

Complaint

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IN THE MATTER OF

S & R USED CARS INC., DOING BUSINESS AS  
GENERAL CAR & WAGON SALES, ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS*Docket C-1943. Complaint, June 8, 1971—Decision, June 8, 1971*

Consent order requiring a Washington, D.C., seller of used automobiles to cease violating the Truth in Lending Act by failing to disclose on installment contracts the terms cash price, cash downpayment, unpaid balance, amount financed, and deferred payment price, failing to itemize the charge for property insurance, and failing to make the disclosures required by Regulation Z of said Act.

## COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing Regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that S & R Used Cars Inc., a corporation doing business as General Car & Wagon Sales, and Samuel J. Battista, 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 S & R Used Cars Inc., a corporation doing business as General Car & Wagon Sales, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its principal office and place of business located at 1717 Rhode Island Avenue, N.E., Washington, D.C.

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

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

PAR. 3. Since July 1, 1969, 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 and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing their customers to execute personal loan notes, installment loan contracts, or retail installment contracts, each herein-after referred to as the "contract." Respondents make no consumer credit cost disclosures to customers other than on the contract. By and through the use of the contract, respondents:

1. Failed to disclose accurately the amount of cash price, and to describe that amount as the "cash price," as required by Section 226.8(c) (1) of Regulation Z.
2. Failed to disclose accurately the amount of the downpayment in money, and to describe that amount as the "cash downpayment," as required by Section 226.8(c) (2) of Regulation Z.
3. By reason of failing to accurately disclose the "cash price" and "cash downpayment" as stated in Paragraphs 1 and 2 above, failed to disclose accurately the "unpaid balance of cash price," "unpaid balance," "amount financed," and "deferred payment price," as required by Sections 226.8(c) (3), 226.8(c) (5), 226.8(c) (7) and 226.8(c) (8) (ii), respectively, of Regulation Z.
4. Failed to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.
5. Failed to disclose accurately the due dates and periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.
6. Failed to include in the finance charge the amount of the charge for required property insurance in instances where the customer was not furnished with a statement in writing setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance was to be obtained, as provided in Section 226.4(a) (6) of Regulation Z, in violation of Section 226.8(c) (8) (i), and thereby failed to state the amount of the finance charge accurately, as required by that section.

PAR. 5. Subsequent to July 1, 1969, in the ordinary course and con-

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duct of their business, respondents have caused to be published advertisements for their used cars, as "advertisement" is defined in Regulation Z, which advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of these used cars. By and through use of these advertisements, respondents failed to disclose accurately the "annual percentage rate" and "deferred payment price," as required by Section 226.10(d)(2) of Regulation Z.

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

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Washington Area Field 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 of the Truth in Lending Act and the 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent S & R Used Cars Inc., is a corporation organized,

existing and doing business under and by virtue of the laws of the District of Columbia, doing business as General Car & Wagon Sales, with its principal office and place of business located at 1717 Rhode Island Avenue, N.E., Washington, D.C.

Respondent Samuel J. Battista is an individual and an officer of said corporation. He formulates, directs and controls the policies of said corporation, including the acts and practices under investigation. 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 S & R Used Cars Inc., a corporation, doing business as General Car & Wagon Sales or under any other name, and its officers, and Samuel J. Battista, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose accurately the amount of the cash price or failing to describe that amount as "cash price," as required by Section 226.8(c) (1) of Regulation Z.

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

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

4. Failing to disclose accurately the amount of the unpaid balance or failing to describe that amount as the "unpaid balance," as required by Section 226.8(c) (5) of Regulation Z.

5. Failing to disclose accurately the amount financed or failing to describe that amount as the "amount financed," as required by Section 226.8(c) (7) of Regulation Z.

6. Failing to disclose accurately the amount of the deferred payment price or failing to describe that amount as the "de-

ferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

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

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

9. Failing to separately itemize and to disclose as part of the finance charge the amount of any charge for property insurance written in connection with the transaction unless a clear, conspicuous, and specific statement in writing is furnished to the customer setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance is to be obtained, in accordance with Section 226.4(a)(6) of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z.

10. Failing to disclose the finance charge accurately, computed in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z.

11. Failing to disclose accurately in any advertisement the "annual percentage rate" or "deferred payment price," as required by Section 226.10(d)(2) of Regulation Z.

12. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.8, 226.9 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 offering for sale, or sale of any products or 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 the respondents shall forthwith distribute a copy of this order to each of their operating divisions.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate 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.

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IN THE MATTER OF  
THE MAGNAVOX COMPANY

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

*Docket 8832. Complaint, Oct. 12, 1970—Decision, June 9, 1971*

Consent order requiring a major diversified manufacturer of consumer electronic products with headquarters in Fort Wayne, Ind., to cease fixing resale prices for dealers in non-fair trade states for a period of two years, and imposing exclusive dealing, full-line purchasing and tie-in sales requirements on its dealers, withholding earned cooperative advertising credits from certain dealers, fixing dealers' trade-in allowances, prohibiting the issuance of trading stamps, paying rewards to dealers to provide information on discounting dealers, and otherwise harassing or coercing dealers who do not cooperate with respondent in maintaining its retail prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been, and is now, violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. 45) and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Magnavox Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware since February 20, 1930. Respondent has its main office and principal place of business located at 2131 Bueter Road, Fort Wayne, Indiana.

PAR. 2. Respondent is, and at all times mentioned herein has been, a diversified manufacturer of consumer electronic products, house-

hold furniture and communications systems for the military. Gross sales by respondent for the fiscal year ending June 30, 1967, were \$464,284,067.

PAR. 3. Within the continental limits of the United States, excluding Alaska, respondent sells and distributes its consumer electronic products directly to its franchised retail dealers. Sales and distribution of such products to retail dealers located in Alaska, foreign countries and outside the continental limits of the United States are made through distributors.

Where the term "consumer electronic products" is used in this complaint it is defined to include the radios, phonographs, television receiver sets and tape recorders manufactured, sold and distributed by respondent under the "Magnavox" trade name.

PAR. 4. To service its approximately 3,000 retail dealers, respondent maintains a comprehensive and integrated manufacturing, sales and distribution system throughout the United States. Sales of respondents' products, including consumer electronic products, are made from sales offices located in Dallas, Texas; Denver, Colorado; Washington, D.C.; Chicago, Illinois; Cincinnati, Ohio; Torrance, California; Cleveland, Ohio; Boston, Massachusetts; Minneapolis, Minnesota; Detroit, Michigan; San Francisco, California; Cherry Hill, New Jersey; St. Louis, Missouri; New York, New York and Atlanta, Georgia. Respondent also maintains showrooms for its consumer electronic products in New York, New York; Dayton, Ohio, and Washington, D.C.

Respondent and its subsidiaries also maintain manufacturing plants located in the States of Indiana, Illinois, California, North Carolina, Mississippi and Tennessee. Respondent transports its products, including consumer electronic products, from its manufacturing plants located in the states referred to hereinabove to warehouses located in Teterboro, New Jersey; Chicago, Illinois; Kansas City, Missouri; Dallas, Texas; Pasco, Washington and Los Angeles, California. Respondent distributes its products, including consumer electronic products, from its warehouses located in the States referred to hereinabove to its dealers located in every State of the United States including the District of Columbia. There is now and has been at all times mentioned in this complaint, a pattern and course of commerce in respondent's products, including consumer electronic products, by respondent within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint,

respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, sale and distributions of consumer electronic products similar to those listed and described in Paragraph Three hereinabove.

PAR. 6. In the course and conduct of its business as above described, respondent has for many years pursued a policy throughout the United States, the purpose of which is and has been to fix, control, establish and maintain the retail prices, including the minimum resale prices, at which its retail dealers advertise, offer for sale and sell its consumer electronic products.

In furtherance of this policy, respondent has, at least since January 1962, and continuing to the present time, engaged in one or more of the following acts and practices, but not necessarily limited thereto, in one or more of the various states of the United States without regard to whether or not such states have valid fair trade laws:

(a) Eliminating competition among dealers in the sale of respondent's products by limiting their number and controlling their locations;

(b) Requiring dealers to sign and be bound by the terms of resale price maintenance agreements and to adhere to minimum resale prices established by the respondent under such agreements, without regard to whether or not such dealers are located in states where resale price maintenance agreements are authorized by law;

(c) Requiring dealers to enter into oral agreements or understandings with the respondent that they will adhere to minimum resale prices established by respondent for its products as a condition to receiving and retaining dealer franchises from the respondent;

(d) Refusing to franchise dealers who operate discount houses for the reason that such dealers have a reputation or a potentiality for discounting or cutting prices;

(e) Requiring dealers to affix to current models of respondent's products on display at their stores, price tags which bear the minimum resale prices established by respondent;

(f) Inspecting the price tags which respondent requires its dealers to affix to its products to ascertain if they are complying with respondent's directive that such tags bear its established minimum resale prices;

(g) Supplying dealers with wholesale cost sheets, product guide books and other documents in which respondent's current established retail prices for its products are set forth;

(h) Encouraging and requiring dealers to use advertising mats



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and proof sheets furnished by respondent and bearing respondent's established retail prices for its products;

(i) Limiting reimbursements under respondent's cooperative advertising program to advertisements which bear respondent's established retail prices for its products;

(j) Requiring prior authorization of advertising in which respondent's products and other merchandise are offered in combination at a single price, as a condition for reimbursement under respondent's cooperative advertising program;

(k) Conducting annual nationwide retail sales of its products through its dealers in which respondent fixes the time and duration of such sales, preselects the products to be offered and establishes the resale prices and discounts therefor;

(l) Controlling the type of merchandise eligible for allowance and the amount of allowance to be granted by dealers on merchandise trade-in on the purchase of respondent's products;

(m) Prohibiting dealers from issuing trading stamps in connection with the sale of respondent's products;

(n) Requiring dealers to limit the terms and duration of repair service warranties they grant in connection with the sale of respondent's products;

(o) Inspecting sales and business records of dealers to ascertain if they are conforming to respondent's requirements that its products not be sold below established minimum resale prices;

(p) Reprimanding dealers found deviating from respondent's established retail prices and extracting promises from them that they will sell respondent's products in the future at those prices;

(q) Soliciting and encouraging the cooperation of dealers in helping to identify and report dealers who advertise, offer to sell and sell respondent's products at prices other than respondent's established retail prices for such products;

(r) Paying rewards to dealers who provide respondent with evidence of discounts from respondent's established retail prices which other dealers grant to purchasers of respondent's products;

(s) Levying fines upon dealers who grant discounts from respondent's established retail prices to purchasers of respondent's products;

(t) Threatening to discontinue doing business with dealers suspected of selling respondent's products at other than its established retail prices; or to other dealers or distributors; and

(u) Terminating business relationships with dealers suspected of failing to adhere to respondent's established retail prices or of selling to other dealers or distributors.

PAR. 7. In the course and conduct of its business as above described and beginning at least as early as January 1962 and continuing to the present time, respondent has made sales and entered into agreements for the sale of its products, including consumer electronic products, on the condition, agreement or understanding that the purchaser or purchasers thereof shall not sell or deal in the products of a competitor or competitors of the respondent.

PAR. 8. In the course and conduct of its business as above described and beginning at least as early as January 1962 and continuing to the present time, respondent has made sales and entered into agreements for the sale of its products, including consumer electronic products, on the condition, agreement or understanding that the purchaser or purchasers thereof shall purchase and display a full line of the respondent's products.

PAR. 9. In the course and conduct of its business as above described and beginning at least as early as January 1962 and continuing to the present time, respondent has refused to sell certain of its products, including consumer electronic products, to purchasers desirous of purchasing such products unless such purchasers also purchase certain other products manufactured by the respondent.

