

Complaint

85 F.T.C.

IN THE MATTER OF

BUSSY ENTERPRISES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket C-2656. Complaint, Apr. 22, 1975—Decision, Apr. 22, 1975*

Consent order requiring a La Mesa, Calif., mortgage brokerage business, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

*Appearances*For the Commission: *George J. Gregores.*For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bussy Enterprises, Inc., a corporation doing business as Valley Mortgage Service, and Richard F. Bussy, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bussy Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 8341 Lemon Ave., La Mesa, Calif.

Respondent Richard F. Bussy is an individual and officer of the corporate respondent. In that capacity, he formulates, directs, and controls the acts and practices hereinafter set forth. His business 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 arranging for the extension of credit through the operation of a mortgage brokerage business, which generally arranges, for a fee, for investors to lend money to consumers using real property as security for the performance of the obligation arising out of the transaction.

PAR. 3. In the regular course and conduct of their business as aforesaid respondents regularly arrange for the extension of consumer credit or offer to extend or arrange for the extension of such credit as "arrange for the extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in arranging for such consumer credit, respondents have failed to comply with the disclosure requirements of the Truth in Lending Act as defined and set forth in Regulation Z in that respondents have:

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

(b) Failed to retain evidence of compliance with the provisions of Regulation Z, for a two year period as prescribed by Section 226.6(i) of Regulation Z.

(c) Failed to provide the borrower with complete consumer credit cost disclosures before consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

(d) Failed to set forth the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.

(e) Failed to set forth the number, amount, due dates or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term, "total of payments," and to identify the amount of any "balloon payment" and state the conditions, if any, under which a "balloon payment" may be refinanced if not paid when due, as prescribed by Section 226.8(b)(3) of Regulation Z.

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

(g) Failed to disclose and itemize all charges which are included in the amount of credit extended but which are not part of the finance charge using the term "amount financed," as prescribed by Section 226.8(d)(1) of Regulation Z.

(h) Failed to disclose the broker's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as prescribed by Section 226.8(d)(2) of Regulation Z.

(i) Failed to disclose and itemize the total amount of the finance charge using the term "finance charge," as prescribed by Section 226.8(d)(3) of Regulation Z.

PAR. 5. By the aforesaid failure to make disclosures and retain evidence of compliance, respondents have failed to comply with the requirements of Regulation Z, the implementing Regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with Regulation Z constitutes 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 Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder; 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 the 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bussy Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 8341 Lemon Ave., La Mesa, Calif.

Proposed respondent Richard F. Bussy is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and

practices of the corporate respondent. His business is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Bussy Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Richard F. Bussy, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any arrangement, offer to arrange, extension or advertisement of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §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 make the required disclosures clearly, conspicuously, and in meaningful sequence, as prescribed by Section 226.6(a) of Regulation Z.

2. Failing to provide the borrower with complete consumer credit cost disclosures before consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

3. Failing to set forth the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as prescribed by Section 226.8(b)(2) of Regulation Z.

4. Failing to set forth the number, amount, due dates or periods of payments scheduled to repay the indebtedness and the sum of such payments using the term, "total of payments," and to identify the amount of any "balloon payment" and state the conditions, if any, under which a "balloon payment" may be refinanced if not paid when due, as prescribed by Section 226.8(b)(3) of Regulation Z.

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

6. Failing to disclose and itemize all charges which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed," as prescribed by Section 226.8(d)(1) of Regulation Z.

7. Failing to disclose the broker's fee as a prepaid finance charge as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as prescribed by Section 226.8(d)(2) of Regulation Z.

8. Failing to disclose and itemize the total amount of the finance

charge using the term "finance charge," as prescribed by Section 226.8(d)(3) of Regulation Z.

9. Failing, in any consumer credit transaction 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, 226.8, 226.9, and 226.10 of Regulation Z.

It is further ordered, That the respondent corporation shall establish and maintain a file of copies of relevant executed documents for all future and post-Jan. 1, 1974, loan transactions, for inspection and review upon request by the Federal Trade Commission for a period of three years following the date of execution of the documents. Such documents shall include copies of the Truth in Lending Disclosure Form, Promissory Notes, Notice of Right of Rescission, and Escrow Instructions.

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 computation, preparation or execution of consumer credit documents or in any aspects of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each person.

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

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

It is further ordered, That the 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.

801

Complaint

IN THE MATTER OF
PETER SCZERBINSKI T/A BUDGET SERVICE
COMPANY

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

Docket C-2657. Complaint, Apr. 22, 1975 - Decision, Apr. 22, 1975

Consent order requiring a Cranston, R.I., moneylender in connection with the financing of insurance premiums, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *James S. Parker.*

For the respondents: *Pro se.*

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 Peter Sczerbinski, an individual trading and doing business as Budget Service Company, hereinafter referred to as respondent, has violated the provisions of said Acts and the implementing Regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Peter Sczerbinski is an individual trading and doing business as Budget Service Company, with his office and principal place of business located at 1320 Cranston St., Cranston, R.I.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of lending money to the public in connection with the financing of insurance premiums.

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

PAR. 4. Subsequent to July 1, 1969, respondent in the ordinary course and conduct of his business as aforesaid, has caused and is causing to be

extended consumer credit, as "consumer credit" is defined in Regulation Z, and has caused and is causing customers to execute a binding combination promissory note and disclosure statement, hereinafter referred to as the "statement." Respondent does not provide these customers with any other consumer credit cost disclosures.

By and through the use of the statement, respondent:

1. Failed 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.

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

3. Failed in some instances 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.

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

5. Provided additional information which misleads or confuses the customer or obscures or detracts attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

6. Failed to make the disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

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

DECISION AND ORDER

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

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

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

1. Respondent Peter Sczerbinski is an individual trading and doing business as Budget Service Company, with his office and principal place of business located at 1320 Cranston St., Providence, R.I.

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 Peter Sczerbinski, an individual trading and doing business as Budget Service Company, or under any other name or names, his successors and assigns, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 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 "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.

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

3. 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.

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

5. Stating, utilizing or placing any additional information in conjunction with the disclosures required to be made by Regulation Z, which information misleads, confuses, contradicts, obscures or detracts attention from disclosure of information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

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

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

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

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

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

IN THE MATTER OF

GEORGIA AGENCY COMPANY, INC., ET AL.

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

Docket C-2658. Complaint, Apr. 22, 1975 - Decision, Apr. 22, 1975

Consent order requiring an Atlanta, Ga., seller of aerosol product distributorships and franchises, among other things to cease misrepresenting earnings and profits, nature of products, and survey results; making unsubstantiated advertising claims; and failing to disclose certain information, such as right-to-cancel provision and cooling-off period, prior to the signing of contracts.

Appearances

For the Commission: *Charles C. Murphy Jr.*

For the respondents: *John Feagin, Jr., Atlanta, Ga.*

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 Georgia Agency Company, Inc., a corporation, Richard A. Bryant, Jr. and Richard R. Royal, individually and as officers of said corporation and Doyle Fleming, an individual and principal stockholder 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:

PAR. 1. Respondent Georgia Agency Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located in Suite 850, 8 Perimeter Pl., N.W., Atlanta, Ga.

Respondents Richard A. Bryant, Jr., Richard R. Royal, and Doyle Fleming are individuals and officers and/or stockholders of said corporation. Together they formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of aerosol health and beauty aid products, fire extinguishers, lubricants and novelty items and in the advertising, offering for sale, and sale of

distributorships or franchises for said products to members of the public.

PAR. 3. In the course and conduct of their business, respondents cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Georgia and their suppliers' places of business in the State of Georgia, and other States, to purchasers thereof located in various other States of the United States. In addition, in the course and conduct of their business, respondents have disseminated and caused to be disseminated in newspapers of interstate circulation, advertisements designed to be read by persons residing outside the State of Georgia and intended to induce such persons to enter into contractual agreements with respondents to purchase distributorships or franchises and products from respondents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in products, distributorships or franchises 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 distributorships or franchises and products, respondents have made numerous statements and representations in promotional material and in newspaper advertisements. Persons responding to said advertisements are contacted by respondents or their representatives. Said respondents or their representatives, in soliciting the sale of said products, make various oral statements and representations concerning the business opportunities and benefits to be derived by purchasing said distributorships or franchises and products.

Among and typical, but not all inclusive, of the statements and representations made in newspapers, circulars, form letters, flyers and by other printed material given to prospective purchasers are the following:

IF YOU COULD EARN: \$50,000 ANNUALLY

Would you:

Work at least 3 days a week? Contact established accounts regularly? Distribute at wholesale level only, top nationally advertised products to drug, department, discount stores, etc.?

And if:

There were no selling, vending or employees? (Other than a manager, if you have other business interests)?

Could you:

Make an immediate decision? (Bring your wife, banker, lawyer or supervisor). Invest \$5,000 to \$10,000 (fully rebatable under contract)?

If so, call: Jan O'Connell 724-3410.

If unable to reach Jan O'Connell, call or write: The Georgia Agency Company, 8 Perimeter Place, N.W., Suite 850, Atlanta, Georgia 30339, (404) 432-0705.

805

Complaint

WE'RE GOING TO PUT A LOCAL MAN IN BUSINESS * * * HE MUST REQUIRE \$25,000 to \$50,000 per year and not just a job. Very few jobs pay \$50,000, but a lot of businesses do. One of them is ours * * *

* * * * *

We merchandise to leading drug stores, department stores, etc., the No. 2 most used personal product in America today, enhanced by the ten most coveted brand names in the industry. Only we offer this opportunity, and this you would have going for you if qualified* * *

* * * * *

LOOKING FOR A \$50,000 JOB?

There are not too many jobs paying \$50,000, but there are lots of businesses that do. One of them is ours and we are a national company in a Billion Dollar Business.

* * * * *

DO NOT CALL ME UNLESS YOU QUALIFY!

We do not want a \$10,000 to \$20,000 per year man.
You must desire and believe that \$100,000 per year and up can be made.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented directly or by implication that:

- A. Persons who purchase a distributorship or franchise from respondents can earn from \$25,000 to \$100,000 annually working part-time or full-time.
- B. Said earnings projections are the earnings made by a significant number of respondents' distributors or franchisees.
- C. Respondents obtain top sales producing locations such as leading department, discount, and drug stores for the placing of products purchased from them.
- D. Respondents' products are nationally advertised.
- E. A distributor's investment is fully refundable under the rebate provisions of respondents' contract.
- F. Respondents' goods contain well-known brand name products.
- G. Only respondents offer to sell distributorships to distribute the particular type of products they describe, to the exclusion of all others.

PAR. 6. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of distributorships or franchises and products, respondents, through their agents and representatives, have made and are now making, numerous oral statements and representations regarding ownership and operation of distributorships and franchises sold by respondents and the products supplied by respondents. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

A. A survey has been made of the market in which the prospective purchaser will operate.

B. The geographical territory granted to each distributor is exclusive.

C. The products of respondents are manufactured using an exclusive formula.

D. Respondents' products are fast moving and easy to sell.

E. A list given to a prospective distributor contains names and telephone numbers of successful distributors of respondents located in various major cities in the United States.

F. \$60 of the prospective distributor's investment is used to pay for a "back up inventory."

G. Many retail accounts secured by respondents will pay cash when the respondents' products are placed in their place of business.

PAR. 7. In truth and in fact:

With respect to advertising representations:

A. Few, if any, persons who purchased a distributorship or franchise from respondents earned from \$25,000 to \$100,000 annually working part-time or full-time.

B. Respondents' claimed earnings projections are far in excess of the earnings of most, if not all, persons who purchased and operated respondents' distributorships or franchises.

C. Respondents do not obtain top income producing locations, but place most of the accounts in small stores which have very little consumer traffic. The locations secured by respondents are few in number and usually undesirable, unsuitable and unprofitable.

D. Respondents do not conduct any national advertising of their products and have no control over the extent to which their distributors conduct product advertising.

E. A distributor's investment is not functionally refundable under the terms of the distributor's contract with the respondents, and few, if any, distributors have received a full refund of their investment under the contractual provisions of respondents' contract.

F. Name brand products are not contained in respondents' products, but instead synthetically-prepared substances which simulate brand-name fragrances such as, but not limited to Arpege, Chanel 5, Joy, Estee Lauder, Shalimar, White Shoulders, Intimate, Jade East, English Leather, Canoe and Brut are used in the manufacture of respondents' products.

G. At least one company other than respondents offers products or distributorships to sell products the same as or similar to the products distributed by respondents.

With respect to oral representations:

A. Seldom, if ever, have respondents made a survey of the market in which the

prospective purchaser intends to operate, prior to the contact by the salesman or thereafter.

B. The geographic territory granted to distributors is not exclusive, but is sometimes granted by respondents to from one to three other distributors.

C. The formula employed in the manufacture of the products sold by respondents is not exclusive to the respondents' products but is used by at least one other company in its aerosol products.

D. The aerosol products sold to distributors are not fast-moving and easy to sell, but are an off-brand and usually undesirable to consumers.

E. The list given to prospective distributors did not contain names of distributors of respondents, successful or otherwise, but were instead so-called "singers" or individuals set up by respondents to represent and hold themselves out as prosperous and successful distributors.

F. The \$60 per account "back up inventory" charge is not used by respondents to purchase and warehouse products for their distributors but is merely an added cost for which distributors receive no consideration.

