which is the subject of the complaint in this matter. P & R Brokerage Co.

is a partnership solely operated by Frank V. Condello, and will be dissolved with the retirement of Frank V. Condello.

Counsel supporting the complaint resist respondents' motion for the reasons that it does not provide permanent relief, and is untimely as Mr. Condello has not yet retired.

The hearing examiner recommends granting respondents' motion.

For the reasons cited by respondent Frank V. Condello, the Commission has decided that it would not be in the public interest to continue these proceedings against the instant respondents. To meet the objections of counsel supporting the complaint, the Commission, however, reserves the right to issue a complaint against respondents, based upon the same or similar charges as the complaint being dismissed by this action, should future events warrant such action. Accordingly:

It is ordered, That the complaint in Docket No. 8789 be, and it hereby is, dismissed as to respondents P & R Brokerage Co. and Frank V. Condello, without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against these respondents at any time in the future as may be warranted by the then existing circumstances.

IN THE MATTER OF

COWLES COMMUNICATIONS, INC., ET AL.

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

Docket No. 8831. Complaint, Jan. 15, 1971—Decision, Aug. 3, 1972.

Consent order requiring a New York City publisher and seller of books and magazines and its five magazine subscription agencies in Des Moines, Iowa, among other things, to cease misrepresenting the terms and conditions of contracts; misrepresenting the identity of solicitors or the firms they are representing; misrepresenting the savings which will be accorded or made available to purchasers; representing that any subscription contract can be cancelled and failing to cancel said contract upon request; misrepresenting the nature, kind or legal characteristics of any document; misrepresenting the action or results of any action which may be taken to effect payment of alleged indebtedness. Respondents are further required to allow purchasers a three day cooling-off period in which they may cancel their subscription contracts.

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 Cowles Communica-

tions, Inc., a corporation; Civic Reading Club, Inc., a corporation; Educational Book Club, Inc., a corporation; Home Reader Service, Inc., a corporation; Home Reference Library, Inc., a corporation, and Mutual Readers League, 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. Cowles Communications, Inc., hereinafter Cowles, 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 488 Madison Avenue, in the city of New York, State of New York.

Cowles is engaged in various businesses such as the operation of radio and television stations; the publication and sale of books, newspapers, business and professional magazines, and consumer magazines, including LOOK a periodical of general interest. Its publications are widely distributed throughout the United States and in many foreign countries. It is also engaged in the sale by subscription, of magazines and other publications, throughout the United States.

Cowles' gross revenues during the period 1967 through 1969 averaged more than $160,000,000 annually. A substantial portion of its income was, and is, derived from revenues attributable to the sale of advertising space in, and at rates based upon the circulation of, its various publications.

PAR. 2. The respondents Civic Reading Club, Inc.; Educational Book Club, Inc.; Home Reader Service, Inc.; and Mutual Readers League, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent Home Reference Library, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa. Each of said respondents has its principal office and place of business located at 111 Tenth Street, Des Moines, Iowa; each is a wholly-owned subsidiary of respondent Cowles Communications, Inc., and each is engaged in the sale, by subscription, of magazines and other publications.

The magazines and other publications which Cowles, through its above-named subsidiaries, sells nationwide pursuant to subscription sales contracts, include those published by others as well as itself. All such products, whether magazines, books or any other printed matter will hereinafter be referred to as "publications."

Subscription sales are made to consumers, members of the general public, hereinafter sometimes referred to as "customers," "subscribers"

or "purchasers," pursuant to contracts which generally run from two to five years and, depending upon the number and type of publications selected by the customer, vary in price from approximately $72 to $195, but generally range between $100 and $150.

Cowles' gross subscription sales of publications through its aforesaid subsidiaries have averaged in excess of $55,000,000 annually during the years 1968 and 1969.

PAR. 3. In the course and conduct of its business of selling publications pursuant to subscription contracts, as aforesaid, Cowles, through its respective subsidiaries, respondents herein, has entered into agreements with numerous individuals located throughout the United States. Said individuals, referred to by respondents as "franchisees" or "dealers," through personnel variously designated as "openers," "salesmen," "closers," "solicitors," or otherwise, hereinafter referred to as "representatives," have induced substantial numbers of customers to subscribe to LOOK and other publications so offered for sale.

Respondents, through their said dealers and representatives, place into operation and, through various direct and indirect means and devices, control, direct, supervise, recommend and otherwise implement sales methods whereby members of the general public are contacted, by telephone calls and door-to-door solicitations, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign subscription contracts which provide for the purchase of publications and payment therefor on an installment basis. Said contracts, among other things, make provision for the listing of publications chosen by the purchaser; the period of delivery and the terms and conditions for payment, by monthly installments, of the purchase price. This method of sale is referred to in the industry as "Paid-During-Service" (PDS).

The subscription contract, when signed by the subscriber, is thereafter returned by the representative to the dealer for processing. The dealer in turn forwards the contract and various forms, reports and other documents to the respondent subsidiary with which he is affiliated, for further processing.

Ultimately, the subscriber receives, among other things, a book of coupons, prepared by respondents, with instructions to detach and submit a single coupon with each monthly payment. Payments are made, as directed, either to the dealer or to the respondent subsidiary with which he is affiliated, depending upon whether or not the dealer is equipped to handle such deferred payments. If payment is made directly to the subsidiary, it pays the dealer the amount due him, by credit or otherwise. If the dealer receives payment from the sub-

scriber, he in turn remits to the subsidiary, the amount due it. In either event, respondents receive and accept the revenues from said sales of publications, either directly from the subscriber or indirectly from the dealer.

In the manner aforesaid, respondent Cowles, directly or indirectly through said respondent subsidiaries, dominates, controls, furnishes the means, instrumentalities, services and facilities for, condones, approves and accepts the pecuniary and other benefits flowing from the acts, practices and policies hereinafter set forth, of the respondent subsidiaries and their respective dealers and representatives, hereinafter collectively referred to as respondents' representatives.

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

PAR. 4. In the course and conduct of their subscription sales business, as aforesaid, respondents now cause, and for more than three years last past have caused said publications, when sold, to be shipped from their places of business or sources of supply by mail to purchasers thereof located in the same and various States of the United States other than the state of origination and have transmitted and received and caused to be transmitted and received in the course of selling, delivering, and collecting payment for said publications among and between the several states of the United States, contracts, invoices, checks, collection notices and various other kinds of commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such products and commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing members of the general public to sign subscription contracts, respondents directly or through their representatives utilize or display sales promotional materials or other means and instrumentalities furnished, approved or ratified by respondents. In conjunction therewith, they have made certain oral statements and representations concerning the terms and conditions of said subscription contracts, their renewal or cancellation, special offers, the nature and purpose of the solicitation, and the identity of an organization purportedly involved in the solicitation. In the foregoing manner, respondents and their representatives have represented, directly or indirectly:

(a) That they are conducting or participating in bona fide surveys, quizzes or contests.

(b) That they represent, or are performing services for bona fide

non-commercial, educational, charitable, social or other organizations, such as "Welcome Wagon."

(c) That publications or other products will be given free, or for the cost of mailing, handling, editing or printing said publications, or at special or reduced prices.

(d) That subscribers will be allowed to cancel the subscriptions if they should decide to do so.

PAR. 6. In truth and in fact:

(a) Said representatives were not conducting or participating in bona fide surveys, quizzes or contests but, to the contrary, were engaged in inducing the general public to sign subscription contracts in the manner aforesaid.

(b) Said representatives neither represented nor performed services for bona fide non-commercial, educational, charitable, social or other organizations such as "Welcome Wagon," but, to the contrary, represented or performed services for respondents in the manner aforesaid.

(c) Publications or other products were not given free, nor solely for the cost of mailing, handling, editing or printing of said publications, nor at special or reduced prices. To the contrary, the subscription contracts provided for payment to cover respondents' regular or prevailing subscription contract prices.

(d) On a substantial number of occasions, subscribers were not allowed to cancel their subscription contracts or were allowed to do so only after extended delay.

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

PAR. 7. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of and payment for said publications by the general public, respondents and their representatives directly or indirectly, have engaged in the following additional acts and practices:

(a) In a substantial number of instances, they have stated approximate costs of a subscription contract on a weekly basis, in conjunction with statements of typical subscription periods as, for example, a cost of 50 cents per week and a period of 60 months. Respondents and their representatives falsely and deceptively fail to disclose, in connection with such statements, the material fact that their contracts seldom, if ever, provide for weekly installment payments, or for payments spread over 60 months. In truth and in fact, the contracts require monthly installment payments of substantially higher amounts over a substantially shorter period of time than stated during such oral presentations.

(b) In a substantial number of instances, they have induced customers to sign a subscription contract by falsely and deceptively representing or implying that all publications covered by said contract will be delivered over the same period of time, such as 60 months. In truth and in fact, subscription periods for different publications covered by the same contract, are frequently different.

(c) In a substantial number of instances they have induced customers to sign contracts by failing to fully inform the customers as to the cost, name and number of issues of each publication, the total cost of the contract, the amount of the downpayment, the amount and due date of each payment and the total number of such payments.