PAR. 10. The effect of respondent's use of the acts, practices, methods of competition and course of conduct hereinabove alleged has been and may be substantially to restrain, lessen, injure, destroy and prevent competition in the marketing, sale and distribution of respondent's products, including consumer electronic products, by, and between and among dealers and purchasers for resale of those products; has been and may be to substantially lessen competition or to create a monopoly in the manufacture, sale and distribution of radios, phonographs, television receiver sets and tape recorders; and has been and is to the prejudice and injury of the public. Respondent's uses of said methods, acts, practices and course of conduct constitute unfair methods of competition in commerce and unfair acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption thereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which,

if issued by the Commission, would charge respondent with a violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 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 Magnavox Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its main office located at 345 Park Avenue, New York, New York, and its principal place of business for consumer electronic products located at 1700 Magnavox Way, Fort Wayne, Indiana.

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

ORDER

I. *It is ordered.* That respondent, The Magnavox Company, a corporation, its subsidiaries, successors, assigns, officers, directors, agents, representatives, and employees, individually or in concert, directly or through any corporate or other device, in connection with the manufacture, distribution, offering for sale or sale of any consumer electronic products, including, but not limited to, radios, phonographs, television receiver sets, tape recorders and parts and components of any of the foregoing (hereinafter referred to in this order as "products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing any plan or policy under which contracts, agreements, understandings or arrange-

ments are entered into with dealers in respondent's products (hereinafter referred to in this order as "dealers") which have the purpose or effect of fixing, establishing, maintaining, enforcing or, for a period of two years from the effective date of this order, suggesting the retail prices at which respondent's products (hereinafter referred to in this order as "its products") are to be resold.

B. Fixing, establishing, controlling, maintaining or, for a period of two years from the effective date of this order, suggesting the retail prices at which its dealers may advertise, promote, offer for sale or sell its products.

C. Requiring any dealer to enter into verbal agreements or understandings that such dealer will adhere to established or suggested retail prices for its products as a condition to receiving or retaining its dealer franchise.

D. Refusing to sell its products to any dealer who desires to engage in the retail sale of such products for the reason that such dealer will not enter into its product at respondent's established or suggested retail prices.

E. Requiring dealers to affix to any of its products on display at their stores price tags bearing its established or suggested retail prices.

F. Publishing, disseminating or circulating to any dealer any price list, price book or other document designating any mandatory retail price, or, for a period of two years from the effective date of this order, any suggested retail price at which its products are to be resold by dealers.

G. Designating in its own advertising, or in any advertising or promotional aids or materials supplied or sold to dealers, any mandatory retail price, or, for a period of two years from the effective date of this order, any suggested retail price at which its products are to be resold by dealers.

H. Threatening to withhold or withholding earned cooperative advertising credits from dealers for the reason that they advertise its products at retail prices other than established or suggested retail prices.

I. Requiring that a dealer not state a combination price for its products and other merchandise as a condition for reimbursement under any cooperative advertising program pursuant to which reimbursement is offered.

J. Engaging in any retail sales of its products through its dealers in which it establishes, or, for a period of two years

from the effective date of this order, suggests the retail prices or discounts therefrom and at the same time either (i) fixes the time and/or duration of such sale, or (ii) preselects the products to be offered.

K. Establishing any criteria as to the type of merchandise eligible for or fixing or suggesting the amount of an allowance which dealers may grant on merchandise traded in on the purchase of its products.

L. Prohibiting dealers from issuing trading stamps to purchasers of its products.

M. Establishing or enforcing any maximum limitation on their terms or duration of any repair service warranties which a dealer may grant in selling its products, other than warranties offered by respondent, or warranties which a dealer offers in any manner which represents or implies that the warranties are offered by or backed by respondent.

N. Inspecting sales and business records of any dealer for the purpose of ascertaining the prices at which, or the customers to whom, such dealer sells its products: *Provided, however,* That nothing in this order shall be deemed to prevent respondent from inspecting such records where such inspection is authorized by law, or is for the purpose of assisting respondent to establish its compliance with the provisions of the order issued on December 23, 1964, in Consent Order No. C-869 [66 F.T.C. 1311], or with any other obligation or requirement of any government authority.

O. Securing or attempting to secure any promises or assurances from dealers regarding the prices at which such dealers will sell its products.

P. Requiring, soliciting or encouraging dealers to report the identity of other dealers, and the prices at which such other dealers advertise, offer for sale or sell its products, or the customers to whom such other dealers sell its products.

Q. Paying rewards to dealers who provide evidence of discounting by other dealers from the established or suggested retail prices of its products, or who provide evidence of customers to whom such other dealers sell its products.

R. Levying fines upon dealers who grant discounts from the established or suggested retail prices of its products to purchasers thereof.

S. Terminating business relationships with any dealer because the dealer has sold or is selling or is suspected of selling its

products at other than its established prices or suggested retail prices.

T. Terminating, harassing, threatening, intimidating, coercing or delaying shipments to any dealer because the dealer has sold or is selling its products at other than its established or suggested retail prices or to any other dealers or distributors of consumer electronic products, or taking any other action to prevent the sale of its products by the dealer to other dealers or distributors of consumer electronic products.

U. Convening or participating in meetings of dealers for the purpose of obtaining their compliance with any of the acts or practices prohibited by this order.

V. Securing or attempting to secure agreement of its dealers not to sell its products to disenfranchised or non-franchised dealers.

II. *It is further ordered*, That nothing in this order shall be construed to prohibit respondent, The Magnavox Company, from entering into, establishing, maintaining and enforcing a legitimate fair trade program in those states having fair trade laws: *Provided*, That, for a period of two years from the effective date of this order, the provisions of this paragraph shall not apply to any Standard Metropolitan Statistical Area in the United States (as defined in *Standard Metropolitan Statistical Areas*, Executive Office of the President, Bureau of the Budget, 1967) that includes both a fair trade and a non-fair trade area.

III. *It is further ordered*, That respondent, The Magnavox Company, shall forthwith cease and desist from:

A. Selling or making a contract or agreement for the sale of any of its products, on the condition, agreement or understanding that the purchaser shall not purchase, advertise, display, sell or distribute similar products sold or supplied by any competitor or competitors of the respondent.

B. Selling or making any contract or agreement for the sale of any of its products on the condition, agreement or understanding that the purchaser or purchasers thereof shall purchase or display a full line of any of the products manufactured, sold or distributed by respondent.

C. Selling or making a contract or agreement for the sale of one or more of its products on the condition, agreement or understanding that the purchaser or purchasers thereof must also buy one or more other of its products; *Provided, however*, That nothing contained in this Paragraph III shall be construed to

prohibit respondent from requiring that its dealer purchase, display, and maintain in inventory a representative line of its products.

IV. *It is further ordered*, That the respondent, The Magnavox Company, shall, in good faith, upon application made within thirty (30) days of the notice given pursuant to Paragraph V-C, reinstate any dealer location terminated between January 1, 1966, and the effective date of this order if the terminated location was in any of the following jurisdictions: Alabama, Alaska, District of Columbia, Hawaii, Kansas, Missouri, Montana, Nebraska, Nevada, Texas, Utah, Vermont and Wyoming, unless respondent can show that the applicant does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling and servicing respondent's products.

V. *It is further ordered*, That respondent, The Magnavox Company, shall:

A. Forthwith serve a copy of this order by registered mail on each of its dealers, accompanied by a letter in the form annexed hereto as Exhibit A. In the case of any dealer who has a franchised place of business located in any of the following jurisdictions: Alabama, Alaska, California, District of Columbia, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia and Wyoming, the copy shall also be accompanied by a letter in the form annexed hereto as Exhibit B. In the case of any dealer located in the fair trade area of any Standard Metropolitan Statistical Area referred to in Paragraph II of this order, the copy shall also be accompanied by a letter in the form annexed hereto as Exhibit C.

B. For a period of three years following the effective date of this order, serve a copy of this order and the appropriate covering letters upon each new dealer franchised by the respondent not later than the date the dealer becomes a franchisee of respondent.

C. Within thirty (30) days after service upon it of this order, serve a copy of this order by registered mail on each dealer located in any of the following jurisdictions: Alabama, Alaska, District of Columbia, Hawaii, Kansas, Missouri, Montana, Nebraska, Nevada, Texas, Utah, Vermont and Wyoming, and terminated since January 1, 1966, together with a letter advising that such dealer, if qualified pursuant to Paragraph IV, may

apply within thirty (30) days from receipt thereof for reinstatement as one of respondent's dealers.

D. Within ninety (90) days after service upon it of this order, submit to the Commission (1) a list of all dealer locations terminated since January 1, 1966, in any of the following jurisdictions: Alabama, Alaska, District of Columbia, Hawaii, Kansas, Missouri, Montana, Nebraska, Nevada, Texas, Utah, Vermont and Wyoming; (2) a list of all dealers who have been reinstated pursuant to Paragraph IV above; and (3) a list of all dealers whose applications for reinstatement have been denied and the reason or reasons therefor.

E. For a period of two (2) years following the effective date of this order, submit to the Commission not less frequently than sixty (60) days following the close of each year a report listing the names and addresses of all dealers terminated by respondent (and the reasons therefor) during the period covered by the report where the dealer's terminated place of business was in a state which at the time of termination did not have statutes or rules of law pursuant to the McGuire Act amendment to the Federal Trade Commission Act.

VI. *It is further ordered*, That respondent, The Magnavox Company, shall, on or before February 1, 1971, and effective for a period ending not sooner than December 31, 1972, make changes in the assignments of its sales personnel so that none of its zone or regional managers (or personnel performing similar functions) shall have or exercise sales or administrative responsibility over any dealer locations situated in any of the following jurisdictions: Alabama, Alaska, District of Columbia, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, Rhode Island, Texas, Utah, Vermont, and Wyoming, while at the same time having or exercising such authority over dealer locations situated in any state other than one of the foregoing.

VII. *It is further ordered*, That respondent, The Magnavox Company, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with those provisions in the order set forth herein, which are not required to be reported separately.

VIII. *It is further ordered*, That respondent, The Magnavox Company, shall 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



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corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

## Exhibit A

## LETTER TO CURRENT DEALERS

(Official of The Magnavox Company Letterhead)

(date)

Dear :

We have been directed by the Federal Trade Commission to inform our dealers that the Federal Trade Commission has entered a consent order against The Magnavox Company which, among other things:

1. Prohibits us from ever requiring, directly or indirectly, a dealer who sells our products in states which do not have fair trade laws to support any programs or policies which establish the prices at which the dealer sells our consumer electronic products in non-fair trade states;

2. Prohibits us, for a period of two years from [date] from suggesting the prices at which non-fair trade dealers may sell our consumer electronic products in non-fair trade states;

3. Contains certain provisions with respect to our policies covering the range of consumer electronic products and the competitive products which our dealers in both fair trade and non-fair trade states must carry and sell.

If you sell our products in non-fair trade states, as a result of this order, despite any existing contracts, agreements, or understandings, and despite any past or present practices or dealings, you are to determine independently your own merchandising policies with respect to matters such as sales prices, your own promotional devices, and customers for our products without interference by The Magnavox Company, and without jeopardy from such determination to your status as a Magnavox Dealer.

We wish also to make clear that we leave to each individual dealer the choice of whether to grant trade-in allowances in connection with the sale of Magnavox products, as well as the determination of the amount of any such allowance, subject only to the provision of applicable fair trade laws.

For your information, we have enclosed a copy of this Order.

Very truly yours,

Exhibit B

OFFICIAL MAGNAVOX LETTERHEAD

[Letter to Dealers in Jurisdictions Listed Below]

(date)

Dear :

This letter is to clarify any possible question as to your right to offer trading stamps in connection with the sale of Magnavox products.

Current [jurisdiction of addressee] law gives you complete discretion whether or not to use and distribute trading stamps\* in connection with the sale of Magnavox products, and no policy of The Magnavox Company is intended to restrict in any way whatsoever the exercise of that discretion.

Very truly yours,

\*For dealers in Ohio, add: "as long as the value is not in excess of three percent of the price of the product,".

Complaint

To be sent to dealers in the following jurisdictions:

Alabama, Alaska, California, District of Columbia, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Wyoming.

Exhibit C

OFFICIAL MAGNAVOX LETTERHEAD

[Letter to Dealers in Jurisdictions Listed Below]

(date)

Dear :

We have been directed by the Federal Trade Commission to inform you that, pursuant to paragraph 2 of the enclosed consent order, [city or county] is to be treated as if it were a non-fair trade jurisdiction for a period of two years from [date].