G. Few, if any, retail accounts secured by respondents' representatives pay cash for respondents' products, but on the contrary, most, if not all, secured accounts are specifically told that the distributor is placing the product on a "consignment only" basis.

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

PAR. 8. In addition to the foregoing statements, representations, acts and practices, respondents have engaged in the solicitation and sale of distributorships requiring a substantial outlay of money from persons with little or no previous experience in such business without affording such persons the right to cancel such contracts of sale without penalty for a period of not less than five (5) business days following the finalization of such transaction.

Therefore, the solicitation of distributorship contracts without allowing for cancellation within a reasonable time constitutes an unfair practice where such contract involves substantial monetary obligations on the part of persons with little or no experience in the type of business arrangement sold by respondents.

PAR. 9. In addition to the foregoing statements, representations, acts and practices, respondents usually and normally require payment in full of the contract price by distributors prior to fulfilling their contractual obligations including, but not limited to, establishing locations and delivering merchandise.

Therefore, the requirement that distributors pay the full contractual price prior to the performance of contractual obligations by respondents under the circumstances and conditions herein alleged constitutes an unfair practice.

PAR. 10. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations and practices, has had the capacity and tendency to mislead members of the public.

into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of respondents' distributorships or franchises and products by reason of said erroneous and mistaken belief and unfairly into the assumption of obligations and the payment of monies which they might otherwise not have incurred.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of the same or similar products.

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

DECISION AND ORDER

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

The 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Georgia Agency Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Georgia, with its office and principal place of business located at Suite 850, 8 Perimeter Pl., N.W., Atlanta, Ga.

Respondents Richard A. Bryant, Jr., Richard R. Royal and Doyle Fleming are officers and/or stockholders of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Georgia Agency Company, Inc., a corporation, its successors and assigns, and its officers, and Richard A. Bryant, Jr. and Richard R. Royal, individually and as officers of said corporation and Doyle Fleming, individually and as principal stockholder of said corporation, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of aerosol health and beauty aid products, fire extinguishers, lubricants and novelty items or any other products, services, distributorships or franchises in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. (a) Persons investing in respondents' distributorships, franchises or purchasing respondents' products will receive any stated amount of income or gross or net profits or other earnings, or misrepresenting in any manner, earnings, profits or other benefits to be derived by purchasers of respondents' distributorships, franchises or products.

(b) Any stated sums of money are past earnings of distributors or purchasers of respondents' products unless such sums are based upon the actual figures for all distributorships granted by the respondents in operation during the entire preceding twelve (12) month period, and without disclosing clearly and conspicuously immediately adjacent to any such representation that "REPRESENTATIONS ARE BASED ON THE REPRESENTATIVE NET EARNINGS OR PROFITS OF ALL INDEPENDENT DISTRIBUTORS OF THIS COMPANY IN OPERATION DURING THE PAST YEAR. THESE FIGURES SHOULD NOT BE CONSIDERED AS ACCURATE REPRESENTATIONS OF POTENTIAL EARNINGS OR PROFITS OF ANY SPECIFIC DISTRIBUTOR."

2. Respondents will obtain satisfactory or profitable locations for sale of the products purchased from them; *Provided, however,* That

nothing herein shall be construed to prohibit respondents from truthfully and nondeceptively representing that they have obtained locations or assisted in obtaining locations if respondents clearly and conspicuously disclose, in immediate conjunction therewith, the average net or gross earnings realized by all distributors from sales of its products in locations obtained by respondents or through their assistance.

3. National advertising will be conducted by or provided for by respondents.

4. The distributorship investment is fully rebatable or refundable under the contract without fully disclosing, both orally and in writing in the contract, the procedure by which such a refund may be obtained including the amount of product which must be purchased, based on the prospective distributor's investment in order to obtain full reimbursement of the investment.

5. Brand name products are used in the manufacture of respondents' products or misrepresenting in any manner the type, nature or origin of respondents' products.

6. Respondents conduct surveys or investigations to find desirable market areas for their products or suitable retail locations for the sale of their products.

7. Geographic territories granted to distributors are exclusive or that the subsequent disposition by distributors of products are geographically restricted.

8. The formula employed in the manufacture of respondents' products is exclusive.

9. The products of respondents that are sold to distributors are fast moving or easy to sell.

10. Persons named as references are distributors, successful or otherwise, unless such persons have been actual distributors as described in Section C-3 of this order.

11. There is a charge as part of the distributorship investment or otherwise for any goods or services specified in the distributorship contract or application that are not actually shipped or provided by respondents.

12. Retail accounts secured by respondents pay or will pay cash for respondents' products.

B. Making any claim in any advertising or promotional material for which the respondents do not have in their possession valid substantiating data, which data shall be made available to prospective distributors or the Commission or its staff upon demand.

C. Failing to furnish any prospective distributor with all of the following information, in writing and in a clear permanent form, at the

time when contact is first established between such prospective distributor and the respondents or their representatives:

1. The official names(s) and address(es) of the corporate respondent, the parent firm or holding company of the respondent, if any; all affiliated companies that will engage in business with the distributor.

2. The business experience of the respondents, including the length of time the respondents have conducted a business of the type to be operated by the distributor, have granted distributorships for such business and have granted distributorships in other lines of business.

3. A list of the names and addresses of ten (10) persons who purchased distributorships, for products or product lines similar to, or the same as, those being offered by respondents to any prospective distributor.

4. A statement of the conditions and terms under which the respondents allow the distributor to sell, lease, assign, or otherwise transfer his distributorship, or any interest therein.

5. A statement of the number of persons who have signed distributor agreements for whom locations have not yet been agreed upon by both the respondents and the distributor.

All of the foregoing material is to be contained in a single package, is to be made available to the Commission or its staff upon demand, and is to carry a distinctive and conspicuous cover sheet with the following information (and no other) imprinted thereon in bold face type of not less than ten (10) point size:

**INFORMATION FOR PROSPECTIVE DISTRIBUTORS REQUIRED BY
THE FEDERAL TRADE COMMISSION**

This package of information is provided for your own protection. It is in your best interest to study it carefully before making any commitment.

If you do sign a contract, you may cancel it, and obtain a full refund of any money paid, for any reason within five business days after signing. Details appear on the contract itself.

The information contained herein has not been reviewed or approved by the Federal Trade Commission, but any misrepresentation constitutes a violation of Federal law. If you feel you have been misled, you should contact the Federal Trade Commission in Washington, or the Federal Trade Commission Regional Office nearest you.

D. Failing to include immediately above and on the same page as the distributor's signature line of any contract establishing or confirming a distributorship agreement, the following statement in bold face print at least 50 percent larger than any other print in the body of such contract, or in bold face print of a contrasting color:

NOTICE: YOU ARE ENTITLED TO CERTAIN IMPORTANT INFORMATION CONCERNING THIS TRANSACTION, ENTITLED "INFORMATION FOR PROSPECTIVE DISTRIBUTORS REQUIRED BY THE FEDERAL TRADE COMMISSION." IT IS IN YOUR BEST INTEREST TO DEMAND AND STUDY SUCH

INFORMATION. YOU MAY CANCEL THIS CONTRACT FOR ANY REASON WITHIN FIVE BUSINESS DAYS AFTER YOU SIGN IT. If you do choose to cancel, you will be entitled to receive full refund of any money paid within five business days after Georgia Agency Company, Inc., receives notice of your cancellation. You may use any reasonable method to notify Georgia Agency Company, Inc., of your cancellation within the five business day grace period. For your own protection, you may wish to use certified mail with return receipt requested, or a telegram, either of which should be sent to the address below. [Respondents will insert here the address to which such notices should be sent.] To cancel this transaction, the notice of cancellation must be sent not later than midnight of [Respondents will insert date.]

E. Failing to cancel any contract for which a notice of cancellation was sent by any reasonable means within five (5) business days after the contract's execution, or failing to refund any money paid by distributor within five (5) business days after the date of receipt of such notice of cancellation.

As used in this order, the following definitions shall apply:

1. "Prospective distributor" means any person who approaches, or is approached by, respondents or their agents or representatives for the purpose of investigating a distributorship between such person and respondents;

2. "Time when contact is first established" means the earlier of the time when: (a) a direct personal meeting first occurs between respondents or their agents or representatives and a prospective distributor, or (b) any document or promotional literature is distributed to a prospective distributor;

3. "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

It is further ordered, That respondents:

Inform orally all prospective customers and provide in writing in all contracts that the contract is not final and binding until respondents have completely performed their obligations thereunder by shipping all supplies and products to the customer and performing all services, and said customer has thereafter signed a statement indicating his satisfaction;

Refund immediately all monies to (1) customers who have refused to sign statements indicating satisfaction with respondents' shipments of supplies and products, and (2) customers showing that respondents' contract, solicitations or performance were attended by or involved violations of any of the provisions of this order.

It is further ordered, That respondents require that distributors pay no more than one-third of the amount of the contract price prior to the shipment of goods and the establishment of accounts to the satisfaction of the distributor.

It is further ordered, That respondents maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two (2) years after the receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

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

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future employees, agents and representatives engaged in the offering for sale or sale of respondents' distributorships or products or in any aspect of preparation, creation or placing of advertising and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

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

EXXON CORPORATION, ET AL.

Docket 8934. Order, Apr. 29, 1975

Denial of respondents' petition, except Texaco, Inc., for extraordinary review of administrative law judge's order denying respondents' motion to require complaint counsel to file environmental statement.

ORDER DENYING PETITION FOR EXTRAORDINARY REVIEW

All respondents, except Texaco, Inc., have petitioned for "extraordinary review" of the administrative law judge's Feb. 5, 1975, "Order Denying Motion of Respondents to Require Complaint Counsel to File Environmental Impact Statement or, In the Alternative, For Immediate Certification to the Commission." Complaint counsel oppose this petition on the ground that such review is unauthorized by the Commission's Rules of Practice. We have considered respondents' petition and have found nothing therein which would warrant departing from the procedural requirement of Section 3.23 of the Commission's Rules of Practice or directing a certification of the matter pursuant to Section 3.22(a). Accordingly,

It is ordered, That the aforesaid petition for extraordinary review be, and it hereby is, denied.

IN THE MATTER OF

ARKON FASHIONS, INC., ET AL.

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

Docket C-2659. Complaint, Apr. 29, 1975—Decision, Apr. 29, 1975

Consent order requiring a New York City clothing importer and distributor, among other things to cease misbranding its wool products.

Appearances

For the Commission: *Jerry R. McDonald*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Arkon Fashions, Inc., a corporation, and Abraham Kunen, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest,

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Arkon Fashions, 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 8 W. 33rd St., N. Y., N.Y.

Individual respondent Abraham Kunen is an officer of Arkon Fashions, Inc. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondents are engaged in the importation of clothing, including but not limited to men's jackets, manufactured from wool blend fibers and the sale and distribution of such products.

PAR. 2. Respondents, now and for some time last past, have imported for introduction into commerce, introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, and sold in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were certain wool blend jackets stamped, tagged, labeled, or otherwise identified by respondents as Shell: 50 percent reprocessed wool, 23 percent linen, 27 percent acrylic-pile: 63 percent acrylic, 37 percent cotton, whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

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

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

weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged above, were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts or 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 New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act; and

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

The Commission having thereafter considered the matter and having determined that it 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 record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Arkon Fashions, 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 8 W. 33rd St., N.Y., N.Y.

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

Respondents are engaged in the importation and sale of wearing apparel including wool products.

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 Arkon Fashions, Inc., a corporation, its successors and assigns, and its officers, and Abraham Kunen, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the introduction, or importing for introduction, into commerce, or offering for sale, sale, transportation, distribution, delivery for shipment or shipment in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

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

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

IN THE MATTER OF
FASHION FLOORS, INC., ET AL.

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

Docket 8982. Complaint, July 8, 1974-Decision, May 1, 1975

Consent order requiring a Beltsville, Md., retailer, distributor and installer of carpeting and other floor coverings, among other things to cease misrepresenting its prices; failing to maintain adequate records; misrepresenting the qualifications and abilities of its sales personnel; and misbranding or mislabeling its textile fiber products and using fiber trademarks improperly.

Appearances

For the Commission: *Everette E. Thomas, Richard F. Kelly and Richard C. Donohue.*

For the respondents: *Glen A. Mitchell, Stein, Mitchell & Mezines, Wash., D. C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Fashion Floors, Inc., a corporation, and Donald F. Riesett, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fashion Floors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 10730 Baltimore Ave., Beltsville, Md.

Respondent Donald F. Riesett is an individual and is the principal officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

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

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning the aforesaid carpeting and floor coverings, by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of respondents' said merchandise.

In the further course and conduct of their business, as aforesaid, respondents have caused, and now cause, their said merchandise to be shipped across State lines between their various retail outlets located in the Commonwealth of Virginia and State of Maryland, for sale to purchasers thereof located in the aforesaid States. Thus, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

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

8 hr. \$50,000 CLEARANCE Savings of 20% to 50% Carpets & Rugs

* * * * *

Complaint

85 F.T.C.

Washington's Birthday Warehouse Sale 25% to 40% Savings Carpets &
Rugs

* * * * *

Fabulous \$100,000 WAREHOUSE RUG SALE

* * * * *

COMP. AREA VALUE	CLEARANCE SALE
\$150	\$29
\$151	\$63

* * * * *

YOU GET: Certified installation by carpet craftsmen who live up to their reputation -
"WE CARE".