(d) In a substantial number of instances, they have induced customers to sign a subscription contract by falsely and deceptively representing it to be a preference list, a guarantee, a route slip, or a document of an import or nature other than a subscription contract.

(e) In their efforts to collect what respondents elect to treat as delinquent accounts of subscribers, they have resorted to telephone calls at unreasonable hours and other forms of harassment, including but not limited to those set forth below, by means of which they have unfairly, falsely and deceptively represented, directly or indirectly:

(1) That the general or public credit rating or standing of any such customer will be adversely affected unless payment is made.

(2) That the failure of a customer to remit money to respondents will result in the institution of legal action to effect payment. In truth and in fact, respondents seldom if ever take any action, including legal action, which adversely affects the general or public credit rating of such subscribers.

(f) In a substantial number of instances where customers have discontinued making payment under subscription contracts, respondents have cancelled said contracts without arranging for the delivery of publications already paid for or without making cash refunds of payments made in advance.

Therefore, respondents' statements, representations, acts and practices, and their failure to reveal material facts, as set forth herein were, and are, unfair, false, misleading, and deceptive acts and practices.

PAR. 8. In addition to the foregoing statements, representations, acts and practices, respondents have engaged in door-to-door solicitations of the aforesaid subscriptions, either without prior invitations to solicit such sales from prospective purchasers or by using one or more of the deceptive means and methods aforesaid to gain access to prospective purchasers at times and under circumstances when such prospective purchasers were not otherwise considering the purchase of magazines or other publications, and without either:

(a) affirmatively stating and affording such purchasers the right to cancel any resulting subscription contracts for a period of not less than 72 hours following such solicitations, or

(b) by refusing to honor any such right purportedly given either orally or in writing, or thwarting the exercise of any right so given. The solicitation of subscription sales without permitting cancellation within a reasonable period of time constitutes an unfair, false, misleading and deceptive practice where such sale involves long-term obligations on the part of the subscriber and where it is made under the conditions and circumstances herein alleged.

PAR. 9. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents of the aforesaid unfair and false, misleading and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief and unfairly into the assumption of debts and obligations and the payment of monies which they might otherwise not have incurred.

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

DECISION AND ORDER

The Commission having issued its complaint on January 15, 1971, charging the consenting parties named in the caption hereof with violation of the Federal Trade Commission Act, and the consenting parties having been served with a copy of that complaint; and

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

The consenting parties and counsel for the Commission having executed an agreement containing a consent order, an admission by consenting parties of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by consenting parties that the law has been violated as set forth in such complaint, and waivers and other 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, and having accepted same, and the agreement containing consent order having 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 makes the following jurisdictional findings, and enters the following order:

1. Cowles Communications, 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 488 Madison Avenue, in the city of New York, State of New York.

Civic Reading Club, Inc., Educational Book Club, Inc., Home Reader Service, Inc., and Mutual Readers League, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware, and Home Reference Library, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa. Each of these corporations has its office and principal place of business located at 111 Tenth Street, in the city of Des Moines, State of Iowa.

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

ORDER

It is ordered, That Cowles Communications, Inc., a corporation, and its officers, Civic Reading Club, Inc., a corporation, and its officers, Educational Book Club, Inc., a corporation, and its officers, Home Readers Service, Inc., a corporation, and its officers, Home Reference Library, Inc., a corporation, and its officers, Mutual Readers

League, Inc., a corporation, and its officers, consenting parties herein, their successors or assigns, employees, franchisees or dealers, agents, salesmen, solicitors or other representatives and the employees, franchisees, agents, salesmen, solicitors or other representatives engaged by or through the consenting parties' franchisees or dealers, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of magazines or any other publications or merchandise, hereinafter sometimes referred to as products, or subscriptions to purchase any such products or services or in the collection or attempted collection of any delinquent or other subscription contract or other account, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that any representative or other person calling upon a customer or prospective customer for the purpose or with the result of inducing or securing a subscription to, order for, or the purchase or agreement to purchase any products or services:

(a) is conducting or participating in any survey, quiz or contest, or is engaged in any activity other than soliciting business; or misrepresenting, in any manner, the purpose of the call or solicitation.

(b) represents, or is performing services for "Welcome Wagon" or any educational, charitable, social or other organization, or any individual or firm other than one engaged in soliciting business; or misrepresenting, in any manner, the identity of the solicitor or of his firm and of the business they are engaged in.

(c) will give any product or service free or as a gift or without cost or charge, or that any product or service can be obtained free or as a gift or without cost or charge, in connection with the purchase of, or agreement to purchase any product or service, unless the stated price of the product or service required to be purchased in order to obtain such free product or gift is the same or less than the customary and usual price at which such product or service required to be purchased has been sold separately from such free or gift item, and in the same combination if more than one item is required to be purchased, for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made.

2. Failing, clearly, emphatically and unqualifiedly to reveal, at the outset of the initial and all subsequent contacts or solicita-

tions of purchasers or prospective purchasers, whether directly or indirectly, or by telephone, written or printed communication, or person-to-person, that the purpose of such contact or solicitation is to sell products or services as the case may be, which shall be identified with particularity at the time of each such contact or solicitation.

3. Representing, directly or indirectly, that any price for any product or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost; or that any price is a special or reduced price unless it constitutes a significant reduction from an established selling price at which such product or service has been sold in substantial quantities by consenting parties in the same combination of items in the recent and regular course of their business; or misrepresenting, in any manner, the savings which will be accorded or made available to purchasers.

4. Representing, directly or indirectly, that any subscription contract or other purchase agreement can be cancelled at the purchaser's option, or that the right to cancel will be accorded to any purchasers, when there is no provision in such contract or agreement for cancellation on the terms and conditions represented, and unless cancellation is in fact granted on such terms and conditions.

5. Refusing or failing upon request to cancel a contract when the representation has been made directly or indirectly that the contract will be cancellable.

6. Making any reference or statement concerning "50¢ per week," "60 months," or any other statement as to a sum of money or duration or period of time in connection with a subscription contract or other purchase agreement which does not in fact provide, at the option of the purchaser, for the payment of the stated sum, at the stated interval, and over the stated duration or period of time; or misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to purchasers or prospective purchasers.

7. Failing to clearly reveal orally, prior to the time the subscription contract is signed by the customer:

(a) The name, the exact number of issues, and the exact number of months of service of each publication covered by the contract;

(b) The total cost of each publication and all the publications covered by the contract; and

(c) The downpayment required and the number, amount, and due dates of all installment payments.

8. Representing, directly or indirectly, that a subscription contract or other purchase agreement is a "preference list," "guarantee," "route slip" or any kind of document other than a contract or agreement; or misrepresenting, in any manner, the nature, kind or legal characteristics of any document.

9. Failing, clearly, emphatically and unqualifiedly to reveal orally and in writing to each purchaser or prospective purchaser before execution, the identity, nature and legal import of any document they are requested or required to execute in connection with the purchase of any product or service.

10. Attempting, by the use of telephone calls, printed matter, or any other means, to harass or intimidate customers in order to effect payment of any account, or representing directly or indirectly, that in the event of non-payment or delinquency of any account or alleged debt arising from any subscription contract or other purchase agreement, the general or public credit rating or standing of any person may be adversely affected, unless consenting parties refer the information concerning such delinquency to a bona fide credit reporting agency; or that legal action may be instituted unless consenting parties in good faith intend to institute legal action against each alleged debtor to whom such representation is made; or misrepresenting, in any manner, the action, or results of any action which may be taken to effect payment of any such account or alleged debt.

11. Cancelling subscription contracts for any reason other than (a) breach by the subscriber or (b) in the event of the discontinuance of publication or other unavailability of any publications subscribed for, without either arranging for the delivery of publications already paid for or promptly refunding money on a pro rata basis for all undelivered issues of publications for which payment has been made in advance.

12. Contracting for any sale in the form of a subscription contract or other purchase agreement which shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the date of signing by the purchaser.

13. Failing to disclose, orally prior to the time of sale and in writing on any subscription contract or other purchase agreement signed by the purchaser, with such conspicuousness and clarity as likely to be observed and read by such purchaser, that the purchaser may rescind or cancel the sale by mailing a notice of cancellation to consenting parties' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale.

14. Failing to provide a separate and clearly understandable form, showing the contract number, date signed by the subscriber and the name and address of the dealer or consenting party subsidiary, which the purchaser may use as a notice of cancellation.

15. Failing to furnish to each subscriber at the time of his signing of the subscription contract a duplicate original of the contract showing date signed by the customer and name of salesman together with his agency's address and telephone number and showing on the same side of the page, above or adjacent to the place for the customer's signature, the exact number and name of the publications being subscribed for; the number of issues for each; the downpayment required; the number, dollar amount and due dates of each installment payment; amount and rate of finance charge, if any; the charge, if any, for late payment and the conditions under which such charge shall be assessed, and the total price for each and all such publications.

16. Failing to furnish with each coupon book initially provided to each subscriber a copy of the contract showing all changes since the initial signing, and setting forth the final terms of the contract.