Therefore, during this period we may not fair trade with you or provide you with suggested prices for any of your franchised locations in [city or county].

Very truly yours,

To be sent to dealers in the fair trade areas of the following Standard Metropolitan Statistical Areas, as defined in *Standard Metropolitan Statistical Areas*, Executive Office of the President, Bureau of the Budget (1967):

- "Columbus, Georgia-Alabama"
- "Fall River, Massachusetts-Rhode Island"
- "Omaha, Nebraska-Iowa"
- "Providence, Pawtucket, Warwick, Rhode Island-Massachusetts"
- "St. Louis, Missouri-Illinois"
- "Sioux City, Iowa-Nebraska"
- "Texarkana, Texas-Arkansas"
- "Washington, D.C.-Maryland-Virginia."

IN THE MATTER OF

ZALE CORPORATION, ET AL.

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

*Docket 8810. Complaint, Mar. 20, 1970*<sup>1</sup>—*Decision, June 10, 1971*

Order requiring a Dallas, Texas, seller and distributor of jewelry and other merchandise through numerous retail stores to cease violating the Truth in Lending Act by failing to use on its installment contracts the terms "dollars finance charge per \$100 of unpaid balance," "annual percentage rate," "finance charge," "cash downpayment," "unpaid balance of cash price," failing to use the terms "payments" and "new balance" where required, and failing to make other disclosures required by Regulation Z of said Act.

<sup>1</sup> Reported as amended by hearing examiner's order of May 28, 1970, by amending Paragraph Two and Paragraph Three.

Complaint

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## COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulations promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said acts, the Federal Trade Commission having reason to believe that Zale Corporation and Corrigan-Republic, Inc., corporations, hereinafter referred to as respondents, having violated the provisions of said Acts and regulations, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Zale Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 512 South Akard Street, Dallas, Texas.

Respondent Corrigan-Republic, Inc., a wholly owned subsidiary corporation of Zale Corporation, is organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Republic National Bank Building, Dallas, Texas.

PAR. 2. Respondent Zale Corporation is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of jewelry and other merchandise to the public through its numerous retail stores located throughout the United States.

Respondent Zale Corporation also controls numerous wholly-owned subsidiaries, one of which is respondent Corrigan-Republic, Inc., and respondent Zale Corporation formulates, directs and controls the acts and practices of respondent Corrigan-Republic, Inc., including the acts and practices hereinafter set forth.

Respondent Corrigan-Republic, Inc., is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of jewelry and other merchandise to the public.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondents regularly extend and advertise for the extension, and for some time last past have regularly extended and advertise for the extension, 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 Zale Corporation, in

the ordinary course and conduct of its business and in connection with its credit sales as "credit sale" is defined in the aforesaid Regulation Z, has caused and is causing customers to execute retail installment contracts, hereinafter referred to as the contract. The following is an illustration of the face and reverse side of the contract.<sup>2</sup>

PAR. 5. By and through the use of the contract set forth in Paragraph Four hereof, respondent Zale Corporation:

1. Fails to disclose the term "dollars finance charge per \$100 of unpaid balance" (permitted by Section 226.6(j) of Regulation Z to be substituted for the term "Annual Percentage Rate" until January 1, 1971) more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

2. Fails to disclose the term "finance charge" more conspicuously than other required terminology as required by Section 226.6(a) of Regulation Z.

3. Includes the amount of the finance charge in the computation of the amount financed contrary to the requirements of Section 226.2(d) of Regulation Z.

4. In placing the term "finance charge" above (before) the term "amount financed," fails to make this disclosure in meaningful sequence, as required by Section 226.6(a) of Regulation Z. The finance charge must not be included in the computation of the amount financed and the amount financed should include all the amounts immediately preceding it.

5. In making the charge for credit life insurance optional to the customer, fails to include such charge in the amount financed, as required by Sections 226.4(a)(5) and 226.8(c)(7) of Regulation Z.

6. Fails to disclose the amount of the dollars finance charge per year per \$100 of unpaid balance with an accuracy to the nearest quarter of one percent, as required by Section 226.5(b)(1) of Regulation Z.

7. Fails to use the term "cash downpayment" when the downpayment is in money, as required by Section 226.8(c)(2) of Regulation Z.

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

9. Fails to treat an existing obligation as a new transaction subject to the disclosure requirements of Regulation Z, as required by Section 226.8(j) of Regulation Z.

<sup>2</sup> For illustration of the face and reverse side of the retail installment contract, see Appendices A and B of the initial decision, pp. 1228-29 herein.

## Complaint

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10. Since a security interest is retained, fails to clearly identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

11. Fails to employ an adequate identification of the method of computing the unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

12. Having elected to combine disclosures with the contract in a single document and having attempted to make required disclosures on both sides of the document, fails to place thereon on both sides of the document the following statement: "NOTICE: See other side for important information," as required by Section 226.801 of Regulation Z.

13. Fails to make the required disclosures that are on the reverse side of the contract in clear, conspicuous and meaningful sequence as required by Section 226.6(a) of Regulation Z. The language on the reverse side of the contract appears in light print on yellow paper producing a low contrast, there are no paragraphs, and all language is printed with the same size letters without larger letters separating sentences.

PAR. 6. Subsequent to July 1, 1969, respondent Corrigan-Republic, Inc., in the ordinary course and conduct of its business and in connection with its credit sales, as "credit sale" is defined in Regulation Z, has caused to be delivered and is delivering to customers periodic statements, as "periodic statements" are described in Section 226.7(b) and (c) of Regulation Z. By and through the use of the periodic statements respondent Corrigan-Republic, Inc.:

1. Fails to disclose the term "finance charge" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

2. Fails to disclose the term "annual percentage rate" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

3. Fails to employ the term "payments" to describe the amounts credited to the account during the billing cycle for payments, as required by Section 226.7(b)(3) of Regulation Z.

4. Fails to disclose each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance charge (whether or not applied during the billing cycle), as required by Section 226.7(b)(5) of Regulation Z.

5. Fails to disclose the term "new balance" to describe the outstanding balance in the account on the closing date of the billing cycle, as required by Section 226.7(b)(9) of Regulation Z.

6. Fails to employ a statement accompanying the term "new balance" indicating the date by which or the period, if any, within which payment must be made to avoid additional finance charges, as required by Section 226.7(b)(9) of Regulation Z.

PAR. 7. By the aforesaid failure to make the disclosures in the contract and periodic billing statement in the manner and form required by Regulation Z, as set forth in Paragraph Five and Paragraph Six hereof, respondents failed to comply with the requirements of Regulation Z of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 105 of that Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

*Mr. Herbert M. Hellman, Mr. Lewis Franke and Mr. Jessica L. Mayne supporting the complaint.*

*Mr. Sam G. Winstead, Mr. T. William Porter, Jackson, Walker, Winstead, Cantwell & Miller, Dallas, Tex., and Mr. Thomas S. Markey, Mr. Peter J. Gallagher and Mr. Harry D. Kempner, Dow Lohnes & Albertson, Wash., D.C., for respondents.*

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

JULY 28, 1970

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## PRELIMINARY STATEMENT

This proceeding is brought under the Truth in Lending Act Title of the Consumer Credit Protection Act,<sup>1</sup> the regulations promulgated thereunder and the Federal Trade Commission Act.<sup>2</sup> The Federal Trade Commission issued its complaint March 20, 1970.

The respondents are a combination holding and operating company, Zale Corporation, and one of its operating subsidiaries, Corrigan-Republic, Inc., which also has subsidiaries.

## THE PLEADINGS

The complaint charges that respondents extend credit and make credit sales in connection with the business of selling jewelry and other merchandise. By reason of the use of a particular form of contract, respondent Zale is charged with some 13 separate violations of the regulations issued under the Truth in Lending Act by the Federal Reserve Board and known as Regulation Z.<sup>3</sup>

Respondent Corrigan-Republic is charged with 6 specific violations of the regulations in connection with its use of form periodic statements.

Respondents' answer admits the description of the respondents with some qualifications, places in issue the adoption of Regulation Z and admits that Zale Corporation has utilized the contract incorporated in the complaint for a limited time. With respect to the 13 alleged violations ascribed to Zale some 4 are denied and qualified admissions were given with respect to the balance. With respect to the 6 violations ascribed to Corrigan-Republic, Inc., each of the charges is denied.

As affirmative defense respondents allege that they had conferred with representatives of the Federal Trade Commission to get the required forms and that the contracts and periodic statements now used are in conformity with the statute and regulations.

## PREHEARING

A prehearing conference was held at the request of complaint counsel with the consent of counsel for the respondent on May 13, 1970.<sup>4</sup> It was contemplated that a stipulation would be agreed upon

<sup>1</sup> 15 U.S.C. § 1601 *et seq.*

<sup>2</sup> 15 U.S.C. 41, 45.

<sup>3</sup> 12 CFR 226.

<sup>4</sup> The conference was ordered by Hon. Edward Creel, by order dated April 8, 1970, who later assigned this matter to the undersigned by order dated April 27, 1970.

prior to the prehearing conference and that hearings would commence during the week of May 18. At the prehearing conference it was ascertained that agreement had not yet been reached on a stipulation. The hearing examiner took official notice of the adoption of Federal Reserve Regulation Z and the issues agreed upon by counsel which were specifically listed in the pretrial order dated May 25, 1970. This order set June 8, 1970, for commencement of formal hearings in Dallas, Texas.

After the first prehearing conference counsel supporting the complaint made a motion for an amendment to the complaint to enlarge the description of the business of respondents to specifically include the allegations that they were engaged in advertising for the extension of credit.

The hearing examiner under the impression that there would be no objection to the amendment because of the positions taken at the prehearing (prehearing Tr. 6, 44),<sup>5</sup> issued an order dated May 28, 1970, granting the motion and amending the complaint. On the same date, respondents filed a motion requesting certification of the proposed amendment to the Commission and requesting a stay of proceedings and a suspension of subpoenas. When informed of this, the hearing examiner vacated the order amending the complaint by order dated June 2, 1970. This order required an accelerated answer by complaint counsel to respondents' proposal. After considering respondents' motion and complaint counsel's answer thereto, filed June 2, 1970, the hearing examiner issued an order, dated June 3, 1970: denying respondents' motions to certify to the Commission complaint counsel's proposal; refusing to set aside subpoenas, and to grant a stay; and granting complaint counsel's motion to amend the complaint.

Respondents thereupon sought permission for an interlocutory appeal and for a stay.

At the request of both parties an informal unrecorded prehearing

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<sup>5</sup> The following abbreviations will sometimes be used:

Tr. — Transcript

C. — Complaint

A. — Answer

ZX — Respondents' Exhibit

CX — Complaint Counsels' Exhibit

CRB—Complaint Counsels' Reply Brief

RRB—Respondents' Reply Brief

CPF—Complaint Counsels' Proposed Findings

RPF—Respondents' Proposed Findings

In reference to proposed findings the reasons and following conclusions are also referred to, including the references therein.



conference was held June 4, 1970. During such conference the hearing set for Dallas, Texas was cancelled and a prehearing conference was scheduled for June 9, 1970, in Washington, D.C. This arrangement was made without prejudice to respondents' application for permission to appeal and for a stay and was confirmed by order dated June 5, 1970.

A stenographically reported prehearing conference was held at 10 a.m., June 9, 1970, and counsel announced that they had two stipulations covering disputed issues of fact and that such stipulations would be offered in lieu of the taking of any testimony on behalf of either side. Complaint counsel withdrew a subpoena, a request for admission of facts, and a request for the admission of genuineness of documents. Both parties then agreed to an immediate trial. The prehearing conference was thereupon concluded and a pretrial order dictated on the record. (Tr. 9, line 14-19.)

#### THE HEARING

The hearing examiner then convened a formal hearing. (Tr. 11.) At the hearing two stipulations were offered.

The first stipulation reciting that 138 exhibits by complaint counsel and 24 exhibits by respondents were annexed was incorporated as a part of the record. (Tr. 13-20.) A description of the exhibits was also incorporated as a part of the record (Tr. 27-31), and each of the exhibits annexed to the stipulation were separately received in evidence. (Tr. 33.)