* * * * *

EASY CREDIT TERMS AVAILABLE

* * * * *

EASY CREDIT TERMS

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing, directly or by implication, that:

1. By and through the use of the word "SALE," and other words of similar import and meaning not set out specifically herein, said carpeting and floor coverings may be purchased at reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

2. Purchasers of respondents' carpet remnants are afforded savings of 25 to 50 percent off the prices at which such carpet remnants are usually and customarily sold at retail.

3. By and through the use of the words "Comp. Area Value" and other words of similar import and meaning not set out specifically herein, said comparative value is the price at which the same carpet remnants are being offered for sale by a substantial number of the principal outlets in respondents' trade area.

4. By and through the use of the words "Certified installation by carpet craftsmen" and other words of similar import and meaning not set out specifically herein, respondents offer to the prospective

customer the services of carpet installers who have received certification by a recognized institution or government licensing agency.

5. By and through the use of the words "Easy Credit Terms" and "Easy Credit Terms Available," purchasers of their products are granted easy credit terms, without regard to their financial status or ability to pay, by financial institutions with which the respondents deal.

PAR. 6. In truth and in fact:

1. Respondents' merchandise is not being offered for sale at reduced prices. To the contrary, in a substantial number of instances, the respondents have not established a regular selling price, and their so-called advertised "sale" price is used to mislead prospective customers into believing there is a saving from a bona fide regular selling price.

2. Purchasers of respondents' carpet remnants are not afforded savings of 25 to 50 percent off the prices at which such carpet remnants are usually and customarily sold at retail. To the contrary, the percentage price comparison is based on prices for quantities of carpeting required for wall-to-wall installation rather than the advertised carpet remnants or rugs which are usually sold for less than wall-to-wall prices.

3. The same carpet remnants are not offered for sale at the comparative price by a substantial number of the principal outlets in respondents' trade area.

4. Respondents' installers have not received certification by a recognized institution or government licensing agency.

5. Purchasers of respondents' products are not granted easy credit terms, without regard to their financial status or ability to pay, by financial institutions with which respondents deal.

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 at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting, floor coverings services of the same general kind and nature as those sold by respondents.

PAR. 8. 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 complete, and

into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 9. 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.

COUNT II

Alleging violation of the Textile Fiber Products Identification Act and the implementing Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products including carpeting and floor covering and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 11. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised in *The Washington Post* and *The Evening Star*, newspapers published in the District of Columbia, and having a wide circulation in the District of Columbia and various States of the United States, in that the respondents in disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to

indicate that it applied only to the face, pile, or outer surface of the floor coverings and not to the exempted backings, fillings, or paddings.

PAR. 12. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder by reason of the fact that in disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

PAR. 13. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, and unfair methods of competition, in commerce, under the Federal Trade Commission Act.

Commissioner Thompson dissenting for the reason that no evidence of consumer injury having been shown to him, he is not persuaded that this litigation is a sound use of the taxpayer's money.

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 containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 sixty (60) days, now in further conformity with the procedure

prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Fashion Floors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 10730 Baltimore Ave., Beltsville, Md.

Respondent Donald F. Riesett is an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, 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

I.

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

1. Using the word "Sale," or any other word or words of similar import or meaning not set forth specifically herein 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. (a) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise or services have been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded

savings amounting to the difference between respondents' stated price and a compared price for said merchandise or services in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise or services at the compared price or some higher price.

(c) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise or services, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise or services of like grade and quality.

3. Advertising or otherwise representing a compared value price for carpet remnants or rugs (a) unless the carpet remnants or rugs being advertised are of the same grade and quality as the carpets with which such advertised prices are compared; and (b) without disclosing in immediate conjunction therewith that the carpet remnants or rugs are usually sold for less than wall-to-wall prices, and that the compared value is based on the wall-to-wall price of carpeting of the same grade and quality.

4. Representing, directly or by implication, orally or in writing, that purchasers of respondents' merchandise will save any stated dollar or percentage amount without fully and conspicuously disclosing, in immediate conjunction therewith, the basis for such savings representations.

5. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraphs One, Two, and Four of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

6. Representing, directly or by implication, orally or in writing, that respondents' installers have received certification by a recognized institution or government licensing agency; or misrepresenting in any manner, the training, certification, or qualifications of any of respondents' employees, agents, or representatives.

7. Representing, directly or by implication, orally or in writing, that purchasers of respondents' products are granted easy or assured credit terms by financial institutions with which respondents deal; or

misrepresenting, in any manner, the amount, type, extent or any other facet of the credit terms respondents arrange or may arrange for their purchasers.

II.

It is further ordered, That respondents Fashion Floors, Inc., a corporation, its successors and assigns, and its officers, and Donald F. Riesett, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Falsely and deceptively advertising textile fiber products by:

(a) Making any representations by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

(b) Failing to set forth in advertising the fiber content of floor covering containing exempted backings, fillings or paddings, that such disclosure related only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

(c) Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

(d) Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

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

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

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

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

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

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 address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

Order

85 F.T.C.

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
KENNECOTT COPPER CORPORATION

Docket 8765. Order, May 5, 1975

Denial of respondent's petition to reopen the proceedings to enlarge the time for compliance.

Appearances

For the Commission: *James T. Halverson.*

For the respondent: *Arthur H. Dean, Sullivan & Cromwell, New York City. William Simon, Howrey, Simon, Baker & Murchison, Wash., D.C.*

ORDER DENYING PETITION TO REOPEN

On Apr. 1, 1975, respondent Kennecott Copper Corporation filed a "Petition to Reopen the Proceedings to Enlarge the Time for Compliance." By answer dated Apr. 25, 1975, Commission staff have filed a response thereto.

The Commission has determined to deny the petition to reopen. The grant of an extension of time within which to comply with a final order is a matter solely within the discretion of the Commission. The Commission believes that consideration of requests for extensions of time is best handled, like other facets of compliance proceedings, as part of the nonadjudicative work of the Commission. To reopen this proceeding in the manner requested would deprive the Commission of the informal advice of its compliance personnel in a matter that has traditionally been deemed particularly well suited to close and constant communication between the Commission and its staff. We see no need to adopt such a cumbersome and time-consuming approach here. We do not believe, in other words, that alleged difficulties in effecting prompt divestiture constitute the "changed conditions of fact or law" necessary to warrant reopening, nor do we believe that reopening to consider an enlargement of time for compliance would be in the public interest.¹ Therefore,

¹ It should be noted that the Commission has heretofore granted two extensions of time to respondent on the basis of requests it has made, and the Commission has traditionally granted extensions of time in appropriate circumstances without reopening the affected proceedings to do so. See Section 4.3(b) of the Commission's Rules of Practice.

It is ordered, That the "Petition to Reopen the Proceeding to Enlarge the Time for Compliance" be, and it hereby is, denied.

IN THE MATTER OF

WENDELKEN-SIMMINGER AND COMPANY T/A SIMS
FURNITURE CO., ET AL.

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

Docket C-2260. Complaint, May 5, 1975-Decision, May 5, 1975

Consent order requiring a Cincinnati, Ohio, seller and distributor of furniture, appliances and related products, among other things to cease misrepresenting the quantity of merchandise in stock; disparaging advertised products; failing to maintain adequate records, to disclose unit prices, and other relevant facts; using misleading sales plans. Further, respondents are required to post copies of the order in prominent locations within their store and maintain records of advertisements for a three-year period.

Appearances

For the Commission: *Allan M. Huss.*

For the respondents: *Saul M. Greenberg, Cincinnati, Ohio.*

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 Wendelken-Simminger and Company, a corporation, trading and doing business as Sims Furniture Company, and Ralph Mazer, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH I. Respondent Wendelken-Simminger and Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1625 Vine St., Cincinnati, Ohio. Respondent Wendelken-Simminger and Company is trading and doing business as Sims Furniture Company.

Respondent Ralph Mazer is an individual and is an officer of the corporate respondent. He formulates, directs, and controls the acts and

Complaint

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 purchasing, offering for sale, sale, and distribution of furniture, appliances, and related products to the public at retail in the greater Cincinnati, Ohio, and northern Kentucky areas.

PAR. 3. In the course and conduct of their business as aforesaid, respondents regularly maintain places of business within the State of Ohio and within States other than Ohio, where they offer for sale, sell, and distribute furniture, appliances, and related products.

In the further course and conduct of their aforesaid business, respondents also disseminate, and cause to be disseminated, certain advertisements by various means in commerce including, but not limited to, advertisements disseminated by electronic broadcast media, for the purpose of inducing, and which are likely to induce, directly or indirectly, the sale of their said products in commerce.

Therefore, at all times mentioned herein, respondents have been, and now are, in competition in commerce with corporations, firms, and individuals in the sale of furniture, appliances, and related products, and maintain, and have maintained at all times mentioned herein, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the sale and purchase of their merchandise, respondents have made, and are now making, numerous and various statements and representations in advertisements disseminated by electronic broadcast media. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

* * * Sims is now offering four rooms of furniture * * * two bedrooms, a living room and a kitchen grouping * * * a house full of furniture for just \$333.
* * * you can buy three rooms [of furniture] for only \$288, and each room separately for just \$99.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set out herein, respondents represent, directly or by implication, that:

1. The offers set forth in said advertisements were and are bona fide offers to sell the advertised furniture.
2. The amount of furniture offered in the groupings is adequate in and of itself to furnish an average room, without the need for additional pieces of furniture to be purchased.

PAR. 6. In truth and in fact:

1. The offers set forth in said advertisements, and other offers not

set forth in detail herein, were not, and are not, bona fide offers to sell groupings of furniture at the advertised price but, to the contrary, were and are made to induce prospective purchasers to visit respondents' place of business. When prospective purchasers, in response to said advertisements, attempt to purchase furniture at the advertised price, salesmen represent, either directly or by implication, that the advertised furniture is of poor quality and inferior in appearance and durability; and such salesmen make no effort to sell the furniture at the prices advertised. Rather, said salesmen, either directly or by implication, attempt to discourage the purchase of said advertised furniture and attempt to, and often do, sell other furniture at considerably higher prices.

2. The amount of furniture offered for sale in the advertisement is not adequate in and of itself to furnish an average room, without the need for additional pieces of furniture to be purchased.

Therefore, the representations, acts, and practices as set forth in Paragraphs Four and Five hereof were and are unfair, misleading, and deceptive.

PAR. 7. The use by respondents of the aforesaid false, misleading, and deceptive statements and representations, directly or by implication, 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 furniture from respondents' place of business by reason of said erroneous and mistaken belief.

PAR. 8. In the course and conduct of their aforesaid business, respondents fail to display the retail selling price of each item advertised or offered for sale in their place of business, or to otherwise enable the customer to ascertain the retail selling price of each item prior to its purchase. Thus, respondents have failed to disclose a material fact, which, if known to certain customers, would be likely to affect their consideration of whether or not to purchase the items offered for sale.

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

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 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Wendelken-Simminger and Company 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 1625 Vine St., in the city of Cincinnati, State of Ohio. Respondent Wendelken-Simminger and Company trades and does business as Sims Furniture Company.

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

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

ORDER

It is ordered, That respondents Wendelken-Simminger and Company, a corporation, trading and doing business as Sims Furniture Company, its successors and assigns, and its officers, and Ralph Mazer, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device in connection with the purchasing, advertising, offering for sale, sale, and distribution of furniture and appliances, or any other products, in commerce, as

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

1. Advertising or offering any products for sale for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered, and respondents maintain an adequate and readily available stock of said products.

2. Disparaging in any manner, or refusing to sell, any product advertised.

3. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations designed to obtain leads or prospects for the sale of other merchandise.

4. Representing directly or indirectly that any products or services are offered for sale when such is not a bona fide offer to sell said products or services.

5. Failing to disclose the number and type of the pieces included in a room grouping, in any advertisement which refers to room groupings.

6. Failing to post, clearly and conspicuously, upon each item to be sold, the retail selling price of each item.

7. Failing to disclose to the consumer, in writing on the sales invoice or sales contract, or any other written evidence of sale, the manufacturer, model number, description, and retail selling price of each item at the time each item is purchased.

8. Failing to maintain adequate records as will show:

(a) Each advertised item identified by model number, manufacturer, description, and date(s) advertised; and

(b) The number of sales made of each advertised product or service at the advertised price for each advertisement published or otherwise disseminated during the period of its publication or other dissemination, and for the six weeks immediately thereafter.

Said records shall be retained for three years from the date of the advertisement, and shall be made available to personnel of the Federal Trade Commission upon request.

It is further ordered, That respondents shall maintain, for a three (3) year period from the date of each advertisement, copies of all advertisements, including newspaper, radio, and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized in the advertising, promotion, or sale of merchandise.

It is further ordered, That for a period of one (1) year, respondents post in a prominent place in each salesroom or other area wherein respondents sell furniture or other products and services, a copy of this

cease and desist order, with a notice that any customer or prospective customer may receive a copy on demand.

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 any aspect of preparation, creation, or placing of advertising, and to all personnel of respondents responsible for the sale or offering for sale of all products covered by this order, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That the 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 address or employment in which he is engaged, as well as a description of his duties and responsibilities.