17. Failing to include on the cover of each coupon book furnished to a subscriber:

(a) a statement showing the total number of coupons in the book, the dollar amount of each such coupon, the total dollar amount of all such coupons, and

(b) a legend stating: "Check the number of coupons in this book and their amounts against your original subscription contract."

18. In the event of the discontinuance of publication, or other unavailability, of any magazines subscribed for, at any time during the life of the contract, failing to offer the subscriber the right to substitute one or more magazines or other publications, or the extension of subscription periods of magazines already selected.

19. Failing or refusing to cancel, at the subscriber's sole option, all or any portion of a subscription contract entered into after entry of this order whenever any misrepresentation prohibited by this order has been made.

20. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner or as to things prohibited by this order.

It is further ordered, That:

(a) The consenting parties herein deliver, by registered mail, a copy of this decision and order to each of their present and future

dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, make or attempt to make, collections for the account of any consenting parties hereto, promote or distribute the products or services included in this order;

(b) The consenting parties provide each person so described in Paragraph (a) above with a form, returnable to the consenting parties and to the Commission, clearly stating his intention to be bound by and to conform his business practices to the requirements of this order;

(c) The consenting parties inform all such present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, make or attempt to make collections for the account of any of the consenting parties hereto, promote or distribute the products or services included in this order that the consenting parties shall not use any third party, or the services of any third party unless such third party agrees to and does, file notice with the consenting parties and the Commission that it will be bound by the provisions contained in this order;

(d) If such party will not agree to so file notice with the consenting parties and the Commission and be bound by the provisions of the order, the consenting parties shall not use such third party, or the services of such third party to solicit subscriptions or make or attempt to make collections;

(e) The consenting parties so inform the persons so described in Paragraph (a) above that the consenting parties are obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order;

(f) The obligations of consenting parties as set forth in Paragraphs (a) through (e) above and in Paragraphs (g) and (h) hereafter of this order shall, with respect to persons engaged solely to make, or attempt to make, collections for the account of any of the consenting parties, apply only to compliance with those provisions of the order relating to said activity and that said persons so engaged be required under this order only to conform their practices to Paragraph 10 of this order;

(g) The consenting parties institute and continue for any period they are engaged in practices covered by this order a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order;

(h) The consenting parties discontinue dealing with the persons so engaged, revealed by the aforesaid program of surveillance, who continue on their own deceptive acts or practices prohibited by this order.

It is further ordered, That the consenting parties herein shall notify the Commission at least 30 days prior to any proposed change in the structure of any of the corporate consenting parties 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 respective corporations which may affect compliance obligations arising out of this order.

It is further ordered, That the consenting parties 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.

Chairman Kirkpatrick not participating.

IN THE MATTER OF

CENCOR, INC., ET AL.

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

Docket C-2265. Complaint, Aug. 3, 1972—Decision, Aug. 3, 1972.

Consent order requiring, among other things, a Kansas City, Mo., company engaged in advertising and selling personal income tax preparation services to cease failing to disclose conditions of its guarantees, misrepresenting that it will reimburse customers for all payments they may be required to make over their initial tax payment, failing to disclose that respondent will not assume liability for additional taxes levied against the taxpayer, misrepresenting that legal representation will be provided to customers whose tax returns are audited, misrepresenting the magnitude or frequency of refunds received by its customers, and misrepresenting that respondent's personnel are tax experts. Respondent is further required to deliver a copy of the order and a returnable form of intention to each of its franchisees.

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 CenCor, Inc., and CenCor Services, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing

to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent CenCor, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1003 Walnut Street, in the city of Kansas City, State of Missouri.

Respondent CenCor Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1003 Walnut Street, in the city of Kansas City, State of Missouri.

PAR. 2. Respondent CenCor Services, Inc., is now, and for some time last past has been, engaged in the advertising, offering for sale and sale of personnel income tax preparation services.

Respondent CenCor Services, Inc., is a wholly-owned subsidiary of, and is managed, directed and controlled by, respondent CenCor, Inc.

Respondents sell their aforesaid products and services directly and through various corporate subsidiaries, affiliates, and franchisees hereinafter referred to for convenience as respondents' representatives.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, monies, contracts, business forms and other commercial paper and printed materials in connection with said income tax preparation services, to be sent by United States mail from respondents' place of business in the State of Missouri to their local offices and franchises and purchasers of respondents' products and services 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 services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondents and their representatives have disseminated, and caused the dissemination of, certain advertisements concerning the said income tax preparation services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said income tax preparation services.

PAR. 5. For the purpose of disseminating such advertisements, respondents and their representatives have employed television and radio commercial broadcasts, newspaper and periodical insertions, direct mail literature and point of sale promotional materials.

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

1. Radio and Television:

Personal attention is more important than ever * * * Attention that you will get from the well-trained, friendly people at CenCor. And CenCor guarantees that they'll go with you in case of a government audit and pay any penalties resulting from an error they may make.

With all the changes in tax forms and regulations, you need the personal attention of Cencor's well trained staff * * * and the assurance of the CenCor guarantee.

At CenCor, they check and recheck every return they prepare * * * yes, CenCor takes-the-time to do your return right and for as little as $5 and up. CenCor's accuracy assures that you'll get every allowable deduction and that you'll pay no more than you should.

Jack Linkletter for CenCor, the Income Tax Service that takes-the-time to assure accuracy * * * last year 60% of CenCor's customers got refunds.

2. Newspaper and direct Mail.

CenCor has the knowledge of all changes in tax forms and regulations—CenCor will accompany you in case of audit

CENCOR GUARANTEE

If we make any errors in the preparation of your return that result in any penalty or interest, we will pay that penalty or interest.

CENCOR TAX SERVICE

"Where accuracy is Guaranteed"

CENCOR INCOME TAX takes the time

Last year OVER 60% of CENCOR's customers received refunds. Where you have your income tax prepared *does* make a difference.

CenCor accuracy means you get every allowable deduction and pay no more than you should.

100% Guaranteed Accuracy by our Experienced staff.

Our guarantee of accuracy, up-to-date knowledge of the latest changes in all Federal and State forms and regulations, plus our assistance in the event your return is selected for an audit, provides you with the finest personal Income Tax Service available.

Our guarantee of accuracy is your assurance of the best work. If we should make an error in the preparation of your return, CenCor will pay any resulting penalty or interest and will accompany you in the event of an audit.

Last year over 60% of CenCor's Tax Service customers received a refund and this year, with all of the complex changes, it is even more important that you seek professional help. All of our well-trained tax people are courteous professionals.

Just one of the many advantages is that from NOW UNTIL APRIL 1ST, CENCOR WILL PREPARE YOUR TAX RETURNS *Right in your own Home.* All it takes is a telephone call to your Century Finance office or to the nearest CenCor Tax office, and a specially-trained tax expert will be on his way to see you.

With all these changes, you will want more than ever, the security of Cencor's Guarantee of Accuracy and our special year around service at no extra cost,

this includes preparation and revision of estimates and our offer to appear with you at Internal Revenue Service in the event your return is selected for an audit. Over 60% of CenCor's tax clients received tax refunds last year.

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

1. Respondents will reimburse the taxpayer for any payments the taxpayer may be required to make in addition to his initial tax payment, if such additional payments result from an error made by respondents and their representatives in the preparation of the tax return.

2. If the customers' tax return is audited, respondents and their representatives will provide representation, without charge, by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service.

3. The percentage of respondents' tax preparation customers who receive refunds is demonstrably greater than the percentage of the tax paying public at large who receive refunds.

4. Respondents' and their representatives' tax preparation personnel are tax experts or professionals or unusually competent in the preparation of tax returns and the rendering of tax advice.

PAR. 7. In truth and in fact:

1. Respondent and their representatives do not reimburse the taxpayer for all payments he is required to make in addition to his initial tax payment if such additional payments result from an error made by respondents and their representatives in the preparation of the tax return.

2. Respondents and its representatives do not provide representation by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service to their customers, in instances where the customer's tax return is audited.

3. The percentage of respondents' tax preparation customers who receive refunds is not demonstrably greater than the percentage of the taxpaying public at large who receive refunds.

4. Respondents' and their representatives' tax preparing personnel are not tax experts or professionals or unusually competent in the preparation of tax returns and the rendering of tax advice.

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

PAR. 10. In the course of conduct of their business, and at all times mentioned herein, respondents and their representatives have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of income tax preparation services of the same general kind and nature.

PAR. 11. The use by respondents and their representatives of the aforesaid false, misleading and deceptive statements and representations, and unfair acts and practices, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' and their representatives' income tax preparation services by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents and their representatives as herein alleged were and are all to the prejudice and injury of the public and of respondents' and their representatives' 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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 CenCor, 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 1003 Walnut Street, city of Kansas City, State of Missouri.

Respondent CenCor Services, 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 1003 Walnut Street, city of Kansas City, State of Missouri.

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 CenCor, Inc., and CenCor Services, Inc., corporations, and their officers, and respondents' agents, representatives, employees and successors and assigns directly or through any corporate or other device, or through their franchisees or any other person, partnership or corporation authorized by respondents to engage in the commercial preparation of income tax returns in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

2. Representing, directly or by implication, that respondents will reimburse their customers for all payments the customer may be required to make in addition to his initial tax payment, in instances where such additional payments result from an error by respondents in the preparation of the tax return; *Provided, however*, nothing herein shall prevent truthful representations that respondents will reimburse their customers for interest or penalty payments resulting from respondents' errors.