The exhibits were physically separated so that they might be placed in Exhibit files by the Record Section of the Commission. (Tr. 32.)

The second stipulation dealt solely with advertising. It was received without prejudice to respondents' request to the Commission for permission to appeal from the order amending the complaint and the hearing examiner expressly stated that if the appeal were granted and an order issued refusing to amend the complaint he would disregard the facts recited in the second stipulation. (Tr. 34-35.) This stipulation was also incorporated in the record. (Tr. 35-37.)

Complaint counsel then offered Commission Exhibits 139-152H for identification. (Tr. 39-44.) These consisted of advertisements by respondents and advertising mats prepared by an independent advertising agency for the Zale Corporation. No claim was made that these advertisements were in violation of the Truth in Lending Act

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## Initial Decision

or the regulations thereunder. They were offered merely as examples of the type of advertisement utilized. (Tr. 48.) The hearing examiner rejected these exhibits as unnecessarily repetitious and already covered by the description embodied in the second stipulation. These exhibits have been ordered placed in the rejected exhibit file. (Tr. 49.)

## THE ISSUES

There are two principal issues arising from the pleadings in the case. First whether or not Zale Corporation and Corrigan-Republic, Inc., exercise such control over their more than 1,000 wholly-owned subsidiaries, that an order should issue binding them to require their subsidiaries to comply with the Truth in Lending Act title to the Consumer Credit Protection Act. The second principal issue is whether or not the documents admittedly used in connection with credit transactions conform to or violate said Act and the regulations issued thereunder.

There are subsidiary issues with respect to each of the charged violations and also with respect to whether or not the case has become moot by reason of compliance by respondents to the Act prior to the issuance of the complaint.

## COMMISSION ACTION ON PROPOSED AMENDMENTS

On the 17th day of June the Federal Trade Commission issued its order denying a stay and remanding the matter of amending the complaint to the hearing examiner for further consideration. The order was served the 24th day of June and on the 29th the hearing examiner after full consideration adhered to his original order amending the complaint by order reciting the intervening events and dated that day.

## BASIS FOR DECISION

Proposed findings of fact and conclusions of law were submitted on July 6 and 7, and responses thereto were filed on July 17, 1970. Complaint counsel filed its brief at the commencement of the trial and served a copy on counsel for respondents. Respondents filed their brief with the proposed findings. A reply brief was filed by complaint counsel on July 17, 1970, and respondents filed their reply brief the same date.

The hearing examiner has considered the proposed findings, conclusions, briefs and proposed order. In light of the stipulations, there is no contested factual issue but merely conclusions to be

drawn from the stipulated facts. The hearing examiner accordingly makes the following findings of fact, conclusions of law and order. All proposed findings of fact not incorporated in terms or in substance are denied as irrelevant, immaterial, repetitious or erroneous. Findings of Fact, Conclusions of Law and an Order will be made under ensuing headings:

## FINDINGS OF FACT

1. Respondent Zale Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business at the time of filing the complaint located at 512 South Akard Street, Dallas, Texas. (C, A; CPF 1; RPF 1.)

2. Respondent Corrigan-Republic, Inc., a wholly-owned subsidiary corporation of Zale Corporation, is organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Republic National Bank Building, Dallas, Texas. (C, A; RPF 2; CPF 1; RRB 1.)

3. Respondent Zale Corporation is now, and for some time last past has been engaged in the offering for sale, sale and distribution of jewelry and other merchandise to the public through retail stores located in a number of states throughout the United States. (C, A; CPF 1; RPF 3; RRB 1.)

4. Respondent Zale Corporation owns all of the corporate stock of a number of corporate subsidiaries including respondent Corrigan-Republic, Inc. There are certain common directors and officers of Zale Corporation and respondent Corrigan-Republic, Inc., and of Zale Corporation and its other subsidiaries. Accordingly Zale Corporation by reason of its stock ownership and of the common directors and officers is in a position to control the policies and practices of its subsidiaries and certain of its policies and practices are in fact formulated by said subsidiaries in connection with the officers of Zale Corporation. (C, A.) The parties have stipulated that:

Respondent Zale Corporation also controls numerous wholly owned subsidiaries, one of which is respondent Corrigan-Republic, Inc., and respondent Zale Corporation formulates, directs and controls the acts and practices of respondent Corrigan-Republic, Inc., including the acts and practices hereinafter set forth. (C; Tr. 20; CPF 3; RRB 1.)

5. Following is a list of the directors and officers, at March 20, 1970, of Zale Corporation. (Tr. 13.)

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## DIRECTORS

James W. Aston, Sam R. Bloom, Leo Fields, Al Gartner, Dean P. Guerin, George Heald, William Levine, Ben A. Lipshy, Jacob Feldman, I. D. Shapiro, Sidney A. Trundle, Donald Zale, Lew D. Zale, Morris B. Zale, William Zale.

## OFFICERS

Morris B. Zale, Chairman of the Board  
 Ben A. Lipshy, President  
 Donald Zale, Executive Vice President  
 Leo Fields, Group Vice President  
 Lew D. Zale, Group Vice President  
 Marvin Zale, Group Vice President  
 Albert S. Greenfield, Senior Vice President  
 Marvin Rubin, Senior Vice President  
 Charles Sugerman, Senior Vice President  
 John P. Dickens, Vice President and General Counsel  
 Leslie Faulkner, Vice President  
 Clarence Feuer, Vice President  
 Sidney Flanzbaum, Vice President  
 Donald G. Fitch, Vice President  
 George Heald, Vice President  
 Harry Lipshy, Vice President  
 Sidney Lipshy, Vice President  
 Gerald Ray, Vice President  
 T. Pat Smith, Vice President  
 I. D. Shapiro, Vice President  
 Robert Williams, Vice President  
 James L. Wilson, Vice President  
 William Zale, Vice President  
 S. Shearn Rovinsky, Treasurer  
 Esir Wyll, Secretary

(CPF 4; RRB 1; ZX 1.)

6. Exhibit ZX 2 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which, together with thirteen retail stores operated by Zale Corporation, are commonly referred to collectively as the Zale Store Division. (Tr. 13.)

Among the 468 corporations listed there are corporations some of which were incorporated as early as 1919, and some whose place of incorporation includes the following States and territory:

Alabama, Alaska, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, New Mexico, Nevada, North Carolina, North Dakota, Ohio, Okla-

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homa, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, West Virginia,<sup>6</sup> Puerto Rico.

(CPF 5; ZX 2.)

Ben A. Lipshy and Donald Zale are directors of each of the corporations listed, and Leo Fields is a director in all except two in which Peter Artzt is a director. In each case, Ben A. Lipshy is president; Leo Fields, Marvin Rubin and John P. Dickens, vice presidents; Esir Wyll, secretary; Shearn Rovinsky, treasurer; and John P. Dickens, assistant secretary. Each of the foregoing, except Peter Artzt, is an officer or director of Zale Corporation. (CPF 6-10; ZX 1, ZX 2.)

7. Exhibit ZX 3 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which, together with 87 retail stores operated by Zale Corporation, are commonly referred to collectively as the Levine Store Division. (Tr. 13.)

Among the 62 corporations listed there are corporations some of which were incorporated as early as 1919, and some whose place of incorporation includes the following States: Alabama, Arkansas, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee and Texas. (CPF 21.)

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case, Ben A. Lipshy is president; Lew Zale, Bert Bernstein and John P. Dickens, vice presidents; Esir Wyll, secretary, John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing except Bert Bernstein is an officer or director of Zale Corporation. (CPF 22-25; ZX 1, ZX 3.)

8. Exhibit ZX 4 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail outlets which are commonly referred to collectively as the Leased Jewelry Division. (Tr. 14.)

Among the 108 corporations listed there are corporations one of which was incorporated as early as 1952 and some whose place of incorporation includes the following States and territory:

Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New Jersey, New York, Nevada, North Carolina,

<sup>6</sup> See p. 41. ZX 2.

Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah,<sup>7</sup> Virginia, Washington, Puerto Rico.

(CPF 15; ZX 4.)

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case, Ben A. Lipshy is president; Leo Fields, Jack Tassi and John Dickens, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing, except Jack Tassi, is an officer or director of Zale Corporation. (CPF 16-19; ZX 1, ZX 4.)

9. Exhibit ZX 5 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of wholly-owned subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Fine Jewelers Guild Division. (Tr. 14.)

Among the 133 corporations listed, there are corporations some of which were incorporated as early as 1900 and some whose state of incorporation includes the following States:

Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, New Jersey, New York, New Mexico, Nevada, North Carolina, Ohio, Pennsylvania, Rhode Island,<sup>8</sup> Tennessee, Texas, Virginia, Missouri.

(CPF 10; ZX 5.)

Ben A. Lipshy and Donald Zale are members of the board of directors of each of the corporations listed and Leo Fields is a director of all except one. In each case, Ben A. Lipshy is president; Leo Fields, John P. Dickens and Willis Cowlshaw, vice presidents; Esir Wyll, secretary; Shearn Rovinsky, treasurer and John P. Dickens assistant secretary. Each of the foregoing except Willis Cowlshaw is an officer or director of Zale Corporation. (CPF 11-14; ZX 1, ZX 5.)

10. Exhibit ZX 6 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of wholly-owned subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Skillern Drug Division. (Tr. 14.)

Among the 23 corporations listed, are corporations one of which was incorporated as early as 1961, and all of whose place of incorporation is the State of Texas. (ZX 6.)

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case Ben. A. Lipshy is president;

<sup>7</sup>ZX 4 p. 1.

<sup>8</sup>ZX 5 p. 10.

Lew Zale, Sol Hirsch and John P. Dickens, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing, except Sol Hirsch, is an officer or director of Zale Corporation. (CPF 27-31; ZX 1, 6.)

11. Exhibit ZX 7 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Regency Division. (Tr. 14, 15.)

Among the 3 corporations listed, are corporations one of which was incorporated as early as 1906, and whose place of incorporation include the following States: Texas and Mississippi. (CPF 31.)

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case Ben. A. Lipshy is president; Lew Zale, Sid Weiss and John P. Dickens, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing, except Sid Weiss, is an officer or director of Zale Corporation. (CPF 32-35; ZX 1, 7.)

12. Exhibit ZX 8 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Sporting Goods Division. (Tr. 15.)

Among the 6 corporations listed are corporations one of which was incorporated as early as 1965, and whose place of incorporation include the following States: Texas and New Mexico.

Ben A. Lipshy, Donald Zale and Leo Fields are directors of each of the corporations listed. In each case, Ben A. Lipshy is president, Lew Zale, Harold Gardenswartz and John P. Dickens, vice presidents; Esir Wyll, secretary; and Shearn Rovinsky, treasurer. Each of the foregoing except Harold Gardenswartz is an officer or director of Zale Corporation. (CPF 36-40; ZX 1, 8.)

13. Exhibit ZX 9 is a list containing information regarding the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Butler's Shoe Division. (Tr. 15.)

Among the 248 corporations listed are corporations one of which was incorporated as early as 1932, and some whose place of incorporation includes the following States:

Delaware, Florida, Georgia, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia.

(CPF 47; ZX 9.)

In the case of Butler Shoe Corporation of Texas, incorporated August 27, 1969, one of the listed corporations, the following officers or directors of Zale Corporation are directors:

Donald Zale, Ben A. Lipshy and Leo Field.

The following are officers: Ben. A. Lipshy, president; Lew Zale, vice president; John P. Dickens, I. D. Shapiro, George Heald, Lawrence Gottfried, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; Shearn Rovinsky, treasurer.

Each of the foregoing officers, except Lawrence Gottfried, is an officer or director of Zale Corporation.

In the case of 54 corporations of the Butler's Shoe Division, the following officers of Zale Corporation are directors:

I. D. Shapiro, Albert S. Greenfield, and George Heald.

The following are officers:

Sidney Flanzbaum, president; I. D. Shapiro and Albert S. Greenfield, vice presidents; George Heald, secretary-treasurer; Lawrence Gottfried, assistant secretary-treasurer.

Each of the foregoing officers is an officer of Zale Corporation, except Sidney Flanzbaum and Lawrence Gottfried.