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

JONEL PAY PLAN, INC., ET AL.

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

Docket C-2661. Complaint, May 5, 1975 - Decision, May 5, 1975

Consent order requiring a Warwick, R.I., moneylender in connection with financing insurance premiums, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *James S. Parker.*

For the respondents: *Bernard C. Gladstone, Gladstone & Zarlenga*, Providence, R.I.

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 Jonel Pay Plan, Inc., a corporation, and John R. Young, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jonel Pay Plan, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 3308 Post Rd., Warwick, R.I.

Respondent John R. Young is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporation, 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 business of lending money to the public in connection with the financing of insurance premiums.

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of their business as aforesaid, have caused and are causing to be extended consumer credit as "consumer credit" is defined in Regulation Z, and have caused and are causing customers to execute a binding premium finance agreement, hereinafter referred to as the "agreement." Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through the use of the agreement, respondents:

1. Failed 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.

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

3. Provide additional information which misleads or confuses the customer or observer or detracts attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

4. Failed to make the disclosures required by Section 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by Section 226.6(a) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with 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 draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Truth in Lending Act and the implementing regulation 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 such agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

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

1. Respondent Jonel Pay Plan, Inc. is a corporation organized,

existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 3308 Post Rd., Warwick, R.I.

Respondent John R. Young is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Jonel Pay Plan, Inc., a corporation, its successors and assigns, and its officers, and John R. Young, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 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 "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.

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

3. Stating, utilizing or placing any additional information in conjunction with the disclosures required to be made by Regulation Z, which information misleads, confuses, contradicts, obscures or detracts attention from disclosure of information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

4. Failing to make all disclosures required by Regulation Z, clearly, conspicuously and in meaningful sequence, as required by Section 226.6(a) of 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, at the time and in the manner, form and amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in

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

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

It is further ordered, That the 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 address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the 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

KUSTOM ENTERPRISES, INC., ET AL.

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

Docket C-2662. Complaint, May 7, 1975-Decision, May 7, 1975

Consent order requiring an Atlanta, Ga., seller and distributor of equipment and supplies used in the assembly of stereo tapes, among other things to cease misrepresenting earnings and profits, guarantees, and opportunities; failing to deliver goods; failing to disclose contract cancellation rights, to make refunds, and to maintain records.

Appearances

For the Commission: *David E. Krischer.*

For the respondents: *Morton P. Levine, Levine, D'Alessio & Cohn,*
Atlanta, Ga.

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 Kustom Enterprises, Inc., a corporation, and Stephen R. Cohen, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kustom Enterprises, Inc., (hereinafter referred to as Kustom), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and principal place of business located at 200 Wendell Ct., Suite 230, Atlanta, Ga.

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

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of equipment and supplies used in the assembly of stereo tapes to distributors and potential distributors. Said distributors purchase respondents' equipment and supplies under a distribution agreement, whereby respondents agree to purchase each week from distributors, a specified amount of assembled stereo tapes at a specified price.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have caused equipment and supplies used in the assembly of stereo tapes, when sold, to be shipped or delivered from their place of business in the State of Georgia to purchasers thereof located in other States of the United States, and disseminated in newspapers of interstate circulation, advertisements designed and intended to induce sales of such equipment and supplies, and thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in said equipment and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of equipment and supplies used in the assembly of stereo tapes, respondents have made numerous statements and representations in newspapers and promotional material. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

* * * * *

Complaint

85 F.T.C.

GUARANTEED INCOME

* * * * *

Make \$300 a week part time; unlimited income full time.

* * * * *

EXCEPTIONALLY HIGH INCOME

* * * * *

Contract for 1,500 pieces per week at \$300
net weekly profit. Expansion possible.

* * * * *

PAR. 5. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of equipment and supplies used in the assembly of stereo tapes, respondents through their agents and representatives, have made and are now making, numerous oral statements and representations regarding ownership and operation of stereo tape distributorships sold by respondents. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

Kustom guarantees that distributors will earn at least \$300 per week.

Each week, Kustom will supply its distributors with the amount of equipment and supplies necessary for the assembly of the stereo tapes which Kustom has contracted to buy weekly from the distributors.

Each week, Kustom will purchase from its distributors the contractually specified amount of assembled stereo tapes.

Each week, Kustom will pay its distributors for the stereo tapes it has purchased from them.

Kustom distributors earn an amount equivalent to their initial investments, within twenty-six weeks of operation.

PAR. 6. By and through the use of the statements and representations set forth in Paragraph Four, and others of similar import but not specifically set forth therein, and through said oral statements set forth in Paragraph Five, and others of similar import but not specifically set forth therein, made by respondents, their employees, agents and representatives, respondents have represented, and do now represent, directly or by implication to the purchasing public, that:

1. Distributors are guaranteed to earn \$300 per week part-time or an unlimited amount per week full-time.

2. Each week, distributors will receive the amount of equipment and supplies necessary for the assembly of the stereo tapes which respondents have contracted to buy weekly from the distributors.

3. Each week, respondents will purchase from distributors the contractually specified amount of assembled stereo tapes.

4. Each week, respondents will pay distributors for the assembled stereo tapes the respondents have purchased from them.

5. Distributors will earn an amount equivalent to their initial investments within twenty-six weeks of operation.

PAR. 7. In truth and in fact:

1. The representations of guaranteed part-time or full-time weekly earnings cannot be substantiated; relatively few, if any, distributors earn \$300 per week part time or an unlimited amount per week full time.

2. Relatively few, if any, distributors receive the equipment and supplies necessary for the assembly of stereo tapes each week. In many instances distributors have had to wait up to eight weeks for their deliveries.

3. Because of the nondelivery of equipment and supplies, relatively few, if any, distributors have been able to sell to respondents each week the contractually specified amount of assembled stereo tapes.

4. Because of the nondelivery of equipment and supplies, relatively few, if any, distributors receive weekly payments from respondents.

5. Relatively few, if any, distributors earn an amount equivalent to their initial investments within twenty-six weeks of operation.

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

PAR. 8. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals in the sale of equipment and supplies used in the assembly of stereo tapes of the same kind and nature as those sold by respondents.

PAR. 9. 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 complete and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted 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 Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The 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 sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its rules, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issues its complaint making the following jurisdictional findings, and enters the following order:

1. Respondent Kustom Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 200 Wendell Ct., Suite 230, Atlanta, Ga.

Respondent Stephen R. Cohen is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Kustom Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Stephen R. Cohen, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of equipment and supplies used in the assembly of stereo tapes, and any other products or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Distributors will earn or can reasonably expect to earn or receive any stated or gross or net amount of earnings or profits; or representing, in any manner, the past earnings of distributors unless in fact the past earnings represented are those of a substantial number of distributors and accurately reflect the average earnings of said distributors under circumstances similar to those of the person to whom the representation is made.

2. Earnings of distributors are guaranteed unless the nature, extent and duration of the guarantee, the manner in which the guarantor will perform thereunder and the name and address of the guarantor are clearly and conspicuously disclosed and respondents do in fact fulfill all of their requirements under the terms of said guarantee.

3. Respondents will deliver the equipment and supplies used in the assembly of stereo tapes on a weekly or other periodic basis, unless in each instance such delivery is made as represented by respondents, subject to any possibilities of delay which will be disclosed in writing at the point of sale; or misrepresenting in any manner the time within which respondents' equipment and supplies will be delivered.

4. Respondents will purchase assembled stereo tapes from distributors on a weekly or other periodic basis unless in each instance distributors will have delivered to them the equipment and supplies necessary for the assembly of such tapes.

5. Respondents will make weekly or other periodic payments to distributors in payment for the assembled stereo tapes it has purchased from them unless in each instance distributors will have delivered to them the equipment and supplies necessary for the assembly of such tapes and in each instance such payments are made as represented by respondents.

6. Distributors will earn or can reasonably expect to earn an amount equivalent to their initial investment within twenty-six weeks

of operation; or representing, in any manner, the time within which a distributor can earn back his investment.

It is further ordered, That respondents:

(a) Orally inform all prospective distributors and provide in writing in all contracts entered into after the effective date of this order, that the contract may be canceled for any reason by notification to respondents in writing within three business days from the date of execution of the contract.

(b) Provide a separate and clearly understandable form to all prospective distributors at the time of execution of the contract, which said distributors may use as a notice of cancellation.

(c) Refund immediately all monies received on contracts entered into after the effective date of this order to (1) prospective distributors who have requested contract cancellation in writing within three business days from the execution thereof and to (2) prospective distributors showing that respondents' contract, solicitations or performance were attended by or involved violations of any of the provisions of this order.

It is further ordered, That respondents:

(a) Refund immediately, pursuant to the terms described in part (c) below, all monies received on contracts entered into before the effective date of this order to distributors who, as of the effective date of this order, have not been brought within two weeks of being up to date on the receipt of their contractually specified weekly shipments of the equipment and supplies used in the assembly of stereo tapes unless;

(1) respondents obtain a signed statement from a distributor stating his desire to reduce his weekly output and respondents have brought him within two weeks of being up to date on his revised output, or

(2) respondents show that a distributor has in his possession two weekly shipments of equipment and supplies used in the assembly of stereo tapes which the distributor has not assembled and shipped to respondents for purchase by respondents, or

(3) respondents obtain a signed statement from a distributor stating that he does not wish a refund pursuant to this provision.

(b) Provide an immediate refund, pursuant to the terms described in part (c) below, to any distributor to whom deliveries of equipment and supplies used in the assembly of stereo tapes fall more than two weeks behind the distributor's contractually specified periodic quota, if at any time during such period said distributor requests such a refund in writing unless;

(1) respondents obtain a signed statement from a distributor stating his desire to reduce his weekly output and respondents have brought him within two weeks of being up to date on his revised output, or

(2) respondents show that a distributor has in his possession two

weekly shipments of equipment and supplies used in the assembly of stereo tapes which the distributor has not assembled and shipped to respondents for purchase by respondents, or

(3) respondents obtain a signed statement from a distributor stating that he does not wish a refund pursuant to this provision.

(c) For the purposes of parts (a) and (b) above, the term "refund" shall mean all sums of money paid by a distributor to respondents less (1) any amount paid by respondents to distributors, and (2) the price paid for any equipment or supplies purchased by the distributor that the distributor does not return (a distributor requesting a refund pursuant to this provision who has equipment or supplies either credited to him in an account, or in his actual possession, shall be entitled to a refund for such merchandise or equipment on the basis of the price paid by the distributor for the equipment or supplies; *Provided, however,* That any of said equipment or supplies in the distributor's actual possession for which he requests a refund under this provision must be delivered to respondents before the refund is payable to the distributor).

It is further ordered, That respondents maintain files containing all inquiries or complaints on contracts entered into after the effective date of this order from any source relating to acts or practices prohibited by this order, for a period of two (2) years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future employees, agents and representatives engaged in the offering for sale or sale of respondents' distributorships or products 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 deliver a copy of this order to cease and desist to all present and future distributors and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That respondents notify the Commission at

Complaint

85 F.T.C.

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

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

IN THE MATTER OF

THE ROUSE COMPANY

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

Docket C-2663. Complaint, May 7, 1975-Decision, May 7, 1975

Consent order requiring a Columbia, Md., based regional shopping center developer, among other things to cease controlling the pricing and advertising practices of its tenants.

Appearances

For the Commission: *James D. Tangires and Gary M. Laden.*

For the respondent: *Lewis A. Noonberg, Piper & Marbury,*
Baltimore, Md.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. §41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating the following:

PARAGRAPH 1. For the purpose of this complaint the following definitions shall apply:

(a) The term "respondent" refers to The Rouse Company, a corporation, its successors and assigns, any corporation, subsidiary,

division or other device, their officers, agents, representatives and employees.

(b) The term "shopping center" refers to a group of retail outlets in the United States of America, planned, developed and managed as a unit in relation to a trade area which the development is intended to serve and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

(c) The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center, whether as lessee or owner of such space.

(d) The term "retailer" refers to a tenant which sells merchandise or services to the public.

(e) The terms "price or prices," "range of prices" and "price range" refer to such descriptive words as "popular priced," "medium priced," "high priced," "better priced," "the sale of merchandise not to exceed \$10," and "the sale of merchandise not less than 99 cents."

PAR. 2. Respondent, The Rouse Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at The Rouse Company Headquarters Bldg. in Columbia, Md. The Rouse Company's subsidiaries are engaged in the acquisition, development and ownership of income producing real estate in the United States and Canada. The term "Rouse" used hereinafter includes The Rouse Company and its subsidiaries.