3. Failing to disclose, clearly and conspicuously, whenever respondents make any representation, directly or by implication, as to their responsibility for, or obligation resulting from, errors attributable to respondents in the preparation of tax returns, that respondents will not assume the liability for additional taxes assessed against the taxpayer.

4. Representing, directly or by implication, that respondent will provide legal representation to customers whose tax returns are audited; or misrepresenting, in any manner, the type or manner of assistance provided by respondent to customers whose returns may be audited.

5. Representing, directly or by implication, that the percentage of respondents' customers who receive tax refunds is demonstrably greater than the percentage of the tax paying public at large who receive refunds; or misrepresenting, in any manner, the magnitude or frequency of refunds received by respondents' tax preparation customers.

6. Representing, directly or by implication, that respondents' tax preparation personnel are tax experts or professionals or unusually competent in the preparation of tax returns and the rendering of tax advice; or misrepresenting, in any manner, the competence or ability of respondents' tax preparation personnel.

It is further ordered, That:

(a) respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future franchisees and any other persons, partnerships or corporations authorized by the respondents to engage in the commercial preparation of income tax returns.

(b) respondents provide each person so described in Paragraph (a) above with a form returnable to the respondents clearly stating his intention to be bound by and to conform his business practices to the requirements of this order;

(c) respondents inform each person so described in Paragraph (a) above that the respondents shall not authorize, grant a franchise to, or continue the authorization or franchise of, any third party to engage in the commercial preparation of income tax returns, unless such third party agrees to and does file notice with the respondents that it will be bound by the provisions contained in this order;

(d) if such third party will not agree to so file notice with the respondents and be bound by the provisions of the order, the respondents shall not authorize, grant a franchise to, or continue the authorization or franchise of, such third party to engage in the commercial preparation of income tax returns;

(e) respondents inform the persons described in Paragraph (a) above that the respondents are obligated by this order to discontinue the authorization, or terminate the franchise, of persons who continue on their own the deceptive acts or practices prohibited by this order;

(f) respondents institute a program of continuing surveillance adequate to reveal whether the business operations of each said person described in Paragraph (a) above conform to the requirements of this order; and that

(g) respondents discontinue the authorization or franchise of persons so engaged, revealed by the aforesaid program of surveillance, who continue on their own the deceptive acts or practices prohibited by this order.

It is further ordered, That the respondents herein shall, prior to January 15, 1973, send a letter to the last known address of each of its customers and the customers of its franchisees for the most recent past year, clearly and accurately explaining (1) the terms, conditions and limitations of respondent's policy regarding its responsibility for, or obligation resulting from errors attributable to respondent in the preparation of tax returns; and, (2) the type or manner of assistance provided by respondent to customers whose returns may be audited.

It is further ordered, That respondents herein shall notify the Commission at least 30 days prior to any proposed change in the structure of 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 respondent corporation which may affect compliance obligations arising out of this order.

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

It is further ordered, That the respondents herein shall within 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

THE J. B. WILLIAMS COMPANY, INC., ET AL.

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

Docket C-2266. Complaint, Aug. 3, 1972—Decision, Aug. 3, 1972.

Consent order requiring a New York City seller and distributor of a stimulant type product, and its advertising agencies, among other things, to cease disseminating any advertisement which represents the use of any such products will solve an individual's sexual, marital, or personality problems; advertising as a stimulant, any product which contains caffeine unless the caffeine

content is expressed in terms of the number of average cups of ordinary coffee, clearly and conspicuously, in immediate conjunction with a statement of active ingredients; representing any non-prescription drug as new when such product has been distributed for six months or more.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the J. B. Williams Company, Inc., a corporation, Della Femina, Travisano & Partners, Inc., a corporation, and Parkson Advertising Agency, 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 the J. B. Williams 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 767 Fifth Avenue in the city of New York, State of New York.

Respondent Della Femina, Travisano & Partners, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 625 Madison Avenue in the city of New York, State of New York.

Respondent Parkson Advertising Agency, 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 767 Fifth Avenue in the city of New York, State of New York.

PAR. 2. Respondent the J. B. Williams Company, Inc., is now, and for some time last past has been engaged in the sale and distribution of a stimulant type product designated "Vivarin" which falls within the classification of "drug," as said term is defined in the Federal Trade Commission Act. Each tablet of said product consists of 200 mg of caffeine alkaloid and 150 mg of dextrose in a base containing various excipients. The dosage recommended on the product package is 1 tablet every 4 hours as needed.

Respondent Della Femina, Travisano & Partners, Inc., was the advertising agency of the J. B. Williams Company, Inc., that prepared and created the print advertisement referred to herein to promote the sale of the said "Vivarin."

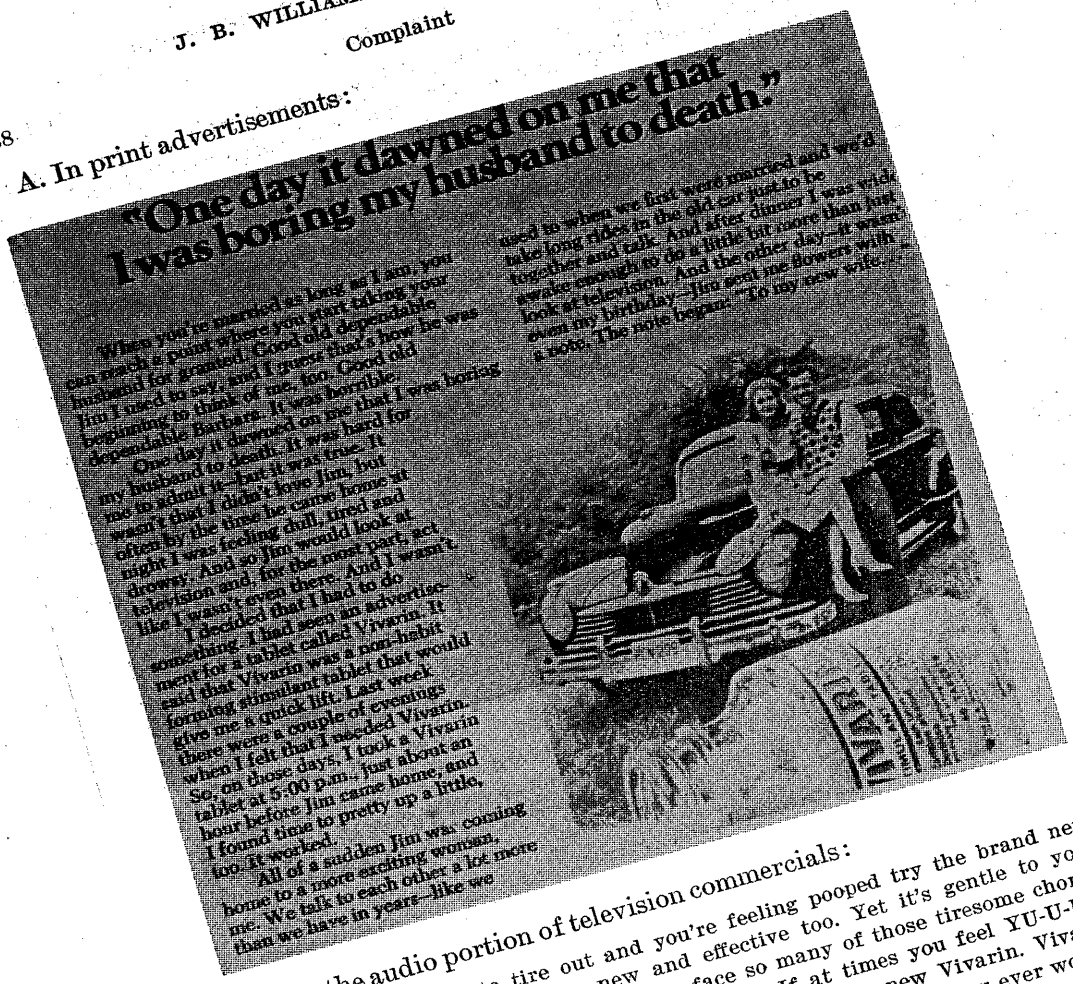
Respondent Parkson Advertising Agency, Inc., is now and for some time last past has been the advertising agency of the J. B. Williams Company, Inc., and now and for some time last past has prepared the television commercials, and placed for publication, and caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of the said "Vivarin."