In the case of the remaining 202 corporations of the Butler's Shoe Division the following officers of Zale Corporation are directors:

I. D. Shapiro, Albert S. Greenfield, George Heald.

The following are officers:

I. D. Shapiro, president; Albert S. Greenfield and Clarence Feuer, vice presidents; George Heald, secretary-treasurer; Lawrence Gottfried, assistant secretary.

Each of the foregoing officers, except Clarence Feuer and Lawrence Gottfried, are officers of Zale Corporation. (ZX 1, 9.)

14. Exhibit 10 is a list containing information regarding the wholly-owned subsidiaries of Zale Corporation and the wholly-owned subsidiaries of subsidiaries of Zale Corporation having retail stores which are commonly referred to collectively as the Home Furnishings Division. (Tr. 15.)

Among the 5 corporations all of which are incorporated in Texas, there are two that were formed as early as 1959.

Ben A. Lipshy, Donald Zale and Leo Fields are directors of the corporations listed. In each case Ben A. Lipshy is president; Lew Zale, Stanley Karotkin and John P. Dickens, vice presidents; Esir Wyll, secretary; John P. Dickens, assistant secretary; and Shearn Rovinsky, treasurer. Each of the foregoing except Stanley Karotkin is an officer or director of Zale Corporation. (CPF 41-45; ZX 1, 10.)



15. In addition to the 87 junior department stores and 13 retail jewelry stores owned and operated by respondent, Zale Corporation, such respondent also has certain non-retail operations which are sometimes referred to as the Zale International Diamond Division and the Jewelry Manufacturing Division. (Tr. 15-16.)

16. In the Zale Corporation and its subsidiaries (1) the Zale Store Division, the Fine Jewelers Guild Division and the Lease Department Division are sometimes referred to as the jewelry divisions; and (2) the Levine Department Store Division, the Skillern Drug Store Division, the Regency Division, the Home Furnishings Division and the Sporting Goods Division are sometimes referred to as the retail marketing divisions. (Tr. 16.)

17. The directors of each of the aforementioned wholly-owned subsidiaries of Zale Corporation were elected by Zale Corporation, the sole shareholder of each of them, and the directors of each of the wholly-owned subsidiaries of Zale were elected by such wholly-owned subsidiary of Zale Corporation. (Tr. 16.)

18. The officers of each of the aforementioned wholly-owned subsidiaries were elected by the directors of such subsidiary; and, the officers of each of the aforementioned wholly-owned subsidiaries of wholly-owned subsidiaries were elected by the directors of such subsidiaries of subsidiaries. (Tr. 16.)

19. Upon the incorporation of many of the foregoing wholly-owned subsidiaries, Zale Corporation subscribed for all of the capital stock issued. The remainder of the foregoing subsidiaries, subsequent to their incorporation, were acquired through the purchase of the capital stock, thereof, or through other types of acquisition such as the assets of an operating company by a subsidiary of Zale Corporation. (Tr. 16-17.)

20. Respondent Zale Corporation regularly advertises for the extension of consumer credit; and, respondent Corrigan-Republic, Inc., since October 3, 1969, has advertised for the extension of consumer credit. (Tr. 36.)

21. The financial statements of respondent Zale Corporation and its wholly-owned subsidiaries and wholly-owned subsidiaries of subsidiaries for the fiscal year ended March 31, 1969, reflect that an aggregate of \$10,240,000 was expended to advertise merchandise offered for retail sale. This amount, however, does not include those amounts expended in connection with the advertising of shoes and related items since Butler's Shoe Corporation and its subsidiaries were not acquired by Zale Corporation until September 11, 1969.

Similarly, this amount does not reflect any advertising expenditures relating to the sale of sporting goods and furniture since neither Zale Corporation nor any of its subsidiaries or subsidiaries of subsidiaries was engaged in either of such businesses during the fiscal year ended March 31, 1969. (Tr. 36.)

22. Approximately 70 percent of the amount expended for advertising by respondent Zale Corporation and its wholly owned subsidiaries and wholly-owned subsidiaries of subsidiaries during fiscal 1969 was for newspaper advertising. (Tr. 36.)

23. During the fiscal year ended March 31, 1969, the following wholly owned subsidiaries of respondent Zale expended the amounts set opposite their respective names for advertising:

Zale-Grand Junction, Inc.....	\$12, 506. 74
Frank Mindlin Jewelers, Inc.....	18, 621. 03
Jewelry Service Pueblo, Inc.....	4, 448. 37
Levine-Pampa, Inc.....	16, 616. 52
Levines, Inc.....	15, 179. 46

(Tr. 37.)

24. Respondent Corrigan-Republic, Inc., is now, and for sometime last past has been, engaged in the offering for sale, sale and distribution of jewelry and other merchandise to the public. (C, A; RPF 4.)

25. In the ordinary course and conduct of their business respondents regularly extend, and for sometime last past have regularly extended, consumer credit as defined in the Federal Reserve Regulation Z. (C, A; RPF 5, 6.)

26. Federal Reserve Board duly adopted Regulation Z effective July 1, 1969, and amendments and interpretations thereto all of which were duly published in the Federal Register and incorporated in Title 12, Chapter II, Part 226 of the Code of Federal Regulations.<sup>9</sup>

27. The financial statements of Zale Corporation, and its wholly-owned subsidiaries and the wholly owned subsidiaries of subsidiaries, for the fiscal year ended March 31, 1970, reflect aggregate net sales of \$384,172,196. Approximately 33% of such sales was accounted for by retail transactions involving the extension of consumer credit. (Tr. 20.)

28. Prior to July 1, 1969, respondent Zale Corporation and its subsidiaries, with some exceptions (as illustrated by CX 129-138), revised their credit agreements in an effort to comply with the Truth In Lending Act effective July 1, 1969. (Tr. 17.)

<sup>9</sup> 12 CFR 226.

## INSTALLMENT CONTRACT

29. Exhibit ZX 11 is a form of retail installment contract used between July 1, 1969, and December 31, 1969, by the thirteen retail jewelry stores, owned and operated by Zale Corporation. This retail installment contract was used in connection with its extension of consumer credit and its other than open-end credit sales of jewelry and other merchandise. This retail installment contract also serves as the security agreement and as evidence of the transaction. Such contract is identical in all material respects to that believed by Zale to have been used between July 1, 1969, and December 31, 1969, by each subsidiary and subsidiary of a subsidiary which operates a retail store commonly referred to as a Zale Store Division store. (Tr. 17; CPF 69, 70; RPF 8.)

30. Exhibit ZX 11, the installment contract form used, consists of four sheets and three carbons attached at the top, with a perforation permitting rapid separation. The four sheets are substantially identical on the front and are respectively marked at the bottom General Office Copy, New York Copy, Customer Copy and Store Copy. The customer copy has an additional notation: "(see Reverse Side)." Attached as Appendix A is a facsimile of the front of ZX 11(A). The store copy and the customer copy contain on the reverse side the contract of sale and security agreement. A copy of the reverse side is attached as Appendix B.

31. Additional examples of retail installment contracts executed in July 1969 by the companies and with the exhibit numbers listed below were received in evidence:

Zale Crenshaw Imperial, Inc., doing business as "Zales Jewelers" (CX 1-91; Tr. 17; CPF 71; RRB 2).

Zale Corporation doing business as "Mission Jewelers" (CX 92-101; CPF 72; RRB 2).

Zale Jewelers (CX 102-104; see CPF 73; Tr. 18; RRB 2).

Zale Corporation doing business as "Zales Jewelers" (ZX 12-21; Tr. 18; CPF 74; RRB 2).

We consider now the specific violations charged in the complaint as resulting from the use of respondents said form of contract.

32. In ensuing subparagraphs, we set forth the complaint allegation in Paragraph 5, regarding the deficiencies in the contract used by Zale Corporation followed by the answer reference, and where controverted by answer, the facts found with regard thereto.

(1) The complaint charges that the contract:

Fails to disclose the term "dollars finance charge per \$100 of unpaid balance" \* \* \* more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

This allegation is denied by answer Paragraph 5(1) (see also RPF 9).

An examination of the contract form (Appendix A) demonstrates that so far as the size type is concerned there is no emphasis on the phrase. After the contract is filled in, the printing and placement of the phrase does not make it conspicuous. (CX 1-91.)

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 72; RRB 2.)

(2) The complaint charges that the contract:

Fails to disclose the term "finance charge" more conspicuously than other required terminology as required by Section 226.6(a) of Regulation Z.

This allegation is denied by answer Paragraph 5(2) (see also RPF 10).

An examination of the contract form (Appendix A) demonstrates that so far as the size of type is concerned there is no emphasis on the phrase. The finance charge is one of 9 other disclosures only one of which "down payment" is emphasized by being printed in red. The word "charge" is underlined as are the words "down payment." However, such underlining does not make the words "finance charge" more conspicuous. Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 76; RRB 2.)

(3) The complaint charges that the contract:

Includes the amount of the finance charge in the computation of the amount financed contrary to the requirements of Section 226.2(d) of Regulation Z.

The answer admits that the contract included the amount of the finance charge in the computation of the amount financed (A5 (3) ) but denies as a conclusion, that such action is contrary to the requirements of Section 226.2(d) of Regulation Z (see also RPF 11). Section 226.2(d) of the regulation defines the term "amount financed" as meaning the amount of credit of which the customer will have the actual use. Clearly a finance charge cannot be included.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 76; RRB 2.)

(4) The complaint charges that the contract:

In placing the term "finance charge" above (before) the term "amount financed", fails to make this disclosure in meaningful sequence, as required by Section 226.6(a) of Regulation Z. The finance charge must not be included in the computation of the amount financed and the amount financed should include all the amounts immediately preceding it.

The answer admits that the term "finance charge" is placed before the term "amount financed" but denies that this constitutes a failure

to make disclosure in a meaningful sequence and denies the last sentence as a conclusion of law. (A5 (4), 6; see also RPF 12.)

Placing the figures denoting the finance charge in the column above the figures denoting amount financed would indicate that the former is and should be included in the latter. This is not so. The proper sequence is listed in Regulation Z on Exhibit C p. 22 (2nd series) the form of retail installment contract and security agreement suggested.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (See CPF 78.)

(5) The complaint charges that the contract:

In making the charge for credit life insurance optional to the customer, fails to include such charge in the amount financed, as required by Sections 226.4(a)(5) and 226.8(c)(7) of Regulation Z.

The answer admits that the charge for credit life insurance is not included in the amount financed but denies the remaining allegations because they are conclusions of law and because no finance charge is made. (A5 (5); see also RPF 13.)

The charge for credit life insurance should be included in the finance charge unless the provisions of i or ii of Paragraph (a)(5) of Section 224.4 of Regulation Z are complied with. Here there is compliance with Section 226.4. Thus the charge for credit life, voluntarily undertaken by the client is financed on his behalf and it should be included in the amount financed, Sec. 226.8(c)(4).

Accordingly, we find that this allegation of the complaint is sustained. (CPF 81, 82; RRB 2.)

(6) The complaint charges that the contract:

Fails to disclose the amount of the dollars finance charge per year per \$100 of unpaid balance with an accuracy to the nearest quarter of one percent, as required by Section 226.5(b)(1) of Regulation Z.

The answer admits that the contract fails to disclose the amount of the dollar finance charge with an accuracy to the nearest quarter of one percent but denies the balance of subparagraph 6 for the reason that such allegations constitute conclusions of law. (A5(6).)

Regulation Z (226.5(b)) expressly requires that the annual percentage rate applicable shall be the nominal annual percentage rate determined in accordance with the actuarial method of computation so that it might be disclosed with an accuracy at least to the nearest quarter of one percent or by application of the United States Rule so that it may be disclosed with an accuracy at least to the nearest 1/4%.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 83, 84; RPF 14; RRB 2.)

(7) The complaint charges that the contract:

Fails to use the term "cash downpayment" when the downpayment is in money, as required by Section 226.8(c)(2) of Regulation Z.

The answer admits that the contract does not use the term "cash downpayment" when the downpayment is in money and denies the remaining allegations of the complaint as constituting conclusions of law. (A5 (7).)