The following Rouse subsidiaries have developed regional shopping centers in the United States:

- (a) Almeda Mall, Inc. - Almeda Mall Houston, Tex.
- (b) Charlottetown, Inc. - Charlottetown Mall Charlotte, N. C.
- (c) Cherry Hill Center, Inc. - Cherry Hill Mall Cherry Hill, N. J.
- (d) Columbia Mall, Inc. - Columbia Mall Columbia, Md.
- (e) Eastfield Mall, Incorporated - Eastfield Mall Springfield, Mass.
- (f) Echelon Mall, Inc. - Echelon Mall Echelon, N. J.
- (g) Exton Square, Inc. - Exton Mall Exton, Pa.
- (h) Franklin Park Mall, Inc. - Franklin Park Mall Toledo, Ohio
- (i) Greengate Mall, Inc. - Greengate Mall Greensburg, Pa.
- (j) Harundale Mall, Inc. - Harundale Mall Glen Burnie, Md.
- (k) Austin Mall, Inc. - Highland Mall Austin, Tex.
- (l) Louisville Shopping Center, Inc. - Louisville Mall Louisville, Ky.
- (m) North Star Mall, Inc. - North Star Mall San Antonio, Tex.
- (n) Northway Mall, Inc. - Northway Mall Pittsburgh, Pa.
- (o) Northwest Mall, Inc. - Northwest Mall Houston, Tex.
- (p) Paramus Park, Inc. - Paramus Park Mall Paramus, N. J.
- (q) Perimeter Mall, Inc. - Perimeter Mall Atlanta, Ga.

(r) Plymouth Meeting Mall, Inc. - Plymouth Meeting Mall Montgomery County, Pa.

(s) Salem Mall, Incorporated - Salem Mall Dayton, Ohio

(t) The Willowbrook Corporation - Willowbrook Mall Wayne, N. J.

(u) Woodbridge Center, Inc. - Woodbridge Mall Woodbridge, N. J.

The property on which the aforesaid regional shopping centers were developed by Rouse is held in fee, leasehold, in fee and leasehold, and in fee by joint venture. For the fiscal year ending May 31, 1973, Rouse had total revenues which exceeded \$57,000,000, of which approximately \$35,000,000 was earned or received from its regional shopping center operations.

Rouse is one of the nation's largest shopping center developers, having built regional shopping centers in at least 12 States. The regional shopping centers developed by Rouse have approximately 15,664,130 square feet of leasable area. Rouse owns approximately 8,260,130 square feet of this leasable area, with the balance of leasable area owned or operated by major tenants in the regional shopping centers. The stores or businesses which lease or occupy space in Rouse's shopping centers offer to sell a variety of consumer goods and services. The annual retail sales to consumers of these various goods and services in Rouse's shopping centers exceeds \$1,000,000,000.

PAR. 3. In the course and conduct of its business, Rouse has, and is now engaged in negotiating and executing agreements, leases, and building agreements with persons located in various States throughout the country with respect to constructing, leasing, and operating retail stores in Rouse shopping centers. In the course and conduct of the negotiation and execution of these agreements, leases, and building agreements, exchanges of information and communications have taken place between Rouse headquarters in Maryland and persons referred to above in various other States. Rouse has disseminated, and caused to be disseminated, certain advertisements and promotional materials concerning occupancy in its shopping centers through the use of various news media in commerce. Correspondence with respect to the approval of tenants for inclusion in Rouse shopping centers passes between various States by use of the United States mail. Tenants in Rouse shopping centers purchase consumer products from suppliers located throughout the United States, advertise these products in newspapers circulated in various States, and resell these products in substantial quantities to consumers, including some who cross State lines to transact business in Rouse shopping centers. By and through the aforesaid course and conduct of its business, Rouse has engaged and is now engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The movement of population from the central city to the suburbs has precipitated the growth of shopping centers in suburban areas. In 1972, retail sales in shopping centers in the United States were approximately \$123.5 billion and accounted for approximately 44 percent of the total retail sales in the United States. Retail sales for regional shopping centers accounted for 45 percent of the total retail sales in shopping centers. In 1972, over 20 percent of the total retail sales, amounting to approximately \$56 billion, were made in regional shopping centers.

Regionally shopping centers are the most economically significant type of shopping center. They reproduce to a substantial extent the retail facilities once available only in downtown business districts, and are displacing and replacing the central, downtown business districts as primary outlets for retail distribution of goods and services.

PAR. 5. Except to the extent that competition has been hindered, lessened and eliminated as set forth in this complaint, retailers selling goods and services in the respondent's shopping centers are in competition with each other and with other retailers; and Rouse is in substantial competition in commerce with others engaged in the development of shopping centers.

PAR. 6. In the course and conduct of its business, respondent is and has been engaged in unfair methods of competition and unfair acts and practices in commerce in that it has unfairly and unlawfully inserted restrictive provisions in its leasing arrangements, operating agreements, contracts, or understandings entered into with tenants in shopping centers which tend to maintain, control, fix and establish the retail selling prices of goods and services by these tenants. Typical and illustrative of said restrictive provisions, but not all inclusive thereof, are the following:

Tenant will not operate or cause to be operated a discount house or discount business on the leased premises. "Discount house" or "discount business," for the purposes of this lease, shall mean a retail establishment which regularly sells the major portion of its merchandise off-price or at prices below normal usual retail prices, or advertises or holds itself out to the public as a discount house or as one regularly selling off-price.

The leased premises shall be used by Tenant solely for the purpose of costume jewelry and watches not to exceed \$10 in price.

The leased premises shall be used by Tenant solely for the purpose of conducting therein the business of sale, at retail, of medium to better priced costume jewelry (not less than 99 cents for any one item), women's handbags and light accessories.

PAR. 7. The aforesaid lease provisions, operating agreements, contracts, or understandings between the respondent and its tenants set forth in Paragraph Six have had and continue to have the tendency to restrain trade and commerce. Included among the effects of such restraints are the following:

- (a) fixing, controlling and maintaining retail prices;

(b) eliminating, hindering, and discouraging discount advertising, discount pricing, and discount selling;

(c) denying the right to determine the prices or range of prices at which tenants may sell their goods and services in shopping centers;

(d) denying the public the benefit of price competition.

The aforesaid lease provisions, operating agreements, contracts, or understandings, respondent's acts, practices and method of competition in connection therewith, and the adverse competitive effects resulting therefrom constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent The Rouse Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at The Rouse Company Headquarters Bldg. in Columbia, Md.

2. The Federal Trade Commission has jurisdiction of the subject

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

ORDER

I

A. *It is ordered*, That respondent The Rouse Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, joint venture or other device, do forthwith cease and desist from making, carrying out, or enforcing, directly or indirectly, an agreement or provision of an agreement which:

1. specifies that any retailer in any of respondent's shopping centers shall or shall not sell merchandise or services at any particular price or within any range of prices;

2. specifies that any retailer in any of respondent's shopping centers shall not be a discounter or sell merchandise or services at discount prices;

3. specifies the content of or prohibits any type of advertising by a retailer, other than advertising within any of respondent's shopping centers, except that respondent may require a tenant to include the name, insignia, or other identifying mark of any of respondent's shopping centers in advertising pertaining to the tenant's store in any of respondent's shopping centers; or

4. prohibits price advertising within any of respondent's shopping centers or controls advertising within any of respondent's shopping centers in such a way as to make it difficult for consumers to discern advertised prices from the common area of such shopping centers, provided that in all other respects, respondent may make, carry out and enforce reasonable standards for advertising within any of respondent's shopping centers.

B. *It is further ordered*, That respondent will within sixty (60) days after service of this order mail a copy of Letter "A," attached hereto, to all tenants in respondent's shopping centers whose leases make reference in the use clauses to the price or quality of the merchandise or services to be sold.

C. *It is further ordered*, That respondent cease and desist from entering into any agreement with any tenant that said tenant may:

1. specify or control or may require respondent to specify or control prices or price ranges of merchandise or services sold by any other retailer;

2. control or may require respondent to control discounting by any other retailer; or

3. exclude any retailer from any of respondent's shopping centers by reason of such retailer's discount selling or discount advertising.

D. *It is further ordered*, That respondent advise the Commission in writing within sixty (60) days after respondent has knowledge of any occasion that:

1. a tenant disapproves the admission into any of respondent's shopping centers of any other retailer;

2. a tenant refuses to approve the renewal of another retailer's lease in any of respondent's shopping centers;

3. a tenant approves the admission of another retailer into any of respondent's shopping centers subject to conditions imposed by the tenant relating to the pricing, price ranges, trade names, store names, trade marks, brands or lines of merchandise, or the discounting practices or methods of such other retailer; or

4. a tenant enters into an agreement with respondent to become a tenant in any of respondent's shopping centers on condition that respondent refuse to renew the lease of another retailer.

E. *It is further ordered*, That respondent will not base its decision to grant, renew or extend the lease of a tenant in any of respondent's shopping centers upon the pricing practices of such tenant.

II

It is further ordered, That respondent shall:

A. distribute a copy of this order to each of its operating divisions within thirty (30) days after service of this order;

B. within thirty (30) days after service of this order upon respondent, notify each tenant in any of respondent's shopping centers of this order by providing each tenant with a copy of this order by registered or certified mail;

C. within sixty (60) days after service of this order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order; and

D. 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.

Decision and Order

LETTER "A"

[On Official Stationery of The Rouse Company subsidiary or affiliate operating the particular shopping centers affected by this order]

Gentlemen:

We have consented to the issuance by the Federal Trade Commission of an order which, among other things, prohibits us from specifying that our tenants shall or shall not sell merchandise or services at any particular price or within any range of prices. A copy of the order is enclosed.

Your lease may describe the merchandise or services you are to sell in terms such as "popular priced," "medium priced," "high priced," "medium to better quality," or the like. Please be advised that such language is intended only as a description of the general quality of the merchandise or services you sell. It is not intended and will not be enforced to affect the retail selling price of your merchandise or services. Pursuant to the terms of the order you are free to set the prices for your merchandise and services and are not required to adhere to any particular price or within any range of prices, expressed or implied, in your lease or in any other agreements with the shopping center.

Neither this letter nor the attached order shall operate as a waiver of any rights which we may now have to require you to sell certain merchandise or services at a general quality level or levels.

Sincerely,

Vice President
Rouse Subsidiary or Affiliate

IN THE MATTER OF

JULIAN L. LEVINSON T/A ASSOCIATES MORTGAGE
COMPANY

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

Docket C-2667. Complaint, May 12, 1975-Decision, May 12, 1975

Consent order requiring a Hampton, Va., loan broker, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Bernard Rowitz, Alice C. Kelleher and Thomas J. Keary.*

For the respondent: *Robert Beale, Newport News, Va.*

Complaint

85 F.T.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Julian L. Levinson, an individual, trading and doing business as Associates Mortgage Company, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Julian L. Levinson is an individual, trading and doing business as Associates Mortgage Company, with his principal office and place of business located at 1517 Aberdeen Rd. and Mercury Blvd., Hampton, Va.

PAR. 2. Respondent is now, and for some time last past has been, engaged as a broker in the arranging and securing of loans for the general public.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly arranges 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. Subsequent to July 1, 1969, in the ordinary course of business as aforesaid, respondent's customers are provided with consumer credit cost disclosure statements.

By and through the use of the aforesaid consumer credit cost disclosures respondent:

1. Fails to include the broker's fee or finder's fee in the determination of the finance charge, as required by Section 226.4(a)(3) of Regulation Z.

2. Fails to disclose the broker's fee or finder's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.

3. Fails to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

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

5. Fails to print the terms "finance charge" and "annual percentage

rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

6. Fails to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.

7. Fails to identify the broker as a creditor, as "creditor" is defined by Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

8. Fails to make full consumer credit cost disclosures before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

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

DECISION AND ORDER

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

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

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

1. Respondent Julian L. Levinson is an individual, trading and doing business as Associates Mortgage Company, with his office and principal place of business located at 1517 Aberdeen Rd. and Mercury Blvd., Hampton, Va.

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 Julian L. Levinson, an individual, trading and doing business as Associates Mortgage Company, or under any other name or names, his successors and assigns, and respondent's 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 advertisement to aid, promote or assist, directly or indirectly, any extension or arrangement for the 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 include the broker's fee or finder's fee in the determination of the finance charge, as required by Section 226.4(a)(3) of Regulation Z.

2. Failing to disclose the broker's fee or finder's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.

3. Failing to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

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

5. Failing to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

6. Failing to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.

7. Failing to identify the broker as a creditor, as "creditor" is defined in Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

8. Failing to provide the borrower complete consumer credit cost disclosures before consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

9. 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, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondent prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the arranging for the extension of consumer credit, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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

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

IN THE MATTER OF

COMMERCIAL INVESTORS, INC., ET AL.

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

Docket C-2668. Complaint, May 12, 1975—Decision, May 12, 1975

Consent order requiring a Hampton, Va., loan broker, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Bernard Rowitz, Alice C. Kelleher and Thomas J. Keary.*

For the respondents: *Philip L. Avis, Newport News, Va.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Commercial Investors, Inc., a corporation, Virginia Mortgage and Loan Association, Inc., a corporation, and John L. Lane, Jr., individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Commercial Investors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its principal office and place of business located at 2000 Kecoughtan Rd., Hampton, Va.

Said respondent controls and dominates the acts and practices of respondent Virginia Mortgage and Loan Association, Inc., a wholly-owned subsidiary which is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its principal office and place of business located at 2000 Kecoughtan Rd., Hampton, Va.

Respondent John L. Lane, Jr. is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged as brokers in the arranging and securing of loans for the general public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly 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. Subsequent to July 1, 1969, in the ordinary course of business as aforesaid, respondents' customers are provided with consumer credit cost disclosure statements.

By and through the use of the aforesaid consumer credit cost disclosures respondents:

1. Fail to include the broker's fee or finder's fee in the determination of the finance charge, as required by Section 226.4(a)(3) of Regulation Z.