PAR. 3. Respondent the J. B. Williams Company, Inc., causes the said product when sold, to be transported from its place of business in one State of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent the J. B. Williams Company, Inc., maintains, and at all times mentioned herein has maintained, a 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. 4. In the course and conduct of their said businesses, respondents the J. B. Williams Company, Inc., and Parkson Advertising Agency, Inc., have disseminated, and caused the dissemination of, certain advertisements concerning the said "Vivarin" 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 other advertising media, and by means of television broadcasts transmitted by television 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 were likely to induce, directly or indirectly, the purchase of said product; and have disseminated, and caused the dissemination of, advertisements concerning said product 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 product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Typical of the advertisements and the statements and representations set forth therein, disseminated as aforesaid, but not all inclusive thereof, are the following:

A. In print advertisements:



B. In the audio portion of television commercials:

1. When you begin to tire out and you're feeling pooped try the brand new stimulant—Vivarin! Vivarin is new and effective too. Yet it's gentle to your system. What a lift for you! When you face so many of those tiresome chores. When you've had too much of a job outdoors. If at times you feel YU-U-UK. Here's the stimulant to know. Give yourself a lift with new Vivarin. Vivarin. if there's a good way—a quick way to get a safe lift? Yes there is. This advertisement in Reader's Digest tells you all about it. Vivarin taken as directed. Vivarin contains one of the most effective, safe stimulants known. And Vivarin is gentle to your system. So, when you begin to feel tired! And want to feel brighter, take Vivarin. It gives you a quick lift, taken as directed. And it is safe!

2. When you feel tired—even after a normal night's sleep—do you ever wonder

PAR. 6. Through the use of said advertisements, and others similar thereto, not specifically set out herein, disseminated as aforesaid, respondents have represented directly or by implication that the use of

"Vivarin" will make one more exciting and attractive, improve one's personality, marriage and sex life, and will solve marital and other personal problems.

PAR. 7. In truth and in fact, the use of Vivarin will not make one more exciting and attractive, improve one's personality, marriage and sex life, and will not solve marital and other personal problems. The active stimulative ingredient of Vivarin is caffeine which acts as a stimulant on the central nervous system, the same effect produced by drinking coffee, also a caffeine product.

Furthermore, in said advertisements and others similar thereto respondents have failed to disclose the material fact that the primary active ingredient contained in "Vivarin" is caffeine, the amount of which contained therein is approximately equivalent to that amount of caffeine contained in two average cups of ordinary coffee.

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

PAR. 8. Further, certain of said advertisements describe Vivarin as "new" and/or "brand new." The use of the terms "new" and/or "brand new" to describe a stimulant product containing as its stimulative ingredient caffeine, an ingredient previously widely available in many forms, including tablet form and such familiar beverages as coffee, was and is false, misleading and deceptive.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and practices, and the dissemination of the aforesaid "false advertisements" by respondents the J. B. Williams Company, Inc., and Parkson Advertising Agency has had, and now has, the capacity and tendency to mislead members of the consuming public into erroneous and mistaken beliefs about the nature and effectiveness of said products and that said statements and representations were, and are true, and into the purchase of substantial quantities of the product of respondent the J. B. Williams Company, Inc., by reason of said erroneous and mistaken beliefs.

PAR. 10. The aforesaid acts and practices of respondents, including the dissemination of "false advertisements" by respondents the J. B. Williams Company, Inc., and Parkson Advertising Agency, Inc., as herein alleged, were, and are, all to the prejudice and injury of the public and constituted and now constitute, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in 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 the J. B. Williams 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 767 Fifth Avenue in the city of New York, State of New York.

Respondent Della Femina, Travisano & Partners, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 625 Madison Avenue in the city of New York, State of New York.

Respondent Parkson Advertising Agency, 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 767 Fifth 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 respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondents, the J. B. Williams Company, Inc., a corporation, Della Femina, Travisano & Partners, Inc., a corporation, and Parkson Advertising Agency, Inc., a corporation, their successors and assigns and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the product designated "Vivarin" or any other stimulant drug product or any calmative drug product, including sleep-inducers, do forthwith cease and desist from:

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

(a) The use of any such product will solve an individual's marital, sexual or personality problems.

(b) The use of any such product will improve an individual's personality or make it more exciting or will improve an individual's physical appearance, marriage or sex life.

Provided however, That in advertisements of sleep inducers this paragraph shall not prohibit representations that, by providing the user with a good night's sleep, such products can help the user to feel rested and look better. This paragraph shall not preclude the Commission from challenging these representations as unlawful in a future proceeding under Section 5(b) of the Federal Trade Commission Act.

2. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of 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.

II

It is further ordered, That respondents, the J. B. Williams Company, Inc., a corporation, Della Femina, Travisano & Partners, Inc., a corporation, and Parkson Advertising Agency, Inc., a corporation, their successors and assigns and respondents' officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from:

1. Advertising, as a stimulant, "Vivarin" or any other drug product which contains caffeine unless the caffeine content, ex-

pressed in terms of the number of average size cups of ordinary coffee, is clearly and conspicuously disclosed with a statement in immediate conjunction therewith that caffeine is the primary active ingredient, or one of the primary active ingredients if such product contains more than one active ingredient.

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 contains statements which are inconsistent with, negate or contradict the affirmative disclosure required by Paragraph 1 above, or which in any way obscures the meaning of such disclosure.

III

It is further ordered, That respondents, the J. B. Williams Company, Inc., a corporation, and Parkson Advertising Agency, Inc., a corporation, their successors and assigns and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing, directly or by implication, that any nonprescription drug product is new, has new ingredients or is new in its therapeutic effectiveness when such product has been distributed for six months or more or when it is substantially similar in composition and therapeutic effectiveness to another product advertised for the same therapeutic effect which has been distributed for at least six months. (For the purpose of this provision "distributed" shall not include distribution in areas representing not more than 15% of the population.)

Provided however, Respondents may represent that any such product has not been previously sold, advertised or manufactured by respondent the J. B. Williams Company, Inc., if such is the case.

IV

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

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

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

IN THE MATTER OF

BATTLE CREEK DEVELOPMENT CO., ET AL.

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

Docket C-2267. Complaint, Aug. 3, 1972—Decision, Aug. 3, 1972.

Consent order requiring a St. Paul, Minnesota, company of operating a number of retail jewelry stores to cease, among other things, using the words "Sale" or ". . . Surplus Stock Sale" unless the price of such merchandise being offered for sale constitutes a significant reduction in price; misrepresenting the usual or regular selling price of respondent's merchandise; misrepresenting the amount of savings available to purchasers; representing respondent's credit terms are lenient and that credit is available regardless of ability to pay or legal age status; representing that products contain or are made or composed, in whole or in part, of a gold quantity, weight, or fineness not actually used or contained therein; and representing that any article of merchandise is guaranteed, without disclosing the nature, conditions and extent of said guarantee.

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 Battle Creek Development Co., a corporation, and Cortland J. Silver and James B. Seaton, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Battle Creek Development Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 748 South Mississippi Boulevard, St. Paul, Minnesota.

Respondents Cortland J. Silver and James B. Seaton are officers of said corporation. Respondent Cortland J. Silver now and for some time last past controls and respondent James B. Seaton for some time

last past has formulated and directed the policies, acts and practices of the corporate respondent, including the acts and practices set forth herein. They have a business address the same as that of the corporate respondent.

PAR. 2. Respondent Battle Creek Development Co. is now and for some time last past has been, engaged in the advertising, offering for sale, sale, and distribution of a variety of merchandise, including watches, jewelry, diamonds, radios, clocks, tape recorders, dinnerware, tableware, and other merchandise to the public. Said respondent conducts said business through retail jewelry stores located in St. Paul, Minnesota, Fort Collins, Colorado and St. Joseph, Missouri and previously conducted said business through retail jewelry stores located in Rochester, Minnesota, Green Bay, Wisconsin, and Waukegan and Jacksonville, Illinois.

PAR. 3. In the course and conduct of its business as aforesaid, respondents ship, and cause to be shipped, watches, jewelry, diamonds and other merchandise to said retail jewelry outlets for sale to the purchasing public. Similarly, advertising and promotional material is prepared, or caused to be prepared, by respondents in St. Paul, Minnesota, and transmitted to and used by said retail jewelry outlets and published in newspapers having an interstate circulation. Respondents further engage in business, in commerce, consisting of the transmission and receipt of letters, invoices, reports, contracts and other documents of a commercial nature between headquarters and their retail jewelry outlets in the various states, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their merchandise, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation. Typical and illustrative of the foregoing but not all inclusive thereof, are the following:

All Merchandise Sold With a Money Back Guarantee
Unconditional 30 Day Money-Back Guarantee
Diamonds Guaranteed against Loss of Value or Loss from Settings for Life
Lifetime Guarantee on all Diamond Rings

PAR. 5. By and through the use of the above-quoted statements and representations, and other of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that their product guarantee is unconditional.

PAR. 6. In truth and in fact, respondents' product guarantees are not unconditional, but are subject to limitations and conditions which are not revealed in the advertising of said guarantees.

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

PAR 7. In the course and conduct of their aforesaid business and for the purpose of inducing others to purchase its watches, jewelry, diamonds, and other merchandise, respondents have made, and are now making, directly or by implication, numerous statements and representations on tickets, tags and labels and in advertisements in newspapers and on radio and television and by the use of other promotional material, with respect to the price, savings, and guarantee of said merchandise.