Regulation Z in Section 226.8(c) requires disclosure of "the amount of downpayment itemized, as applicable, as downpayment in money, using the term 'cash downpayment.'" Downpayment in property, using the term "trade-in" and the sum, using the term "total downpayment."

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 85, 86; RPF 15; RRB 2.)

(8) The complaint charges that the contract:

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

The answer admits that the contract does not use the term "unpaid balance of cash price" to describe the difference between the cash price and the cash downpayment but denies the remaining allegations as conclusions of law. (A5(8).)

Section 226.8(c)(3) of Regulation Z expressly requires the use of the term "unpaid balance of cash price" in the required disclosures.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 88; RPF 16.)

(9) The complaint charges that the contract:

Fails to treat an existing obligation as a new transaction subject to the disclosure requirements of Regulation Z, as required by Section 226.8(j) of Regulation Z.

The answer admits that the contract fails to treat an existing obligation as a new transaction but denies the remaining allegations as conclusions of law. (A5(9).)

Section 226.8(j) of Regulation Z expressly requires among other things that if an existing obligation is increased, such transaction "shall be considered a new transaction subject to the disclosure requirements of this Part."

In a number of contracts in evidence it appears from the reverse side that an existing obligation was increased (old balance filled in)

while the front demonstrates that the total owed was not included in the amount financed or reflected in the finance charge (see CX 92, 93, 98 and 100).

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 89, 90; RPF 17; RRB 2.)

(10) The complaint charges that the contract:

Since a security interest is retained, fails to clearly identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

The answer denies the allegations in this subparagraph for the reason that such allegations constitute conclusions of law rather than allegations of fact. (A5 (10); see also RPF 18.)

It appears from the sample contract (Appendix A, B) and the executed contracts (CX 1-104; ZX 12-21) that the property is described on the front of the contract and the security interest on the reverse side. Moreover, the statement relating to the retention of a security interest is contained in the middle of the contract of sale in such a location that it might well be overlooked by the purchaser. In addition, the contract in this regard fails to conform to the suggested form Exhibit C of the pamphlet incorporated in Regulation Z. In such form, the description of the security interest immediately precedes the description of the property secured.

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 91, 92, 93.)

(11) The complaint alleges that the contract:

Fails to employ an adequate identification of the method of computing the unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z.

The answer denies the allegations of this subparagraph for the reason that such allegations constitute conclusions of law rather than allegations of fact. (A5 (11); see also RPF 20.)

On the reverse side of the contract (Appendix B) the following statement appears:

Under law you have a right to pay in advance the full amount due and under certain conditions obtain a partial refund on the finance charge based on Zale Refund Chart.

Regulation 226.8(b) of Regulation Z requires both an identification of the method of computing and a statement of the amount of method of computation of any charge "that may be deducted from the amount of any rebate of such unearned finance charge.\* \* \*"

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 94, 95, 96; RRB 2.)

(12) The complaint alleges that the contract:

Having elected to combine disclosures with the contract in a single document and having attempted to make required disclosures on both sides of the document, fails to place thereon on both sides of the document the following statement: "NOTICE: See other side for important information," as required by Section 226.801 of Regulation Z.

The answer admits the allegation that the prescribed notice is not used but instead the language "see reverse side" and denies the remaining allegations as conclusions of law (A5(11); see also RPF 20.)

Section 226.801, an interpretation issued by the Federal Reserve Board on April 22, 1969, requires that when some required disclosures are made on two sides of a contract "both sides shall contain the statement:

"NOTICE: See other side for important information." Required disclosures are on both sides of the contract (Appendix A, B).

Accordingly, we find that this allegation of the complaint is sustained by the proof. (CPF 97, 98, 99.)

(13) The complaint alleges that the contract:

Fails to make the required disclosures that are on the reverse side of the contract in clear, conspicuous and meaningful sequence as required by Section 226.6(a) of Regulation Z. The language on the reverse side of the contract appears in light print on yellow paper producing a low contrast, there are no paragraphs, and all language is printed with the same size letters without larger letters separating sentences.

The answer denies the allegation in the first sentence of this subparagraph as a conclusion of law but admits that the language on the reverse side appears in print on yellow paper and that there are no paragraphs, and that all language is printed with same size letters without larger letters separating sentences. (A5(13); see also RPF 21.)

An examination of CX 11<sup>10</sup> demonstrates that the print is light and produces a low contrast.

Accordingly, we find that the allegations of this subparagraph are supported by the proof. (CPF 100; RRB 2.)

33. Exhibit ZX 22 is a form of retail installment contract used subsequent to January 31, 1970, by the thirteen retail jewelry stores owned and operated by Zale Corporation. Such contract is identical

<sup>10</sup> The xerox copy of Appendix B is much clearer than the original because of the difference between the sensitivity of the machine and that of the human eye.



in all material respects to that believed by Zale to be used subsequent to January 31, 1970, by each subsidiary and subsidiary of a subsidiary which operates a retail store commonly referred to as a Zale Store Division store. It is agreed that, except in some instances (evidenced by Exhibits CX 102-104) Exhibit ZX 22 is the form of retail installment contract also used between December 31, 1969, and January 31, 1970, by the thirteen retail jewelry stores owned and operated by Zale Corporation, and believed by Zale to have been used between December 31, 1969, and January 31, 1970, by each subsidiary and subsidiary of a subsidiary<sup>11</sup> which operates a retail store commonly referred to as a Zale Store Division store. (Tr. 18.) A copy of the front and back of such revised contract are annexed as Appendices C & D respectively.

Accordingly, the allegations of Paragraph VIII of respondents' answer have been established to the effect that, through conferences with representatives of the Federal Trade Commission, prior to the issuance of the complaint, the respondents' retail installment contract forms have been brought into conformity with the Truth in Lending Act with the exception of the failure to supply the prescribed notice on the first page (Appendix C.) (RPF 29.)

#### OPEN END CONSUMER CREDIT PERIODIC STATEMENTS

34. Exhibit ZX 23 is a form of periodic statement used between October 3, 1969, and January 31, 1970, by Corrigan-Republic, Inc., in connection with its regular extension of open-end consumer credit. Such periodic statement is identical in all material respects to that believed by Zale to have been used between July 1, 1969, and January 31, 1970, by each subsidiary and subsidiary of a subsidiary which operates a retail jewelry store commonly referred to as a Fine Jewelers Guild Division store. During the period October 3, 1969, through January 31, 1970, in connection with the open-end credit accounts of respondent Corrigan-Republic, Inc., customers who had paid their new balance within 30 days from the closing date of the billing cycle were not assessed additional finance charges. Exhibits CX 105-128 are copies of periodic billing statements typical of those mailed or delivered to customers in January 1970 by Corrigan-Republic, Inc., doing business as "Corrigan's Jewelers." (Tr. 19; CPF 101, 102; RPF 22; RRB 2.)

35. A copy of the front and back of ZX 23 are annexed hereto

<sup>11</sup> Correction to record made by order on stipulation of parties of July 1, 1970, and mailed July 9, 1970.

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and marked Appendices E & F, respectively. We consider now the specific violations charged in the complaint as resulting from the use of respondents' said form of periodic statement.

36. In ensuing subparagraphs we set forth the complaint allegation in Paragraph 6 regarding the deficiencies in the periodic statement all of which were denied by the answer, followed by the facts found with regard thereto.

(1) The complaint charges that the periodic statement:

Fails to disclose the term "finance charge" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

An examination of ZX 23 (Appendices E & F) and CX 105-128 discloses that the finance charge is placed under the column headed "charge" and is designated with a symbol "cc" which is explained on the reverse side of the form.

Accordingly, we find that the allegation in the complaint is sustained by the proof and that the form does not comply with Section 226.6(a) of Regulation Z. (CPR 104; RPF 23; RRB 3.)

(2) The complaint charges that the periodic statement:

Fails to disclose the term "annual percentage rate" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

An examination of ZX 23 (Appendices E & F) discloses that the term "annual percentage rate" is described in the text on the reverse side of the form in the alternative depending on the amount of the balance.

Accordingly, we find that this allegation in the complaint is sustained by the proof and that the form does not comply with Section 226.6(a) of Regulation Z. (CP 104; RPF 23; RRB 3.)

(3) The complaint charges that the periodic statement:

Fails to employ the term "payments" to describe the amounts credited to the account during the billing cycle for payments, as required by Section 226.7(b) (3) of Regulation Z.

An examination of ZX 23 (Appendices E & F) discloses that the word "payments" does not appear. There is a column headed "credits" and a space for the obligator to insert the payment he makes on the part of the statement to be returned to the obligee.

Accordingly, we find that this allegation in the complaint is sustained by the proof, and the form fails to comply with Section 226.7(b) (3) of Regulation Z. (CPF 106; RPF 25; RRB 3.)

(4) The complaint charges that the periodic statement:

Fails to disclose each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance charge (whether or not

applied during the billing cycle), as required by Section 226.7(b)(5) of Regulation Z.

An examination of ZX 23 (Appendices E & F) discloses that, in describing the finance charges and the alternate basis on which they are computed on the reverse side of the form, the term "periodic rate" is not used and that term is also not used on the front of the form.

Accordingly, we find that this allegation in the complaint is sustained by the proof and that the form does not comply with Section 226.7(b)(5) of Regulation Z. (CPF 107; RPF 26; RRB 3.)

(5) The complaint charges that the periodic statement:

Fails to disclose the term "new balance" to describe the outstanding balance in the account on the closing date of the billing cycle, as required by Section 226.7(b)(9) of Regulation Z.

An examination of ZX 23 (Appendices E & F) and CX 105-128 discloses that the term "new balance" is not used but an asterisk is used as a symbol to designate the "final balance."

Accordingly, we find that the term "new balance" is not used as required by Section 226.7(b)(9) of Regulation Z. (CPF 108; RPF 27; RRB 3.)

(6) The complaint charges that the periodic statement:

Fails to employ a statement accompanying the term "new balance" indicating the date by which or the period, if any, within which payment must be made to avoid additional finance charges, as required by Section 226.7(b)(9) of Regulation Z.

An examination of ZX 23 (Appendices E & F) and CX 105-128 discloses no statement accompanying the term "new balance" indicating the date by which, or the period, if any, within which, payment must be made to avoid additional finance charges.

Accordingly, we find that this allegation in the complaint is sustained by the proof and that the form does not comply with Section 226.7(b)(9) of Regulation Z. (CPF 109, 110; RPF 28; RRB 3.)

37. Exhibit ZX 24 is a form of periodic statement used subsequent to January 31, 1970, by Corrigan-Republic, Inc. Such periodic statement is identical in all material respects to that believed by Zale to have been used subsequent to January 31, 1970, by each subsidiary and subsidiary of a subsidiary which operates a retail jewelry store commonly referred to as a Fine Jewelers Guild Division store. (Tr. 19.)

A copy of such revised periodic statement is hereto annexed and marked Appendix G (the reverse side is blank).

Accordingly, the allegations of Paragraph VIII of respondents' answer have been established to the effect that, through conferences with representatives of the Federal Trade Commission, prior to the issuance of the complaint, the respondents' periodic statement has been brought into conformity with the Truth in Lending Act.

#### REASONS FOR DECISION

There were a large number of issues raised by the pleadings which persisted through pretrial. However, after the parties entered into their stipulations and prepared their proposed findings, the real matters in controversy turned out to be relatively few and primarily directed to what kind of an order, if any, should be issued.

Respondents admitted by their proposed findings and reply brief that each of the contracts or periodic statements used from July to December 1969 violated some of the regulations promulgated by the Federal Reserve Board in Regulation Z. But they claimed, first, that no order should issue because they are now in compliance and second that, if any order should issue, it should be confined to prohibiting only the violations admitted that are specific and require no "subjective judgments." Moreover they contend that any order should apply only to acts of the named respondents and not to what they could accomplish through their thousand odd subsidiaries and sub-subsidiaries.<sup>12</sup>

On the first point, it is very clear from the vigor of respondents claim that certain of the provisions of Regulation Z require subjective judgments and that they should not be bound by the interpretations urged on them, (Respondents Brief pp. 2 & 3) that some order must be issued to clarify what interpretations are proper ones and to see to it that there is future compliance.<sup>13</sup> Moreover, one new form fails to contain the prescribed notice and it has not been shown that the forms are being properly completed. (CRB 14, *et seq.*)

Having determined that some order should be issued we come to a determination of the breadth of the order. It has long been established that the Commission in drafting an order is not to be confined

<sup>12</sup> In light of the Commission's opinion accompanying its order of June 17, 1970, to the effect that evidence on advertising was to be received and the explanation provided by the undersigned in his order of June 29, 1970, with regard to his amendments to the complaint (constituting merely a particularization deemed desirable under Rule 3.15) further discussion of the amendments seems unnecessary although respondents preserved their position throughout that no amendment should have been made.