2. Fail to disclose the broker's fee or finder's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.

3. Fail to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

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

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

6. Fail to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.

7. Fail to identify the broker as a creditor, as "creditor" is defined in Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

8. Fail to make full consumer credit cost disclosures before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of the Act and, pursuant to Section 108 thereof, respondents have thereby violated 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 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 provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Commercial Investors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 2000 Kecoughton Rd., Hampton, Va.

Said respondent controls and dominates the acts and practices of respondent Virginia Mortgage and Loan Association, Inc., a wholly-owned subsidiary which is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its office and principal place of business located at 2000 Kecoughtan Rd., Hampton, Va.

Respondent John L. Lane, Jr. is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

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

ORDER

It is ordered, That respondents Commercial Investors, Inc., a corporation, its successors and assigns, and its officers, and Virginia Mortgage and Loan Association, Inc., a corporation, its successors and assigns, and its officers, and John L. Lane, Jr., individually and as an officer of said corporations, and respondents' 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 advertisement to aid, promote or assist, directly or indirectly, any extension or arrangement for the 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 include the broker's fee or finder's fee in the determination of the finance charge, as required by Section 226.4(a)(3) of Regulation Z.

2. Failing to disclose the broker's fee or finder's fee as prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.

3. Failing to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

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

5. Failing to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

6. Failing to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.

7. Failing to identify the broker as a creditor, as "creditor" is defined in Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

8. Failing to provide the borrower complete consumer credit cost disclosures before consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

9. 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, 226.8, 226.9 and 226.10 of Regulation Z.

It is furthered ordered, That respondents prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

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

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of any successor corporations, the creation or dissolution of

Order

85 F.T.C.

subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the arranging for the extension of consumer credit and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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 affiliations with a new business or employment. Such notice shall include respondent's current business addresses and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the 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

EXXON CORPORATION, ET AL.*

Docket 8934. Order, May 13, 1975

Denial of motion by Texaco, Inc., to disqualify the administrative law judge in this proceedings.

ORDER DENYING MOTION TO DISQUALIFY ADMINISTRATIVE LAW
JUDGE

Upon his appointment as administrative law judge in this matter, Alvin L. Berman informed the parties that, as a former member of the litigation staff of the Commission's Office of General Counsel, he had represented the Commission on appeal in seven cases involving one or more of the respondents herein. Arguing that, in at least three of these matters, Judge Berman had taken positions on issues which have arisen in this proceeding, respondent Texaco moved that he disqualify himself. The judge declined to do so, on the ground his role in the previous cases had been limited to that of an advocate and his statements made in performing that function were not necessarily indicative of his own views. By order of Mar. 10, 1975, he certified this question to the

* For appearances, see, p. 91, herein.

Commission and on Mar. 20, 1975, Texaco moved, pursuant to Section 3.42(g)(2) of the Commission's Rules of Practice, that he be disqualified.

An administrative official may be subject to disqualification under either of two sections of the Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq.* First, Section 554(d) provides in relevant part:

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision * * *.

Respondent does not argue that Judge Berman should be disqualified under this standard and our review of this matter has convinced us that such an argument would have to be rejected because his role as appellate advocate was neither investigative nor prosecutorial in nature within the meaning of Section 554.

The Administrative Procedure Act also provides for disqualification of a presiding or participating employee "[o]n the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification * * *." 5 U.S.C. §556(b). Respondent does not argue that Judge Berman is personally biased against it, but, rather, bases its motion on a line of cases holding that an administrative official should be disqualified where he has prejudged a factual issue likely to arise in a matter. The principal case in this area is *American Cyanamid Co. v. Federal Trade Commission*, 363 F.2d 757 (6th Cir. 1966), wherein then Chairman Dixon was found ineligible to participate in the decision due to his prior supervision of a congressional investigation involving many of the facts which were at issue in the Commission proceeding.

However, *American Cyanamid* is distinguishable from the case at hand because here Judge Berman did not participate in the development of the evidentiary facts in the previous case. Further, the ultimate facts in *Cyanamid* were nearly identical to those which were the focus of the congressional investigation, whereas here it is likely that whatever relationship exists between this matter and the *Texaco-Goodrich* case is attenuated at best. Finally, it should be pointed out that the court in *Cyanamid* specifically based its decision not on the mere participation by then Chairman Dixon in the legislative and administrative matters, but on "* * * the depth of the (legislative) investigation and the questions and comments by Mr. Dixon as counsel," which led the court to conclude that Mr. Dixon had formed opinions as to the ultimate facts. The same can hardly be true of Judge Berman since his participation in the previous cases was limited to the role of an advocate in the appellate court, defending findings already adjudicated by the Commission.

Respondent argues vigorously that general standards for judicial officers have been strengthened recently and that Judge Berman's continued participation in this matter would contravene those stand-

Complaint

85 F.T.C.

ards as expressed in the recent amendment to 28 U.S.C. §455(a). As amended, that statute calls for the disqualification of a federal judicial official "in any proceeding in which his impartiality might reasonably be questioned." As respondent points out, the intent of this amendment was to substitute an objective standard for the subjective one employed by the former statute.

However, there is no indication that the substantive grounds for disqualification were broadened by the amendment. Since the courts applied the former statute to participation in the same or closely related cases which, as shown above, is not the situation here, we conclude that the new statute does not require Judge Berman's disqualification. Furthermore, even if the amendment was intended to broaden the grounds for disqualification, we find, based on the foregoing analysis, that respondent has not raised a reasonable question as to Judge Berman's impartiality in this matter. Accordingly,

It is ordered, That the aforesaid motion to disqualify Alvin L. Berman as administrative law judge in the above-captioned matter be, and it hereby is, denied.

Commissioner Thompson not participating.

IN THE MATTER OF

ROY D. HANSEN T/A ROY HANSEN MORTGAGE
COMPANY

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

Docket C-2664. Complaint, May 13, 1975-Decision, May 13, 1975

Consent order requiring an Arlington, Va., loan broker, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Bernard Rowitz, Alice C. Kelleher and Thomas J. Keary.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation

promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Roy D. Hansen, an individual, trading and doing business as Roy Hansen Mortgage Company, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Roy D. Hansen is an individual, trading and doing business as Roy Hansen Mortgage Company, with his principal office and place of business located at 2116 Wilson Blvd., Arlington, Va.

PAR. 2. Respondent is now, and for some time last past has been, engaged as a broker in the arranging and securing of loans for the general public.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly arranges 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. Subsequent to July 1, 1969, in the ordinary course of business as aforesaid, respondent's customers are provided with consumer credit cost disclosure statements.

By and through the use of the aforesaid consumer credit cost disclosures respondent:

1. Fails to disclose the broker's fee or finder's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.

2. Fails to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

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

4. Fails to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

5. Fails to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.

6. Fails to identify each creditor, as "creditor" is defined by Section

226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

7. Fails to make full consumer credit cost disclosures before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

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

DECISION AND ORDER

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

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

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

1. Respondent Roy D. Hansen is an individual, trading and doing business as Roy Hansen Mortgage Company with his office and principal place of business located at 2116 Wilson Blvd., Arlington, Va.

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 Roy D. Hansen, an individual, trading

and doing business as Roy Hansen Mortgage Company, or under any other name or names, his successors and assigns, and respondent's 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 advertisement to aid, promote or assist, directly or indirectly, any extension or arrangement for the 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 disclose the broker's fee or finder's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.

2. Failing to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

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

4. Failing to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

5. Failing to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.

6. Failing to identify each creditor, as "creditor" is defined in Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

7. Failing to provide the borrower complete consumer credit cost disclosures before consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

8. 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, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondent prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the arranging for the extension of consumer credit, and that

Complaint

85 F.T.C.

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

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

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

IN THE MATTER OF

VALLEY ACCEPTANCE CORPORATION, ET AL.

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

Docket C-2665. Complaint, May 13, 1975 - Decision, May 13, 1975

Consent order requiring a Roanoke, Va., loan broker, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Bernard Rowitz, Alice C. Kelleher and Thomas J. Keary.*

For the respondents: *Richard Lee Lawrence, Roanoke, Va.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Valley Acceptance Corporation, a corporation, and Henry E. Wiesen, and Virginia C. Wiesen, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public

interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Valley Acceptance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its principal office and place of business located at Colonial American Bank Bldg., Roanoke, Va.

Respondents Henry E. Wiesen, and Virginia C. Wiesen are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged as brokers in the arranging and securing of loans for the general public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly 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. Subsequent to July 1, 1969, in the ordinary course of business as aforesaid respondents' customers are provided with consumer credit cost disclosure statements.

By and through the use of the aforesaid consumer credit cost disclosures respondents:

1. Fail to include the broker's fee or finder's fee in the determination of the finance charge, as required by Section 226.4(a)(3) of Regulation Z.
2. Fail to disclose the broker's fee or finder's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.
3. Fail to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.
4. Fail to disclose accurately the annual percentage rate computed in accordance with Section 226.5(b) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
5. Fail to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.
6. Fail to disclose clearly the method of computing any unearned

portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.

7. Fail to identify the broker as a creditor, as "creditor" is defined in Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

8. Fail to make full consumer credit cost disclosures before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of the Act and, pursuant to Section 108 thereof, respondents have thereby violated 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 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 provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Valley Acceptance Corporation is a corporation organized, existing and doing business under and by virtue of the Commonwealth of Virginia, with its office and principal place of business located at Colonial American Bank Bldg., Roanoke, Va.

Respondents Henry E. Wiesen and Virginia C. Wiesen 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 Valley Acceptance Corporation, a corporation, its successors and assigns, and its officers, and Henry E. Wiesen, and Virginia C. Wiesen, individually and as officers of said corporation, and respondents' 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 advertisement to aid, promote or assist, directly or indirectly, any extension or arrangement for the 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 include the broker's fee or finder's fee in the determination of the finance charge, as required by Section 226.4(a)(3) of Regulation Z.
2. Failing to disclose the broker's fee or finder's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.
3. Failing to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.
4. Failing to disclose accurately the annual percentage rate computed in accordance with Section 226.5(b) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.
5. Failing to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.
6. Failing to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.
7. Failing to identify the broker as a creditor, as "creditor" is defined in Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.
8. Failing to provide the borrower complete consumer credit cost disclosures before consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

9. 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, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondents prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

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

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the arranging for the extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment.

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

TED P. SIMOPOULOS T/A TED SIMS REAL ESTATE

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

Docket C-2666. Complaint, May 13, 1975—Decision, May 13, 1975

Consent order requiring a Lynchburg, Va., loan broker, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Bernard Rowitz, Alice C. Kelleher and Thomas J. Keary.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing Regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Ted P. Simopoulos, an individual, trading and doing business as Ted Sims Real Estate, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ted P. Simopoulos is an individual, trading and doing business as Ted Sims Real Estate, with his principal office and place of business located at 1111 Church St., Lynchburg, Virginia.

PAR. 2. Respondent is now, and for some time last past has been engaged as a broker in the arranging and securing of loans for the general public.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly arranges 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. Subsequent to July 1, 1969, in the ordinary course of business as aforesaid, respondent's customers are provided with consumer credit cost disclosure statements.

By and through the use of the aforesaid consumer credit cost disclosures respondent:

1. Fails to include the broker's fee or finder's fee in the determination of the finance charge, as required by Section 226.4(a)(3) of Regulation Z.

2. Fails to disclose the broker's fee or finder's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.

3. Fails to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

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

5. Fails to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

6. Fails to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.

7. Fails to identify the broker as a creditor, as "creditor" is defined by Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

8. Fails to make full consumer credit cost disclosures before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

PAR. 5. Pursuant to Section 103(q) of the Truth in Lending Act respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of the Act and, pursuant to Section 108 thereof, respondent has thereby violated 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 respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues

its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Ted P. Simopoulos is an individual, trading and doing business as Ted Sims Real Estate, with his office and principal place of business located at 1111 Church St., Lynchburg, Va.

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 Ted P. Simopoulos, an individual, trading and doing business as Ted Sims Real Estate, or under any other name or names, his successors and assigns, and respondent's 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 advertisement to aid, promote or assist, directly or indirectly, any extension or arrangement for the 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 include the broker's fee or finder's fee in the determination of the finance charge, as required by Section 226.4(a)(3) of Regulation Z.

2. Failing to disclose the broker's fee or finder's fee as a prepaid finance charge, as required by Section 226.8(e)(1) of Regulation Z, using the term "prepaid finance charge," as required by Section 226.8(d)(2) of Regulation Z.

3. Failing to itemize the components of the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

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

5. Failing to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology, as required by Section 226.6(a) of Regulation Z.

6. Failing to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z.

7. Failing to identify the broker as a creditor, as "creditor" is defined in Section 226.2(m) of Regulation Z, as required by Section 226.6(d) of Regulation Z.

8. Failing to provide the borrower complete consumer credit cost

disclosures before consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

9. 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, 226.8, 226.9 and 226.10 of Regulation Z.