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

Cortland's 9 Store Surplus Stock Sale—Price Busters

Watches

	Now
Men's:	
Elgin—Y.G., Auto./Day/Date (Reg. 89.25)	48. 88
Elgin—SS, Waterproof (Reg. 42.50)	26. 88
Elgin—W. G., Automatic (Reg. 79.95)	39. 88
Hamilton—Y.G., Automatic (Reg. 119.95)	69. 88
Hamilton—Y.G., Calendar (Reg. 79.95)	39. 88
Hamilton—W.G., Automatic, Calendar (Reg. 99.50)	59. 88
Ladies':	
Hamilton—Y.G., 6 Diamonds (Reg. 175.00)	91. 88
Hamilton—W.G., Dress (Reg. 100.00)	49. 88
Hamilton—YG., Dress (Reg. 79.95)	39. 88
Benrus—Y.G., Patriot (Reg. 59.95)	23. 95
Elgin—Y.G., 6 Diamonds, 19 Jewel (Reg. 149.50)	58. 88
Elgin—Y.G., Dress (Reg. 67.50)	31. 88
Elgin—Y.G., Sport Dress (Reg. 29.88)	17. 88

CASH SPECIAL

	Now
17 Jewel SWISS MOVEMENT WATCHES (Reg. 39.95)	12. 88
17 Jewel SWISS MOVEMENT WATCHES (Reg. 49.95)	22. 88

* * * * * * *

Pierced Earrings

Reg. $9.00	Now $6.00
Reg. $6.00	Now 4.00
Reg. $3.00	Now 2.00

Entire Stock ⅓ off

* * * * * * *

Now

Ladies Pearl Rings Reg. 29.95---------- Now $11.88

* * * * * * *

Birthstone Rings. Many to choose from. Value to $29.95. Your choice only-- $8.99

* * * * * * *

Man's Diamond—Onyx Initial Ring. Yellow Gold. Reg. $47.50---------- Now $22.88

* * * * * * *

Ironstone Dinnerware, Complete Service for 8. Regular $39.95---------- Now $21.88

2 patterns to choose from

* * * * * * *

Grab Bags---------- $1.00

Included are Diamond Rings, Watches, Jewelry for Ladies or Men

Values to $125.00

* * * * * * *

China and Crystal. Complete Service for 8. Included are:

China 53 pieces, crystal 24 pieces. Regular $69.95---------- Now $48.88

* * * * * * *

RADIO

AM/FM/SW, Battery or Electric. Reg. $49.95---------- Now $24.88

* * * * * * *

All Cortland Watches. 5-Year Guarantee. Buy now---------- 25% Off

* * * * * * *

Buys of a Lifetime. Loose Diamonds:

Now

⅓ ct (Reg. $200.00)---------- $120

½ ct (Reg. $345.00)---------- 239

¾ ct (Reg. $685.00)---------- 459

* * * * * * *

Birthstone Rings. Entire Stock. Ladies and Men's---------- 25% Off

* * * * * * *

Sheffield Reproduction Silver Sale---------- Save up to 50%

* * * * * * *

Famous Brand Cigarette Lighters---------- Save 30%

* * * * * * *

Save on Silver Plated Holloware---------- 32% Discount

* * * * * * *

C. J. Silver Jewelers Blasts Prices On Diamonds—Jewelry—Gifts

Right Before Christmas---------- Save 20% to 33%

Everything Included—Nothing Held Back

* * * * * * *

All the Credit You Need

* * * * * * *

Easy Credit Terms

* * * * * * *

Instant Credit—Even if you are under 21

* * * * * * *

Your Credit is Good— * * * Even if you are under 21

* * * * * * *

PAR. 8. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. The higher prices, accompanied by the words "Regular," "Reg.," or words of similar import or meaning, were the prices at which the advertised merchandise was offered for sale or sold by the respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business. Purchasers of such merchandise would save an amount equal to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices.

2. During the period of the advertised "Sale" or "Surplus Stock Sale," or words of similar import and meaning, the advertised price of any merchandise represents a reduction from the price at which respondents have made a bona fide offer to sell or have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

3. The terms "Save 20%," "Save 25%," "Save 20% to 33%," "⅓ off" and other savings claims of similar import expressed in percentages or fractions set out in said advertisements offer a reduction in price by the stated savings from respondents' watches, rings and diamond—jewelry—gifts.

4. The terms "All the Credit You Need," "Easy Credit Terms," "Instant Credit—Even if you are under 21," "Your Credit is good * * * Even if you are under 21" and other words of similar import used in said advertisements offering to extend easy credit to all customers responding to the advertisements without determining the customers' financial ability to pay, or their credit rating or legal age status.

5. Watches, rings and other merchandise offered for sale in said advertisements are made in whole or in part of gold or of an alloy of gold.

6. Pearl rings offered for sale in said advertisements are made with natural or genuine pearls.

7. Birthstone rings offered for sale in said advertisements are made with natural or genuine precious or semi-precious stones.

8. Watches offered for sale in said advertisements are waterproof in every respect, without qualification or limitation.

PAR. 9. In truth and in fact:

1. The higher prices, accompanied by the words "Regular," "Reg.," or words of similar import and meaning, were not the prices that advertised merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent,

regular course of their business, and purchasers thereof would not save amounts equal to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices.

2. During the period of the advertised "Sale" or "Surplus Stock Sale," or words of similar import and meaning, the advertised price of any merchandise did not represent a reduction from the price at which respondents have made a bona fide offer to sell or have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

3. All of respondents' watches, rings and diamonds—jewelry—gifts in the stores covered by said advertisements were not reduced by the stated savings of "20%" and "25%" and "20% to 33%" and "⅓ off" from respondents' regular prices.

4. Contrary to respondents' representations not all customers of all ages responding to said advertisements are able to purchase advertised merchandise on credit.

5. Watches, rings and other merchandise offered for sale in said advertisements and described as containing yellow gold or abbreviation YG or WG are not composed throughout of fine (24 karat) gold. Karat fineness of alloy is not adequately and conspicuously disclosed.

6. The pearls used in rings offered for sale in said advertisements are not natural or genuine pearls but are either cultured pearls or imitation pearls.

7. The birthstones used in rings offered for sale in said advertisements are not all natural or genuine stones but are imitation or synthetic precious or semi-precious stones.

8. Watches offered for sale in said advertisements are not waterproof in every respect without qualification or limitation.

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

PAR. 10. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 12. The acts and practices of the respondents as set forth above were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constitute, 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 Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter given careful consideration to the executed consent agreement and having determined that the relief provided by the order contained therein is adequate and appropriate in all respects to dispose of this matter, and having thereupon provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, and having determined on the basis of such comments that Paragraph 11 of the provisionally accepted consent order should be modified, and respondents having agreed to such modification, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Battle Creek Development Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 748 South Mississippi Boulevard, St. Paul, Minnesota.

Respondent Cortland J. Silver and James B. Seaton are officers of said corporation. They formulate, direct and control the policies, acts

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

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 Battle Creek Development Co., a corporation, its successors and assigns, and its officers, and Cortland J. Silver and James B. Seaton, individually and as officers of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, or oral sales presentation offering for sale, sale, or distribution of watches, jewelry, diamonds, radios, clocks, tape recorders, dinnerware, tableware, or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Sale," or "* * * Surplus Stock Sale" or any other word or words of similar import or meaning unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. Using the words "Sale," or "* * * Surplus Stock Sale," or any other word or words of similar import or meaning, in advertising or other promotional material containing non-sale items, without clearly and conspicuously revealing in immediate conjunction with said representations which items are sale items.

3. Using the words "Was," "Regular," "Reg.," or any other words of similar import or meaning to refer to any price amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business, or misrepresenting, in any manner, the usual or regular selling price of respondents' merchandise.

4. Using the term "Save 20%," "Save 25%," "From 20% to 32% off" or "⅓ off," or any other word or words stating or implying reductions in price unless such reductions apply to each article of the particular class of merchandise represented to be offered for sale at the advertised reductions.

5. (a) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amount-

ing to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, in any manner, that by purchasing any of said merchandise (customers are afforded savings amounting to the difference between respondents' stated price and compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price.

6. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

7. Representing, directly or by implication, that respondents' credit terms are lenient and representing directly that credit is available regardless of the credit rating, financial ability to pay or legal age status of potential customers.

8. Representing, directly or indirectly, through the use of the word gold, the abbreviation YG or WG, or the term yellow gold or any other words or abbreviations of similar import that products contain or are made or composed in whole or in part of gold or of a gold quantity, weight or fineness of alloy not actually used or contained therein.

9. Representing, directly or indirectly, through the use of the word "Pearl" or any other word or words of similar import or meaning, that imitation pearls are genuine pearls; *Provided, however*, That the foregoing shall not be construed to prohibit the use of the word "Pearl" to describe the appearance of said imitation pearls if, whenever used, the word "pearl" is immediately preceded, in equally conspicuous type, by the word "imitation" or the word "simulated," or other words of similar import or meaning, so as to clearly indicate that said imitation pearls are not genuine pearls but imitations thereof.

10. Representing, directly or indirectly, through the use of the word "birthstone" or any other words of similar import or mean-

ing, that imitation or synthetic precious or semi-precious stones are genuine and descriptive of any product which is not in fact a natural stone of the type described.