<sup>13</sup> *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965); *Libby-Owens-Ford Glass Company v. FTC*, 352 F. 2d 415 (6th Cir. 1965); *Carter Products v. FTC*, 323 F. 2d 523 (5th Cir. 1963); CRB 14-17.

to the specific practice proved but it must be allowed effectively to close all roads to the prohibited goal so that its order may not be by-passed with impunity.<sup>14</sup>

Since admittedly respondents' practices with respect to their contracts and periodic statements violated the act and regulations, respondents should properly be prohibited from using other means, such as advertising, to accomplish a similar forbidden result. Moreover, having shown that respondents have the means of controlling more than a thousand subsidiary and sub-subsidiary corporations thru their stock ownership and their common directors and officers the order should provide against the utilization of this control in a manner that would admit of continued violations by the companies owned. This is especially true, where, as here, the stipulation indicates, because of widespread use of identical forms, that wide control was exercised in the formulation and adoption of the old contracts (Appendices A, B, E, & F) as well as the new ones (Appendices C, D & G).

In connection with the so-called subjective judgments which must be made to determine whether or not the contested charges were violations of valid regulations, we must look to the nature of the statute, its purpose, the extent of legislative delegation, and the specificity of the regulation adopted.

The nature of the statute and its purpose are so clear from its terms that no search of Congressional intent is necessary or appropriate.

In the initial section of the Act, Congress expressly stated in part:

It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.<sup>15</sup>

Similarly, in defining the adjective "consumer" as it relates to a credit transaction<sup>16</sup> the statute makes it clear that natural persons seeking credit for personal, family, household, or agricultural purposes are those to be protected.

Hence, in construing the statute, and the regulations adopted, we must do so from the point of view of protecting the run of the mill natural person, not from the point of view of protecting the sophis-

<sup>14</sup> *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965); *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952); see also *Siegel Co. v. FTC*, 327 U.S. 608, 611 (1946); *P. F. Collier & Son, Corp. v. FTC*, 427 F. 2d 261 (1970); CRB 17-22.

<sup>15</sup> 15 U.S.C. § 1601.

<sup>16</sup> 15 U.S.C. § 1603 h.

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ticated businessman. We turn now to the extent of legislative delegation to the Federal Reserve Board.

In providing for the Federal Reserve Board to issue regulations the broadest discretion is given to this expert body in the following language:

The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter to prevent circumvention or evasion thereof, or to facilitate compliance therewith.<sup>17</sup>

Having in mind that the purpose of the legislation is to permit the ordinary consumer, of whatever degree of sophistication, to obtain a meaningful disclosure so that he or she can compare credit terms available; any regulation that would make comparison easier would seem to be expressly authorized.

Respondents seem to have little difficulty with those regulations that prescribe the use of specific terms or the inclusion of items or percentage of accuracy of computations. (RPF 9-10.) Clearly such specificity is authorized under the broad statutory authority granted.<sup>18</sup>

Respondents do have some difficulty, however, with the requirement that a particular form of wording is prescribed when another phraseology would, in their opinion, accomplish the same purpose. Thus, they regard the use of their notation, ("see reverse side") as the equivalent of the required statement: "NOTICE See other side for important information."<sup>19</sup> The difference is of course in emphasis. Clearly when there is information on each side of the form that the Federal Reserve Board, in the exercise of its expert discretion, regards as important, it may very properly require appropriate emphasis. And, since the words are reasonably adapted to the enforcement of the act and their use does not contravene some other requirement of law, the regulation must be followed.<sup>20</sup>

<sup>17</sup> 15 U.S.C. § 1604.

<sup>18</sup> *Udall v. Tallman*, 380 U.S. 1 (1965); *Brewster v. Gage*, 280 U.S. 327, 336 (1930); *Maryland Casualty Co. v. United States*, 251 U.S. 342 (1920); *Tyler v. United States*, 397 F. 2d 565 (5th Cir. 1968); *McCarthy v. FCC*, 390 F. 2d 471, 474 fn. 5 (D.C. Cir. 1966).

<sup>19</sup> Required by Interpretation Section 226.801.

<sup>20</sup> *Allstate Insurance Company v. United States*, 329 F. 2d 346 (7th Cir. 1964); *Tyler v. United States*, 397 F. 2d 565 (5th Cir. 1968); *Brewster v. Gage*, 280 U.S. 327 (1929); *A.T.&T. Co. v. United States*, 299 U.S. 232 (1936); *Udall v. Tallman*, 380 U.S. 1 (1965); *Gardner v. Alabama*, 385 F. 2d 804, 817 (5th Cir. 1967); Compare *FTC v. Guignon*, 390 F. 2d 323, see 336 dissenting opinion of Judge Heaney.

Respondents also have difficulty with the regulations that set a standard to be followed rather than prescribing, in detail, the precise form to be followed. For example, they object to the complaint's challenge to their failure to make the words "Finance Charge" more conspicuous than other terminology; to the requirement that the property subject to a security interest be clearly defined; and, that required disclosures be made in clear, conspicuous and meaningful sequence, because they claim these matters are subject to interpretation. The short answer is that the Supreme Court has had no difficulty with enforcing such regulations so long as there is a sufficient guide supplied.<sup>21</sup> The forms supplied with the regulations, though not prescribed, form an excellent guide. Moreover, the administrative enforcement of the law and regulations, except in the case of creditors subject to other administrative supervision was left to the Federal Trade Commission.<sup>22</sup> Undoubtedly this was done because of the recognized expertise of the Federal Trade Commission in assessing the probable effect on consumers of advertising and other types of documents used for inducing purchase.<sup>23</sup>

Viewing the documents challenged (Appendix A & B for example) it is apparent to the hearing examiner that the printing on the reverse side (Appendix B) by reason of the colors used, the choice of type, and the failure to break up the various separate concepts is not clear. It is also apparent that the words and phrases required to be emphasized are not properly emphasized in light of the other printing on the documents, the type of print used and the effect of filling in the spaces. In addition, again viewing the documents as a whole and observing the confusion engendered by the order in which the items are listed (see CX 1-91) it appears that the terms required are not in meaningful sequence.

For the foregoing reasons in addition to those expressed in finding the facts, we have determined that the following conclusions and order are appropriate.

#### CONCLUSIONS

1. Respondent Zale Corporation, through its ownership of respondent Corrigan-Republic Inc., and over a thousand subsidiaries or subsidiaries of subsidiaries is a large interstate chain of stores selling jewelry and other commodities at retail. In connection there-

<sup>21</sup> *A.T. & T. Co. v. United States*, 299 U.S. 232 (1936); *Maryland Casualty Co. v. United States*, 251 U.S. 342 (1920); *Udall v. Tallman*, 380 U.S. 1 (1965).

<sup>22</sup> 15 U.S.C. § 1607(c).

<sup>23</sup> *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965); *FTC v. Mary Carter Paint Co.*, 382 U.S. 46 (1965); See *Cinderella Career and Finishing Schools, Inc. et al. v. Federal Trade Commission*, 425 F. 2d 583 (D.C. Cir. 1970); *Stauffer Laboratories Inc. v. FTC*, 343 F. 2d 75, 79 (9th Cir. 1965); *Bakers Franchise Corp. v. FTC*, 302 F. 2d 258, 261 (3rd Cir. 1962); *Exposition Press Inc. v. FTC*, 295 F. 2d 872 (2d Cir. 1961), cert. denied, 370, U.S. 917 (1962).

with it extends credit and advertises for the extension of credit. Through ownership, common directors and officers it maintains control over its widespread operations and in the changes developed in its installment contracts and periodic statements actually exercised wide control.

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

3. For approximately 6 months following the effective date of the Truth in Lending Act, and the regulations thereunder, respondent itself and through its wholly-owned subsidiaries, and their subsidiaries, has been party to the use of form contracts and form periodic statements in connection with the extension of credit that failed to conform to the requirements of the Truth in Lending Act, and the regulations propounded by the Federal Reserve Board in connection therewith.

4. It is very clear from the preamble to the Truth in Lending Act, 15 U.S.C. 1601, that it was the purpose of Congress to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him, and to avoid the uninformed use of credit. The regulations prescribed by the Federal Reserve Board have, in meticulous detail, described what shall be contained in credit instruments and how the information shall be set up so that the purpose of the Act will be fulfilled.

5. The documents in use by respondent and by a number of its subsidiaries, for a number of months following the effective date of the Act and Regulations have failed to follow with precision, the regulations prescribed by the Board pursuant to statutory authority. Because of such failure, under the provisions of Section 105 and 108 of the Truth in Lending Act, respondents have violated the Federal Trade Commission Act.

6. Respondents contend that no order should be issued because they conferred with Federal Trade Commission representatives, and some 6 months following the effective date of the Act, but before issuance of the complaint, changed their documentation. Because among other reasons of the size and complexity of respondents' operation, we conclude that the issuance of an order is essential to insure compliance with the Truth in Lending Act by all the stores operated directly or indirectly by respondents and to prevent maintenance of instrumentalities capable of causing violations of the Act. For similar reasons, we conclude that the order should prevent advertising forbidden by the Act though no instances of that were shown.



## Initial Decision

78 F.T.C.

7. The facts having been found to be as alleged in the complaint, the order in the form attached to the complaint should be issued.

## ORDER

*It is ordered,* That respondents Zale Corporation, a corporation, and Corrigan-Republic, Inc., a corporation, and their officers, and respondents' agents, representatives and employees, directly or through any corporate, subsidiary, division or other device, in connection with any consumer credit sale of jewelry or any other merchandise or service, as "credit sale" is defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to print the terms "dollars finance charge per \$100 of unpaid balance," "annual percentage rate" and "finance charge," where required by Regulation Z to be used, more conspicuously than other terminology required by Regulation Z of the Truth in Lending Act.
2. Including the amount of the finance charge in the computation of the amount financed.
3. Failing to include the charge for credit life insurance, when not required to be placed within the finance charge, within the amount financed.
4. Determining the annual percentage rate or the dollars finance charge per year per \$100 of unpaid balance in any manner other than that provided in Section 226.5 of Regulation Z of the Truth in Lending Act.
5. Failing to employ the term "cash downpayment" to describe the downpayment in money, as required by Section 226.8(c)(2) of Regulation Z of the Truth in Lending Act.
6. Failing to employ 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 of the Truth in Lending Act.
7. Failing to treat an increase of an existing obligation as a new transaction subject to the disclosure requirements of Regulation Z, as required by Section 226.8(j) of Regulation Z of the Truth in Lending Act.
8. Failing to make a clear identification of the property to which a security interest relates, as required by Section 226.8(b)(5) of Regulation Z of the Truth in Lending Act.
9. Failing to make an adequate identification of the method of computing the unearned portion of the finance charge in the

event of prepayment of the obligation, as required by Section 226.8(b)(7) of Regulation Z of the Truth in Lending Act.

10. Failing to disclose the required notice on both sides of the document in language conforming to that contained in Section 226.801 of Regulation Z of the Truth in Lending Act.

11. Failing to print installment contracts and any other consumer credit instruments both on the face and reverse side clearly, conspicuously, and in meaningful sequence both as to form and substance.

12. Failing to employ the term "payments" to describe the amounts credited to the customer's account during the billing cycle for payments, as required by Section 226.7(b)(3) of Regulation Z.

13. Failing to disclose each periodic rate that may be used to compute the finance charge (whether or not applied during the billing cycle), using the term "periodic rate" (or "rates"), as required by Section 226.7(b)(5) of Regulation Z of the Truth in Lending Act.