It is further ordered, That respondent prominently display no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the arranging for the extension of consumer credit and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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

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

IN THE MATTER OF

EATON YALE & TOWNE, INC. AND ITS SUCCESSOR IN
NAME, EATON CORPORATION

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

Docket 8826. Complaint, Dec. 17, 1970-Decision, May 15, 1975

Consent order requiring a Cleveland, Ohio, manufacturer of engine valves and valve lifters, among other things to divest itself of the assets acquired in 1969, of the McQuay-Norris Manufacturing Co. within 24 months. The order further requires respondent to supply, for a period of two years, on reasonable terms and conditions, any or all requirements the divested firm may have for automotive engine valves, valve lifters, camshaft bearings, thermostats and tire valves.

Appearances

For the Commission: *K. Keith Thurman, James C. Egan, Jr. and James C. Hamill, Jr.*

For the respondent: *John T. Loughlin, Victor E. Grimm, Robert T. Johnson, Jr. and William R. Carney, Bell, Boyd, Lloyd, Haddad & Burns, Chicago, Ill.*

COMPLAINT

The Federal Trade Commission having reason to believe that Eaton Yale & Towne Inc., a corporation subject to the jurisdiction of the Commission, has acquired the stock of McQuay-Norris Manufacturing Co., a corporation, in violation of Section 7 of the Clayton Act (15 U.S.C. §18), hereby issues this Complaint, pursuant to Section 11 of that Act (15 U.S.C. §21), stating its charges in that respect as follows:

I. Definitions

1. For the purpose of this complaint, the following definitions shall apply:

(a) "Automotive valve train products" are defined as engine valves, valve springs, valve guides, valve lifters, valve seals, valve keepers, valve seat inserts, push rods, rocker arms and parts, roto caps, roto assemblies and camshafts.

(b) "Automotive engine parts" are valve train products, engine sleeve bearings, pistons and pins, piston rings, and water pumps.

(c) A "reboxer" is defined as a manufacturer of one or more lines of automotive parts who purchases for resale under its own brand, automotive parts that it does not manufacture. A reboxer competes at the manufacturers' functional level.

(d) The "independent aftermarket" is defined to include all sales by manufacturers of automotive parts direct to wholesalers or retailers for replacement use. It excludes sales by vehicle manufacturers or engine manufacturers directly to vehicle dealers.

II. Eaton Yale & Towne Inc.

2. Respondent Eaton Yale & Towne Inc., (hereafter "EYT"), is now, and was at the time of merger, an Ohio corporation with its principal office and place of business located at 100 Erieview Plaza, Cleveland, Ohio.

3. In 1968, EYT had sales of \$889.8 million, and assets of \$622.7 million. In that year it was the 111th largest industrial corporation in

the nation. In 1969, its sales exceeded \$1 billion and assets increased to \$735.5 million which made it the 110th largest industrial corporation.

4. EYT's four most important product lines, which contributed an aggregate of approximately 63 percent of net sales during 1968 are (a) Motor Vehicle Parts and Accessories (29 percent); (b) Industrial Trucks, Tractors, Trailers and Stackers (15 percent); (c) Miscellaneous Machinery (10 percent); and (d) Mechanical Power Transmission Equipment (9 percent).

5. Among the motor vehicle parts and accessories EYT manufactures are engine valves, hydraulic valve lifters and valve seat inserts. EYT is one of the nation's two largest producers of engine valves and valve lifters. It is one of only two companies manufacturing sodium filled engine valves in the United States. EYT's valve division is one of only four basic manufacturers of engine valves for the automotive replacement market (hereafter sometimes "aftermarket"), excluding engine manufacturers. The other three engine valve manufacturers sell directly in the independent aftermarket, whereas, prior to acquiring McQuay, EYT did not sell automotive valve train products directly in the independent aftermarket. EYT is also a substantial supplier of engine valves to the automotive original equipment market. In 1967, EYT shipped \$27.8 million of engine valves, accounting for 34.4 percent of total industry shipments of engine valves for passenger cars, trucks, and buses. EYT's shipments in 1967 of engine valves for replacement use were in excess of \$1.6 million, accounting for over 20 percent of such shipments.

6. EYT, through its Dole Valve Division, is the leading seller of automotive thermostats in the independent aftermarket, accounting for 23 percent of 1967 sales. EYT also sells several other product lines in the independent aftermarket including tire repair items, air conditioners and parts, and filler caps.

7. By virtue of its position as a substantial supplier of engine valves to the original equipment market, its reputation as a manufacturer of high quality engine parts, its financial resources, and its knowledge of the aftermarket gained through the sale of several other products in the independent aftermarket, EYT was, prior to Oct. 31, 1969, one of the most likely potential entrants into the sale of engine valves and other valve train products directly in the independent aftermarket.

8. By virtue of its position as a likely entrant into the sale of valve train products in the independent aftermarket, EYT was also one of the most likely potential entrants into the sale of automotive engine parts other than valve train products in the independent aftermarket.

9. At all times relevant herein, EYT sold and shipped its products

throughout the United States and was and is now engaged in commerce as "commerce" is defined in the Clayton Act.

III. McQuay-Norris Manufacturing Co.

10. Prior to its merger into EYT on Oct. 31, 1969, McQuay-Norris Manufacturing Co. (hereafter "McQuay") was a Delaware corporation with its principal office and place of business located at 2320 Marconi Av., St. Louis, Mo.

11. McQuay was engaged principally as a manufacturer and reboxer in the sale of engine, chassis and automatic transmission parts for automobiles, truck, tractors and industrial uses. Substantial sales were made to original equipment manufacturers, but the greater part of McQuay's sales were made in the independent aftermarket. In 1968, McQuay had sales of \$32.9 million and assets of \$22.1 million.

12. McQuay was a leading seller of engine parts in the independent aftermarket. In 1967 it sold \$13.3 million of engine parts in the independent aftermarket. In that year it accounted for 10.7 percent of the sale of engine parts in the independent aftermarket and was the 5th largest seller of such parts in the independent aftermarket.

13. McQuay was a leading seller in the independent aftermarket of the 5 product lines which comprise the engine parts market. In 1967, McQuay's sales of valve train products in the aftermarket were \$3.6 million, which represented approximately 6 percent of the total aftermarket sales of valve train products. In that year McQuay was the third largest seller of valve train products in the 1967 independent aftermarket. McQuay accounted for 11 percent of total valve train product sales in the independent aftermarket.

14. In 1967, McQuay was a substantial manufacturer and seller of automotive engine parts in the independent aftermarket. With sales of \$1.7 million, it ranked 5th in the country in sales of piston rings; with sales of \$3.9 million, 4th in the sale of engine sleeve bearings; with sales of \$2.9 million, 3rd in the sale of water pumps; and with sales of \$1.1 million, 5th in the sale of pistons and pins.

15. McQuay as a reboxer was a significant purchaser of automotive engine valves and valve lifters. In 1967, its purchases of automotive engine valves were approximately \$1 million and valve lifters were approximately \$.3 million. The purchases of automotive engine valves represented 12.3 percent of all shipments made by automotive engine valve manufacturers for replacement use.

16. At all times relevant herein McQuay sold and shipped its products throughout the United States and engaged in commerce as "commerce" is defined in the Clayton Act.

IV. Trade and Commerce

17. The aftermarket for automotive engine parts consists of two submarkets: sales by engine manufacturers to vehicle dealers and sales by engine manufacturers and other manufacturers or reboxers to distributors, wholesalers, rebuilders and direct buying retailers. Engine manufacturers sell replacement engine parts almost entirely to vehicle dealers. Reboxers and manufacturers of engine parts, other than engine manufacturers, account for almost all the sales in the independent aftermarket and do not sell any engine parts directly to vehicle dealers.

18. The sale of automotive engine parts in the independent aftermarket is substantial, with 1967 shipments of such parts amounting to \$124.4 million.

19. Sales of each of the product lines which comprise the sale of engine parts in the independent aftermarket are also substantial. In 1967, sales in the independent aftermarket of valve train products were in excess of \$32 million, sales of piston rings were \$30.6 million, sales of engine sleeve bearings were \$33.2 million, sales of water pumps were \$15.6 million and sales of pistons and pins were \$14.2 million.

20. Sales of each of the five automotive engine parts product lines in the aftermarket exceeded sales of each such product lines in the independent aftermarket. In 1967, total sales of valve train products in the entire aftermarket were in excess of \$58.5 million compared to sales in excess of \$32 million in the independent aftermarket.

21. Concentration in the sale of engine parts in the independent aftermarket is high. In 1967, the 5 largest sellers of engine parts in the independent aftermarket accounted for 69 percent of total sales in that market.

22. Concentration within each of the five product lines comprising the engine parts market is also high. For example, in 1967, the four largest marketers of valve train products accounted for 64 percent of independent aftermarket sales of such products.

23. Entry into the sale of engine parts in the independent aftermarket of any of the five product lines comprising the engine parts market is difficult. A successful manufacturer or reboxer must possess a reputation as a manufacturer of high quality engine parts, must have ample financial resources and must have knowledge of how to sell automotive parts in the independent aftermarket.

24. Engine valves represent a significant portion of replacement engine parts sales. In 1967 shipments of engine valves for replacement use totalled \$8.1 million, representing 10 percent of the \$80.9 million total shipments of engine valves for passenger cars, trucks and buses.

25. Concentration in the production of engine valves is very high. In 1967, the two largest producers of engine valves accounted for over 80 percent of shipments both for replacement use and total shipments.

26. The number of manufacturers and reboxers of engine valves has remained constant for over 15 years, except that one company recently discontinued producing engine valves in the United States.

27. Engine valves represent a necessary product in the sale of engine parts in the independent aftermarket. Engine valves account for approximately 50 percent of total independent aftermarket sales of valve train products, with another 25 percent of the independent aftermarket sales of valve train products being accounted for by valve lifters. Without selling engine valves it is most difficult to compete successfully in the sale of engine parts or valve train products in the independent aftermarket.

V. The Transaction

28. On or about October 31, 1969, EYT acquired McQuay by merger of McQuay into EYT through an exchange for each share of McQuay's common stock of 0.8 common share of EYT. At the time of the acquisition of EYT stock exchanged for McQuay was valued at approximately \$25 million.

VI. Effect of the Acquisition

29. The effects of the acquisition of McQuay by EYT may be substantially to lessen competition or tend to create a monopoly in the sale of automotive engine parts, automotive engine valves and other valve train products throughout the United States in violation of Section 7 of the Clayton Act, as amended, in the following ways among others:

(a) Substantial potential competition between EYT and McQuay in the sale of automotive engine parts in the independent aftermarket has been eliminated.

(b) Substantial potential competition between EYT and McQuay in the sale of automotive valve train products in the independent aftermarket has been eliminated.

(c) Entry of new manufacturers or reboxers into the sale of automotive engine parts in the independent aftermarket may be inhibited or prevented.

(d) Entry of new manufacturers or reboxers into the sale of automotive valve train products in the independent aftermarket may be inhibited or prevented.

(e) Competing manufacturers of automotive engine valves may be

foreclosed from access to a substantial segment of the independent aftermarket and may thereby be deprived of a fair opportunity to compete.

(f) Competing reboxers of automotive engine valves may be foreclosed from access to a substantial source of supply of engine valves, especially in periods of short supply.

(g) Competing reboxers of automotive engine valves may be disadvantaged in competing in the sale of automotive engine parts in the independent aftermarket by the potential foreclosure of access to a substantial source of supply of automotive engine valves.

VII. The Violation Charged

30. The acquisition of McQuay by EYT constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 7 of the Clayton Act, as amended, and the respondent having been served with a copy of that complaint, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, 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 withdrawn this matter from adjudication in accordance with Section 2.34(d) of its rules; and

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

1. Respondent Eaton Corporation 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 in the city of Cleveland, State of Ohio.

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

ORDER

I

It is ordered, That Eaton Corporation, formerly known as Eaton Yale & Towne, Inc., (hereinafter "Eaton") within a period not exceeding twenty-four (24) months from the effective date of this order, shall divest, by sale, or by public offering or spin-off of the stock of a new corporation formed for such purpose, subject to prior approval of the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all plants, equipment, machinery, inventory, customer lists, trade names, trademarks and good will, acquired by Eaton as a result of its merger with McQuay-Norris Manufacturing Co., (hereinafter "McQuay") together with all additions and improvements to such assets and properties, but excluding:

(A) The plant, machinery, equipment, and other fixed assets and the business of the former Dura-Bond operation of McQuay, which is now a part of the special products division of Eaton; and

(B) The plant, machinery, equipment, and other fixed assets and the business of the former electric products division of McQuay, which is now a part of the electric products division of Eaton.

In the event that a new corporation is established as provided herein, respondent shall make available to such new corporation adequate administrative, sales and service personnel to carry on the business to be transferred to the new corporation.

II

It is further ordered, That none of the assets, properties, rights or privileges to be divested, as described in the foregoing paragraph of this order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, respondent or any of respondent's subsidiary or affiliate corporations, or anyone who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Eaton, or to anyone who is not approved in advance by the Federal Trade Commission.

III

If respondent divests the assets, properties, rights and privileges, described in Paragraph I of this order, to a new corporation or corporations, the stock of each of which is wholly owned by the Eaton Corporation, and if respondent then distributes all the stock in said corporation or corporations to the stockholders of the Eaton Corporation, in proportion to their holdings of the Eaton Corporation stock, then Paragraph II of this order shall be inapplicable, and the following Paragraphs IV and V shall take force and effect in its stead.