11. Representing, directly or indirectly, that respondents' watches are waterproof.

12. Representing, directly or by implication, that any article of merchandise is guaranteed, without clearly and conspicuously disclosing the nature, conditions and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder; and unless respondents promptly and fully perform all their obligations and requirements, directly or impliedly represented under the terms of each such guarantee.

It is further ordered, That the respondents shall forthwith distribute a copy of this order to each of their respective operating divisions or departments and all jewelry store managers and sales personnel and secure from each a signed statement acklowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed changes in the corporate respondent such as dissolution, assignment or sale resulting in the emerging 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 respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

WEIL & CO., 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-2268. Complaint, Aug. 9, 1972—Decision, Aug. 9, 1972.

Consent order requiring, among other things, a New York City retailer of furniture, electrical appliances, and other merchandise, to cease violating the Truth in Lending Act by failing to disclose to customers the minimum periodic payment required for open end credit; the time period within which extended credit may be paid without finance charge; stating contradictory terms on initial and periodic disclosure statements; and any other disclosures required by Regulation Z of the 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 Weil & Co., Inc., a corporation, and Robert Weil, individually and as manager in charge of credit of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and 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 Weil & Co., 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 37–43 West 14th Street, New York, New York.

Respondent Robert Weil is manager in charge of credit of the corporate respondent. He formulates, directs and controls the consumer credit policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the sale of furniture, electrical appliances, and other merchandise 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 Systems.

PAR. 4. Respondents, subsequent to July 1, 1969, in the ordinary course and conduct of their business, extend open end credit to their customers in connection with their credit sales, as "open end credit" and "credit sale" are defined in Regulation Z. In connection with their open end credit agreements, and prior to the first transaction made under such agreements, respondents make disclosures to each customer describing the credit terms of these open end accounts as required by Section 226.7(a) of Regulation Z. Furthermore, in connection with their open end credit agreements, respondents have caused to be delivered, and are delivering to their customers, periodic statements, as required by Section 226.7(b) of Regulation Z.

PAR. 5. In the open end credit disclosure statements and periodic statements used by respondents referred to in Paragraph Four hereof, respondents:

1. Failed to disclose, before the first transaction was made, the minimum periodic payment required, as required by Section 226.7 (a) (8) of Regulation Z.

2. Failed to disclose, before the first transaction was made, the time period within which any credit extended may be paid without incurring a finance charge, as required by Section 226.7(a) (1) of Regulation Z.

3. Have stated contradictory terms on their initial and periodic disclosure statements concerning the time period within which any credit extended may be paid without incurring an additional finance charge, in violation of Section 226.6(c) of Regulation Z.

4. Required their customers to execute a new note each time additional credit was extended for the purpose of consolidating the old and new credit balances which constituted a consolidation of credit other than open end, as defined in Section 226.8(j) of Regulation Z, and thereafter characterized their credit plan as, and made disclosures consistent with, an open end credit plan as "open end credit" is defined in Regulation Z.

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its

charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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 Weil & Co., 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 37–43 West 14th Street, New York, New York.

Respondent Robert Weil is manager in charge of credit of said corporation. He formulates, directs and controls the consumer credit policies, acts and practices of said corporation and his principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondent Weil & Co., Inc., a corporation, its successors and assigns and respondent Robert Weil, individually and as an employee of said corporation, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division 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 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forth with cease and desist from:

1. Failing to disclose the minimum periodic payment required for their open end credit plan before the first transaction is made, as required by Section 226.7(a)(8) of Regulation Z.

2. Failing to disclose, before the first transaction is made, the time period within which any credit extended may be paid without incurring a finance charge, as required by Section 226.7(a)(1) of Regulation Z.

3. Stating contradictory terms on their initial and periodic disclosure statements concerning the time period within which any credit extended may be paid without incurring an additional finance charge, in violation of Section 226.6(c) of Regulation Z.

4. Requiring their customers to execute a new note each time additional credit is extended for the purpose of consolidating the old and new credit balances which constitutes a consolidation

of credit other than open end, as defined in Section 226.8(j) of Regulation Z, and thereafter characterizing their credit plan as, and making disclosures consistent with, an open end credit plan, as "open end credit" is defined in Regulation Z.

5. Failing in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9, 226.10 and 226.11 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 this order.

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

IN THE MATTER OF

GETTO & GETTO, INC., ET AL.

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

Docket C-2269. Complaint, Aug. 10, 1972—Decision, Aug. 10, 1972.

Consent order requiring, among other things, a New York City manufacturer of fur products to cease, misbranding and deceptively invoicing its merchandise.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Getto & Getto, Inc., a corporation, and Harold Getto

and Irving Getto, 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 Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Getto & Getto, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Harold Getto and Irving Getto are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 352 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they where falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

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

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

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

PAR. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said rules and regulations under the Fur Products Labeling Act and Section 10(b) of said Act.

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

DECISION AND ORDER

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

The respondent 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 has 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 records 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 Getto & Getto, 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 352 Seventh Avenue, New York, New York.

Respondents Harold Getto and Irving Getto are officers 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 Getto & Getto, Inc., a corporation, its successors and assigns, and its officers, and Harold Getto and Irving Getto, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

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

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

B. Falsely or deceptively invoicing any fur product by:

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

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

It is further ordered, That Getto & Getto, Inc., a corporation, its successors and assigns, and its officers, and Harold Getto and Irving Getto, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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 this order to each of its operating divisions.

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

IN THE MATTER OF

COMMANDER CARPET MILLS, INC., ET AL.

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

Docket C-2270. Complaint, Aug. 14, 1972—Decision, Aug. 1972.

Consent order requiring, among other things, a Cartersville, Georgia, manufacturer and seller of carpets to cease manufacturing for sale, selling, importing or distributing any product, fabric, or related material which fails to conform

to an applicable standard of flammability or regulation issued or amended under the provisions of the Flammable Fabrics 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 Commander Carpet Mills, Inc., a corporation, and Nasser Nikourkary, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Commander Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Nasser Nikourkary is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at P.O. Box 765, Cartersville, Georgia.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, 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 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 carpets and rugs in style "Certified," subject to Department of Commerce Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1–70).

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 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 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. Respondent Commander Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

Respondent Nasser Nikourkary is an officer of the said corporation. He formulates, directs, and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with the office and principal place of business of respondents located at P.O. Box 765, Cartersville, Georgia.

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 Commander Carpet Mills, Inc., a corporation, its successors and assigns, and its officers, and respondent

Nasser Nikourkary, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, 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" 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 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 the 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 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 identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) 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 the results thereof, (5) any disposition of said products since March 14, 1972, and (6) 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 to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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

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

UNITED SYSTEMS, INC., ET AL.

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

Docket C-2271. Complaint, Aug. 18, 1972—Decision, Aug. 18, 1972.

Consent order requiring an Indianapolis, Indiana, truck driver correspondence school to cease, among other things, misrepresenting the nature of the business; representing offers of employment; misrepresenting respondent's connections or affiliations; misrepresenting the nature or purpose of any fees paid by enrollees; misrepresenting the terms and conditions under which payments can be made; and failing to notify purchasers of their right to a 3-day cooling-off period.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that United Systems, Inc., Skyline Deliveries, Inc., Express Parcel Deliveries, Inc., Truck Line Distribution Systems, Inc., Sheridan Truck Lines, Inc., and Advance Systems, Inc., corporations, and George L. Eyler, individually and as an officer, director or stockholder of said corporations, hereinafter re-

ferred 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. Respondents United Systems, Inc., formerly known as Nationwide Systems, Inc., Skyline Deliveries, Inc., Express Parcel Deliveries, Inc., Truck Line Distribution Systems, Inc., and Sheridan Truck Lines, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of Indiana, with their principal place of business located at 1600 Oliver Avenue, in the city of Indianapolis, State of Indiana.

Respondent Advance Systems, Inc., is a corporation organized existing and doing business under and by virtue of the laws of the State of Ohio with its principal place of business located at 1600 Oliver Avenue, in the city of Indianapolis, State of Indiana.

Respondent George L. Eyler is a stockholder of said corporations and an officer of some of them. He formulates, directs and controls the policies, acts and practices of said corporations, including the acts and practices hereinafter set forth. His address is the same as that of said corporate respondents.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the offering for sale, sale and distribution of courses of study and instruction purporting to prepare graduates thereof for employment as truck drivers. Said courses consist of a series of lessons pursued by correspondence through the United States mails and a period of in-residence training at a place designated by respondents.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the correspondence portion of their courses, when sold, to be sent from respondents' place of business in the State of Indiana to purchasers thereof located in various other States of the United States. Respondents utilize the services of salesmen who induce prospective purchasers of respondents' courses located in the states other than the State of Indiana to call on said salesmen at respondents' offices. Said salesmen transmit to and receive from respondents contracts, checks and other instruments of a commercial nature. Respondents maintain, and at all time mentioned herein have maintained, a substantial course of trade in said courses of study and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of obtaining leads to prospective purchasers of their courses, respondents have published or caused to be published in the

"Help-Wanted" and other columns of newspapers advertisements containing statements and representations regarding job opportunities, training and wages for persons interested in becoming truck drivers. Typical and illustrative, but not all inclusive, of such advertisements is the following:

DRIVERS NEEDED

train NOW to drive semi truck, local and over the road. You can earn over $4.00 per hour, after short training. For interview and application, call 317—632-1461, or write Safety Department, Nationwide Systems Inc. c/o Motor Freight Terminal, 1905 S. Belmont, Indianapolis, Indiana 46221.

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

1. Nationwide Systems, Inc. is a trucking company.

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

PAR. 6. In truth and in fact:

1. Nationwide Systems, Inc. was not and is not a trucking company.

2. Respondents do not offer employment to persons who will be trained as truck drivers. The real purpose of such advertisements is to obtain leads to prospective purchasers of respondents' courses of study and instruction.

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

PAR. 7. In the further course and conduct of their business as aforesaid, respondents cause persons who respond to advertisements seeking leads to prospective purchasers to visit respondents' salesmen at repondents' offices. For the purpose of inducing the sale of respondents' courses, such salesmen make to prospective purchasers many statements and representations, direct and by implication, regarding opportunities for employment as truck drivers available to purchasers of respondents' courses, the terms and conditions for enrollment in respondents' courses, the assistance furnished to respondents' graduates in obtaining employment and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets and other printed material furnished to said salesmen by respondents and other statements and representations are made orally by said salesmen. Among and typical, but not inclusive, of such statements and representations are the following:

1. Respondents have been requested by trucking companies to train drivers and therefore, employment as a truck driver is assured to persons completing respondents' course.

2. Persons completing respondents' course will be fully qualified for employment as local or over-the-road truck drivers and therefore, employment as a truck driver is assured to persons completing respondents' course.

3. Payment of an initial fee to respondents will be the full purchase price for both the home study and residential training portions of respondents' course of study and instruction.

4. Persons enrolling in respondents' course are required to post a bond or pay a bonding fee.

5. Payment of the balance of the cost of respondents' course remaining after the initial or registration fee has been paid can be deferred until after the student has completed the course and obtained employment as a truck driver.

6. To other prospective purchasers of respondents' course, representations have been made that respondents will handle or secure financing of the balance of the cost of respondents' course remaining after the initial or registration fee has been paid.

7. Respondents have a placement service which will secure a job as a local or over-the-road truck driver for graduates of respondents' course and such a job is assured for everyone who wants to work.

8. Graduates who desire employment in a particular geographic area are assured of a job in the area of their choice.

9. Persons enrolling in respondents' courses of study and instruction will receive a full refund of all monies paid to respondents upon request prior to completion of the home study portion of respondents' course.

10. Persons completing the home study portion of respondents' training program are entitled to certain pro rata refund privileges if they leave respondents' training program prior to completing respondents' residential training portion of respondents' course.

PAR. 8. In truth and in fact:

1. Respondents have not been requested by trucking companies to train drivers and therefore, employment as a truck driver is not assured to persons completing respondents' course.

2. Persons completing respondents' course are no more than basically trained drivers who may require further training or experience before becoming qualified for employment as local or over-the-road truck drivers and therefore, employment as a truck driver is not assured to persons completing respondents' course.

3. The initial payment to respondents is not the full purchase price for respondents' complete training program. It is a registration fee and the balance of the cost of respondents' course after the initial

registration fee has been paid must be paid by the student before residential training can be started.

4. The sum of money that enrollees in respondents' course are required to pay is not a bond or bonding fee but is a non-refundable registration fee.

5. Respondents generally require that the balance of the cost of respondents' course remaining after the initial or registration fee has been paid must be paid before the student can attend the resident training portion of the course and do not permit students to defer such payments until after employment as a truck driver has been obtained.

6. Respondents seldom if ever handle or secure financing to enable purchasers of respondents' course to pay the balance of the cost.

7. Respondents do not have a placement service which will secure a job as a local or over-the-road truck driver for graduates of respondents' course and such a job is not assured for everyone who wants to work.

8. Graduates who desire employment in a particular geographic area are not assured of any job much less a job in the area of their choice.

9. Respondents will not make any refunds to persons who have requested refunds and have not completed the home study portion of respondents' course. Respondents' initial or registration fee is a non-refundable registration fee.

10. Respondents have not refunded money to their students in accordance with their stated policy with respect to refunds.

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

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, institutions, and organizations of various kinds, engaged in the sale and distribution of similar courses of study and instruction.

PAR. 10. 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 and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and to induce a substantial number thereof to purchase respondents' said courses of study or instruction by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair

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

DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 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. Respondents United Systems, Inc., Skyline Deliveries, Inc., Express Parcel Deliveries, Inc., Truck Line Distribution Systems, Inc., and Sheridan Truck Lines, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of Indiana, with their office and principal place of business located at 1600 Oliver Avenue, in the city of Indianapolis, State of Indiana.

Respondent Advance Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1600 Oliver Avenue, in the city of Indianapolis, State of Indiana.

Respondent George L. Eyler is a stockholder of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his principal office and place of business is located at the above-stated address.

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

ORDER

It is ordered, That respondents United Systems, Inc., a corporation, Skyline Deliveries, Inc., a corporation, Express Parcel Deliveries, Inc., a corporation, Truck Line Distribution Systems, Inc., a corporation, Sheridan Truck Lines, Inc., a corporation, and Advance Systems, Inc., a corporation, their successors and assigns, and officers, and George L. Eyler, individually and as an officer of said corporations, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of courses of study and instruction in truck driving or courses of study and instruction in any other subject, trade or vocation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing, that respondent United Systems, Inc., is a trucking company; misrepresenting, in any manner, the nature of respondents' business.

2. Failing to disclose, clearly and conspicuously, in advertisements seeking leads to prospective purchasers of respondents' courses, in catalogs, brochures and on letterheads that respondent United Systems, Inc.'s business is solely and exclusively that of a private school, and not otherwise.

3. Representing, directly or by implication, orally or in writing, that employment is being offered when the real purpose of such offer is to obtain leads to prospective purchasers of respondents' courses.

4. Failing to specify, clearly and conspicuously, as a condition to the publication of classified advertisements seeking leads to prospective purchasers, that such advertisements be published only in the education, instruction or similar columns of classified advertising.

5. Representing, directly or by implication, orally or in writing, that respondents have been requested to train drivers by any trucking company; misrepresenting, in any manner, respondents' connection or affiliation with the trucking industry or any member thereof.

6. (a) Representing, directly or by implication, orally or in writing, that persons completing respondents' course in truck driver training will be any more proficient than basically trained drivers who may require further training or experience before becoming qualified for employment as local or over the road truck drivers.

(b) Failing to disclose, in writing, clearly and conspicuously, to each prospective purchaser of respondents' courses of study and instruction before said prospective purchasers have paid any money or fee to respondents or executed any contract with respondents, that respondents are unable to guarantee or assure employment to graduates of their courses of study and instruction.

7. Representing, directly or by implication, orally or in writing, that enrollees in respondents' course in truck driver training are required to post a bond or pay a bonding fee; misrepresenting, in any manner, the nature or purpose of any fee which must be paid by enrollees in respondents' courses.

8. (a) Failing to disclose, in writing, clearly and conspicuously, to any prospective purchaser of respondents' course of study and instruction, the full cost of such course including the fee for any home study lessons and for any residential training;

(b) Representing, directly or by implication, orally or in writing, that the balance of the cost of respondents' course remaining after the initial or registration fee has been paid can be deferred until after the student has completed the course and obtained employment as a truck driver;

(c) Representing, directly or by implication, orally or in writing that respondents will handle or secure the financing of any portion of the cost of respondents' course;

(d) Misrepresenting, in any manner, the terms or conditions under which payment is to be made for respondents' courses.

9. Representing, directly or by implication, orally or in writing, that respondents' placement service will guarantee or assure the placement of graduates in jobs for which respondents' courses are represented to train them, or will guarantee or assure the placement of graduates in such jobs in the geographical area of their choice; misrepresenting, in any manner, respondents' ability or facilities for assisting graduates of their courses in obtaining employment.

10. (a) Failing to notify, in writing, each purchaser of respondents' courses of study and instruction, before said purchaser makes any payment to respondents or executes any contract with respondents, that said purchaser has a right to request a refund of all monies paid at any time within not less than 72 hours after signing the contract for respondents' course of study and instruction.

(b) Failing to make any refund in accordance with the policy set forth in Paragraph 10(a).

11. (a) Failing to disclose, in writing, clearly and conspicuously, the refund policy of respondents with respect to those students who have embarked upon the training program after the 72-hour period set forth in Paragraph 10(a) above.

(b) Failing to make any refund in accordance with the refund policy disclosed to the students under Paragraph 11(a) above.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in selling respondents' courses of study and instruction and secure from each such salesmen or other persons a signed statement acknowledging receipt of said order.

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

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

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.

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

IN THE MATTER OF

COLONIAL ENGINEERING CORPORATION, ET AL.

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

Docket C-2272. Complaint, August 18, 1972—Decision, August 18, 1972.

Consent order requiring a Springfield, Massachusetts, seller and distributor of home improvement products to cease, among other things, representing salesmen as officers, co-owners or advertising representatives of the respond-