IV

No person who is an officer, director, or executive employee of the Eaton Corporation, or who owns or controls, directly or indirectly, more than 1 percent of the stock of The Eaton Corporation, shall be an officer, director or executive employee of any new corporation or corporations described in Paragraph III, or shall own or control, directly or indirectly, more than 1 percent of the stock of any new corporation or corporations described in Paragraph III.

V

Any person who must sell or dispose of a stock interest in the Eaton Corporation or the new corporation or corporations, described in Paragraph III, in order to comply with Paragraph IV of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation or corporations is made to stockholders of the Eaton Corporation.

VI

It is further ordered, That, pending divestiture, respondent shall not make or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of the company to be divested which may impair its present capacity or market value.

VII

It is further ordered, That respondent shall grant to the purchaser of the assets, or to the new company referred to in Part I of this order, the right to purchase, on reasonable terms and conditions no less favorable than those offered to any other customers performing the same distribution functions in the automotive aftermarket, for a period of two (2) years from the date of divestiture as provided in Part I of this order, or for any part of same two (2) year period, all or any part of

the requirements of said purchaser of automotive engine valves, valve lifters, camshaft bearings, thermostats and tire valves, subject to the capacity of respondent to fulfill such requirements.

VIII

It is further ordered, That, pending divestiture, and for five (5) years from the date of divestiture as provided in Part I of this order, respondent shall not acquire, directly or indirectly, without the prior approval of the Commission, the share capital or assets (other than products acquired for use or resale in the ordinary course of respondent's business, or other than the acquisition by respondent of the share capital or assets of any corporation not organized in the United States of which respondent owns more than 50 percent of the issued and outstanding share capital as of the effective date of this order) of any corporation which operates an automotive aftermarket distribution organization with annual sales of automotive engine parts within the automotive aftermarket in the United States in excess of \$2,000,000; provided that nothing in this paragraph shall prohibit respondent from acquiring the share capital or assets of any corporation engaged at the time in the importation of foreign automotive engine parts into the United States.

No acquisition made by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this order.

IX

It is further ordered, That respondent shall, within six (6) months after the effective date of this order, and every six (6) months thereafter, until respondent has fully complied with Part I of this order, submit to the Federal Trade Commission a detailed written report of its actions, plans and progress in complying with the provisions of Part I of the order.

With respect to Part VIII of this order, respondent shall, on the first anniversary date of the divestiture provided for in Part I of this order and on each anniversary date thereafter, to and including the fifth anniversary date, submit a report, in writing, setting forth in detail the manner and form in which respondent intends to comply, is complying and has complied with Part VIII of this order.

X

It is further ordered, That respondent notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in

Order

85 F.T.C.

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

IN THE MATTER OF

WARNER-LAMBERT COMPANY

Docket 8850. Order, May 22, 1975

Complaint counsel's motion for corrections in the official transcript of the oral argument granted; and procedures clarified for reception of motions to correct transcript.

ORDER CORRECTING TRANSCRIPT AND CLARIFYING PROCEDURES
FOR RECEPTION OF MOTIONS TO CORRECT TRANSCRIPT

This matter is before the Commission upon the Motion of Counsel Supporting the Complaint, filed Jan. 14, 1975, requesting certain corrections in the official transcript of the oral argument in this matter, held Dec. 18, 1974. Said motion having been served on respondent Warner-Lambert Company on Jan. 17, 1975, and respondent having filed no timely answer thereto; *It is ordered*, That the said motion be granted and that a copy of said motion be attached to the official copy of the transcript of the oral argument to provide a record of the corrections adopted.

Henceforth, the Commission will entertain only joint motions of the parties requesting corrections in the transcript of oral argument, except that the Commission will receive a unilateral motion which recites that the parties have made a good faith effort to stipulate to the desired corrections but have been unable to do so. If the parties agree in part and disagree in part, they should file a joint motion incorporating the extent of their agreement and, if desired, separate motions requesting those corrections to which they have been unable to agree.

IN THE MATTER OF

FILMDEX CHEX SYSTEM INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS

Docket C-2669. Complaint, May 16, 1975-Decision, May 16, 1975

Consent order requiring a Centreville, Va., credit reporting company, among other things to cease furnishing, in violation of the Fair Credit Reporting Act; such information as has been gathered by respondents on consumers to persons without a permissible purpose.

Appearances

For the Commission: *Bernard Rowitz and Irvin E. Abrams.*

For the respondents: *John R. Foley, Foley & Foley, Wash., D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Fair Credit Reporting Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that FilmDEX Chex System Incorporated, a corporation, and Joseph E. Slattery, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent FilmDEX Chex System Incorporated 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 15500 Lee Hwy., Centreville, Va.

Respondent Joseph E. Slattery is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Subsequent to Apr. 25, 1971, in the ordinary course and conduct of their business, respondents have compiled and published lists containing, among other things, the names and addresses of consumers, together with statements or indications that such consumers have outstanding unpaid bills, or with statements or indications that such consumers have issued forged checks, checks drawn upon

nonexistent accounts, or checks which have been returned by the drawee bank because of insufficient funds or other reasons.

The information contained in the aforesaid lists concerning consumers whose names and addresses appear therein, bears on said consumers' credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics and/or mode of living. Therefore, each of the aforesaid lists constitutes a series of consumer reports as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

Respondents are, and have been, for monetary fee, regularly engaged in the practice of assembling such information on consumers for the purpose of furnishing such lists to third parties, and regularly use a means or facility of interstate commerce for the purpose of preparing and/or furnishing said lists. Therefore, respondents are a consumer reporting agency as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. At the time respondents furnish the aforesaid consumer reports in list form, respondents do not have reason to believe that each person to whom the consumer reports are furnished has a legitimate business need for the information in each report in connection with a business transaction involving each consumer reported upon, nor do respondents have reason to believe that each recipient otherwise intends to use the information contained in each report for a purpose set forth in Section 604 of the Fair Credit Reporting Act. Further, the furnishing of such consumer reports is neither in response to a court order nor in accordance with the written instructions of each consumer to whom the reports relate.

Therefore, respondents, in the ordinary course and conduct of their business, as aforesaid, furnish consumer reports to persons, as "person" is defined in Section 603(b) of the Fair Credit Reporting Act, who do not have a legitimate business need or other permissible purpose to receive the consumer reports furnished to them, as required by Section 604(e) of the Act.

By furnishing consumer reports as described above, respondents have violated, and are violating, Section 604 of the Fair Credit Reporting Act.

PAR. 4. By and through the acts and practices described in Paragraph Three above, respondents have failed to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act, and have furnished consumer reports to persons under circumstances in which there are reasonable grounds for believing that such reports will not be used for a purpose listed in Section 604 of such Act. Therefore, respondents

have violated, and are violating, Section 607(a) of the Fair Credit Reporting Act.

PAR. 5. The acts and practices set forth in Paragraphs Three and Four above, were, and are, in violation of the Fair Credit Reporting Act and pursuant to Section 621(a) of that Act, said acts and practices constitute unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having 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 Washington, D.C. 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 Fair Credit Reporting Act; and

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

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

1. Respondent Filmdex Chex System Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 15500 Lee Hwy., Centreville, Va.

Respondent Joseph E. Slattery is an officer of said corporation. He formulates, directs and controls the 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 respondents Filmindex Chex System Incorporated, a corporation, its successors and assigns, and its officers, and Joseph E. Slattery, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with collecting, preparation, assembling and/or furnishing of consumer reports as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub.L. 91-508, 15 U.S.C. §1601, *et seq.*), shall forthwith cease and desist from:

1. Furnishing any consumer report to any person, unless such report is furnished:

a. In response to the order of a court having jurisdiction to issue such order; or

b. In accordance with the written instructions of the consumer to whom the report relates; or

c. To a person which respondents then has reason to believe intends, at the time the information is furnished, to use the information:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) For employment purposes; or

(3) In connection with the underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a business transaction involving each consumer, reported upon.

2. Furnishing consumer reports in list form, unless the identity of the consumer to whom the information relates is not disclosed on such list, and cannot be determined without the use of additional information and identification to be provided by the consumer. Such additional information and identification to be provided at the time of the transaction with the user.

3. Failing to require prospective users of consumer reports to certify the purposes for which the information in such reports is

sought, and that it will be used for no other purpose, in accordance with Section 607 of the Fair Credit Reporting Act.

4. Furnishing consumer reports to any user or prospective user of such reports who does not first provide the identification and the certification of purpose for which information in such reports is sought, as required by Section 607(a) of the Fair Credit Reporting Act.

5. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purpose listed under Section 604 of the Act, as provided by Section 607 of the Act.

6. Failing to include the following statement on the face sheet of series of consumer reports published and distributed by respondents with such conspicuousness and clarity as is likely to be read and understood by users of such consumer reports:

a. Information contained within these series of consumer reports will be used exclusively by the designated recipient or his representatives for the following permissible purposes and no other:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) In connection with employment purposes; or

(3) In connection with the underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a legitimate business need for the information in connection with a business transaction involving the consumer.

b. It is understood by the users of these series of consumer reports that Pub. L. 91-508, Section 619, states "Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

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 preparation and/or furnishing of consumer reports, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

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 address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That 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

Order

85 F.T.C.

subsidiaries or any other change in the corporation which may effect 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 the order to cease and desist contained herein.

IN THE MATTER OF

KOSCOT INTERPLANETARY, INC., ET AL.*

Docket 8888. Order, May 22, 1975

Publication of initial decision pursuant to established procedures directed.

ORDER DIRECTING PUBLICATION OF INITIAL DECISION

On Mar. 20, 1975, the administrative law judge certified to the Commission the question of whether, and in what form, the initial decision in this matter should be published, inasmuch as it contains references to testimony which we had been directed to keep *in camera* by Judge Hodges of the United States District Court for the Middle District of Florida. At the direction of the Commission, the General Counsel sought modification of the Court's order and, by Order of May 9, 1975, the Court granted leave to publish the initial decision in full. This renders moot complaint counsel's motion of Apr. 7, 1975, requesting, *inter alia, in camera* service of the initial decision pending the Commission's decision on the law judge's certification. Accordingly,

It is ordered, That the initial decision in the above-captioned matter be published pursuant to the Commission's established procedures.

IN THE MATTER OF

ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

Docket 8908. Order, May 22, 1975

Denial of motion by respondents or postponement of oral argument until they obtain documents currently being sought under the Freedom of Information Act.

* For appearances, see p. 19, herein.

Appearances

For the Commission: *Paul L. Chassy, Lemuel Dowdy & Donald L. Bachman.*

For the respondents: *Mayer, Brown & Platt, Chicago, Ill.*

ORDER DENYING MOTION TO POSTPONE ORAL ARGUMENT

By motion filed May 16, 1975, respondents have moved for a postponement of oral argument in this matter until they are able to obtain certain documents which they are currently seeking from the Commission under the Freedom of Information Act, 5 U.S.C. § 552, as amended. Respondents contend that, without these documents, they will be unable to anticipate all of the arguments which complaint counsel may raise in oral argument.

Respondents have had full opportunity for discovery in this matter, and, in preparing for oral argument, they have had complete access to the record in this case. Therefore, the Commission finds respondents' contention too speculative a ground on which to postpone the argument, since it assumes that respondents will ultimately obtain the documents and that the documents will contain information necessary to a resolution of the issues of this case. Accordingly,

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

IN THE MATTER OF

SOUNDTRACK CHEVELL INDUSTRIES, INC., ET AL.*

Docket 8998. Order, May 22, 1975

Request for appointed counsel granted and general counsel directed to secure adequate legal representation for corporate and two individual respondents.

ORDER GRANTING REQUEST FOR APPOINTED COUNSEL

By order of May 5, 1975, the administrative law judge certified to the Commission his findings of fact with respect to the request of respondents William and Helen Temple and Soundtrack Chevell Industries, Inc. that an attorney be appointed to represent them in this matter. Where a respondent is unable to afford adequate legal representation, the Commission will appoint counsel for him pursuant to the procedures outlined in 35 F.R. 18998 (1970). Based upon the law judge's findings as to: (1) the above-named respondents' financial situations, and (2) the probable costs of presenting a defense to the

* For appearances, see p. 404, herein.

Complaint

85 F.T.C.

charges against them, we have concluded that said respondents are entitled to appointed counsel. Accordingly,

It is ordered, That the general counsel for the Commission take all necessary and appropriate measures to secure adequate legal representation for the above-named respondents.

Commissioners Dixon and Thompson would have closed this matter for lack of public interest in further proceedings.

IN THE MATTER OF

CUBCO, INC., ET AL.

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

Docket C-2670. Complaint, May 22, 1975—Decision, May 22, 1975

Consent order requiring a Nutley, N.J., manufacturer and distributor of ski bindings and related items, among other things to cease anticompetitive practices having the effect of enforcing and fixing the dealers' resale prices for certain of respondents' products.

Appearances

For the Commission: *David W. DiNardi*

For the Respondents: *Richard F. McMahon, Lafferty, Rowe, McMahon, McKeon, Newark, N.J.*

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 Cubco, Inc., a corporation, and Mitchell H. Cubberley, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. §45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Cubco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located on Baltimore St., Nutley, N.J.

Respondent Mitchell H. Cubberley is an officer of the corporate