14. Failing to disclose the term "new balance" to describe the outstanding balance in the account on the closing date of the billing cycle, as required by Section 226.7(b)(9) of Regulation Z of the Truth in Lending Act.

15. Failing to employ a statement, accompanying the term "new balance," indicating the date by which, or period, if any, within which payment must be made to avoid additional finance charges, as required by Section 226.7(b)(9) of Regulation Z of the Truth in Lending Act.

16. Engaging in any consumer credit transaction or disseminating any advertisement within the meaning of Regulation Z of the Truth in Lending Act without making all disclosures that are required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z in the amount, manner and form specified therein.

*It is further ordered,* That the respondents herein shall forthwith deliver a copy of this order to cease and desist to all present and future store managers or other persons engaged in the completion of credit agreements growing out of the sale of respondents' products or services, and shall secure from each such manager or other person a signed statement acknowledging receipt of said order.

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

*It is further ordered,* That each respondent notify the Commission at least 30 days prior to any proposed change in the corporate re-

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

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

WRITE YOUR NUMERALS LIKE THIS H21011 H21012

1 2 3 4 5 6 7 8 9 0

# ZALES

JEWELERS

NAME \_\_\_\_\_

STREET ADDRESS \_\_\_\_\_

CITY STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

ACCT. NO. \_\_\_\_\_

DESCRIPTION	CASH		CHARGE		REG.	STU.	REP.	LATAWAY	REOPEN	ADD ON
	1	2	3	4	5	6	7	8	9	0
QUANTITY	DEPT.		ITEM NUMBER			AMOUNT				

REPLACE CODE	N. Y. DEPT.	N. Y. TYPE	WH.	YEL.	*1. CASH PRICE
					*2. SALES TAX
					*3. (DOWN PAYMENT)
					*4. BALANCE (1+2-3)
					*5. FINANCE CHARGE
					*6. AMOUNT FINANCED (4+5)
					*7. CREDIT LIFE
					*8. DEFERRED PAYMENT PRICE (1+3+5+7)
					*9. TOTAL OF PAYMENTS (4+7)

DATE \_\_\_\_\_

FINANCE CHARGE PER YEAR PER \$100 OF UNPAID BALANCE \_\_\_\_\_

SOLD BY \_\_\_\_\_ STORE NO. \_\_\_\_\_

OK BY \_\_\_\_\_

0-DO NOT REPLACE  
1-REPLACE  
(ENTER IN REPLACE CODE COLUMN)  
\*-POST

2 S

0949427

GENERAL OFFICE COPY

CUSTOMER COPY (SEE REVERSE SIDE)

Initial Decision

APPENDIX B

TOTAL BALANCE  
 OLD BALANCE  
 COMBINED BAL.  
 INSTALLMENT SCHEDULE  
 Number      Amount      First

Secured party (seller) sells and debtor (buyer) purchases goods and/or services described herein and buyer acknowledges delivery of goods and/or performance of services. Buyer will pay the balance due in substantially equal consecutive monthly installments as set out above until all goods and/or services have been paid. Buyer agrees not to sell, remove or encumber the goods. Buyer is to be responsible for all loss or damage to goods. Buyer agrees that seller retains a security interest in said goods and in case of default then seller shall be entitled to possession of goods and entire balance of this contract shall become due and payable. In event of repossession, seller may lawfully enter any premises where said goods are located and remove them. If sent to attorney for collection, buyer agrees to pay reasonable attorney's fees and court costs. The front and back of this instrument constitutes the entire contract. Notice to buyer—do not sign this before you read it or if it contains blank spaces. You are entitled to a copy of this contract. Under law you have the right to pay in advance the full amount due and under certain conditions obtain a partial refund on the finance charge based on Zale refund chart. Keep this contract to protect your legal right. Buyer acknowledges receipt of his copy of this contract and that this contract was completed before buyer signed.  
 Credit insurance is voluntary and costs \$\_\_\_\_\_ and buyer desires the coverage.

-----  
 Buyer

-----  
 Zale by:

(See reverse side)

-----  
 Buyer

BACK OLD CONTRACT

APPENDIX C

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT

Write your numerals like this 1234567890 G. O. COPY 683348

Seller retains a security interest in the below described merchandise.

Description	Quantity	Dept.	Item number	Amount
-------------	----------	-------	-------------	--------

\_\_\_\_\_  
 ITEM 1

\_\_\_\_\_  
 ITEM 2

\_\_\_\_\_  
 ITEM 3

(ENTER IN REPLACE CODE COLUMN)

0—DO NOT REPLACE

1—REPLACE

REPLACE CODE N. Y. DEPT. N. Y. TYPE WH. YEL

ITEM 1

ITEM 2

ITEM 3

Buyer hereby agrees to pay the "total of payments" shown on the right hand column of this page in

\_\_\_\_\_ WEEKLY \_\_\_\_\_ SEMI-MONTHLY \_\_\_\_\_ MONTHLY

SOLD BY STORE NO. \_\_\_\_\_

INSTALLMENTS OF \$ \_\_\_\_\_

CASH CHG. RETURN \_\_\_\_\_

(FINAL PAYMENT TO BE \$ \_\_\_\_\_)

THE FIRST INSTALLMENT BEING PAYABLE \_\_\_\_\_  
19\_\_\_\_, AND ALL SUBSEQUENT INSTALLMENTS ON THE SAME DAY OF  
EACH CONSECUTIVE

\_\_\_\_\_ WEEK \_\_\_\_\_ SEMI-MONTH \_\_\_\_\_ MONTH UNTIL PAID IN FULL.

IS A OLD BALANCE \_\_\_\_\_ B REFUND \_\_\_\_\_

C\* NET OLD BALANCE \_\_\_\_\_

1. CASH PRICE 2. SALES TAX 3. TOTAL CASH PRICE

4. CASH DOWN PAYMENT 5. TRADE-IN

6. LESS: TOTAL DOWN PAYMENT

7. UNPAID BALANCE OF CASH PRICE

8. OTHER CHARGES: \_\_\_\_\_

9.\* NET OLD BALANCE

10. CREDIT LIFE INSURANCE

11. AMOUNT FINANCED

12. FINANCE CHARGE

13. TOTAL OF PAYMENTS

14. DEFERRED PAYMENT PRICE

Annual percentage rate is \_\_\_\_\_%

Name \_\_\_\_\_

Street address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

ZIP Code \_\_\_\_\_

ZALES JEWELERS

Date \_\_\_\_\_

O.K. By \_\_\_\_\_

CASH 1 CHARGE 2 STU. 3 REP. 4 LAYAWAY 5 ADD BY 6

FRONT REVISED CONTRACT

APPENDIX D

The Secured party (Seller) sells and Debtor (Buyer) purchases the merchandise and/or services described herein. Buyer acknowledges delivery of merchandise and/or performance of services.

**SELLER'S SECURITY INTEREST.** Seller retains a security interest in the described merchandise and/or services.

**PAYMENT TERMS.** Buyer will pay the total of payments due as shown on the installment schedule on reverse side until all merchandise and/or services have been paid in full.

**DELINQUENCY CHARGE.** Seller may assess Buyer a delinquency charge of 5%, but not more than \$2.50, once on each installment payment in default of 30 days or more.

**BUYER'S DEFAULT.** In case of default, Seller shall be entitled to possession of the merchandise and/or the balance of the payments shall become due and payable.

**COLLECTION COSTS.** If this account is sent to an attorney for collection, Buyer shall pay court costs and reasonable attorney fees.

**BUYER'S OBLIGATIONS.** Buyer is responsible for all loss or damage to merchandise and agrees not to sell, remove, or encumber the merchandise.

**BUYER'S AUTHORIZATION.** Seller is authorized to investigate Buyer's credit record and to report to responsible persons Buyer's performance of this contract.

**CREDIT CARD.** Buyer authorizes Seller to send Buyer a credit card.

**NOTICE TO BUYER.**

DO NOT SIGN IF THIS CONTRACT CONTAINS BLANK SPACES. SIGN ONLY AFTER READING. YOU ARE ENTITLED TO A COPY OF THIS CONTRACT. UNDER LAW YOU HAVE THE RIGHT TO PAY IN ADVANCE THE FULL AMOUNT DUE AND ANY UNEARNED FINANCE CHARGE WILL BE REBATED UNDER THE RULE OF 78 AFTER DEDUCTING A CHARGE OF \$5.00. KEEP YOUR COPY TO PROTECT YOUR LEGAL RIGHTS.

THE FRONT AND BACK OF THIS INSTRUMENT CONSTITUTES THE ENTIRE CONTRACT.

Credit Life Insurance is voluntary and costs \$\_\_\_\_\_ for the term of credit.

Buyer does not desire coverage\_\_\_\_\_ (Buyer) (Date)

Buyer does not desire coverage\_\_\_\_\_ (Buyer) (Date)

(Buyer's Signature)

(Seller's Signature)

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION

BACK REVISED CONTRACT

Initial Decision

78 F.T.C.

## APPENDIX E

## CORRIGAN JEWELERS

Statement

See reverse side for symbols

Billing Date \_\_\_\_\_

	Date	Symbols	Charge	Credit	Balance
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

Terms as arranged at time of purchase

*Corrigan's*

Jewelers Since 1914

Republic National Bank Tower • Dallas, Texas 75201 • PH: 747-8284

Also 610 Northpark Mall • Fairmont Hotel

Amount paid \$ \_\_\_\_\_

Please tear off this stub and return with remittance your cancelled check is your receipt

FRONT OLD PERIODIC STATEMENT

## APPENDIX F

S—Previous Balance

CC—Finance Charge

\*Final Balance

Charges, payments, returns received after your billing date will appear on your next statement. Your finance charge is 1½% per month on so much of the unpaid balance as does not exceed \$500 and this is 18% on an annual percentage rate. Your finance charge is 1% per month on so much of the unpaid balance as does exceed \$500 and this is 12% on an annual percentage rate. The finance charge is applied to the previous balance without deducting current credits received during the billing cycle.

BACK OLD PERIODIC STATEMENT

## APPENDIX G

Billing date

Statement

	Date	Symbols	Purchases	Payments/ credits	Previous balance
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

Finance charge

Last amount is "New Balance". To avoid additional finance charges pay "New Balance" in full within 25 days of the billing date.

FINANCE CHARGE is computed at a periodic rate of 1½% per month (ANNUAL PERCENTAGE RATE 18%) on the first \$500.00 and a periodic rate of 1% per month (ANNUAL PERCENTAGE RATE 12%) on the excess over \$500.00. These rates will be applied to the "Previous Balance" before adding purchases and without deducting payments or credits shown hereon.

## EXPLANATION OF SYMBOLS

PP—Payment C—Credit FC—FINANCE CHARGE  
CORRIGAN JEWELERS

Notice: See accompanying statement(s) for important information.  
No. G7169-1

CORRIGAN'S

Jewelers Since 1914

Amount paid \$ \_\_\_\_\_

NEW PERIODIC STATEMENT

## OPINION OF THE COMMISSION

JUNE 10, 1971

By JONES, *Commissioner*:

I

On March 30, 1970, the Commission issued a complaint against the respondent Zale Corporation and one of its wholly-owned subsidiar-



ies, Corrigan-Republic, charging the respondents with violations of the Truth in Lending Act Title of the Consumer Credit Protection Act (15 U.S.C. §§ 1601-1665 (Supp. V 1965-1970) (herein called the Truth in Lending Act), Regulation Z promulgated thereunder (12 CFR §§ 226.1-226.1002 (1970)) (herein called Regulation Z) and Section 5 of the Federal Trade Commission Act (15 U.S.C. §§ 41, 45 (1964)).

The complaint charges respondent Zale Corporation with 13 violations of the Truth in Lending Act and Regulation Z arising from its failure to disclose in the retail installment contracts used in its business various facts about the terms of credit being offered as required by the statute and the implementing regulation (C, Para. 4-5).<sup>1</sup> Respondent Corrigan-Republic is charged with six violations of the Act and Regulation occasioned by its use of a periodic statement in connection with the extension of open end credit which also contained several enumerated deficiencies in disclosing the credit terms of the transactions as required by the statute and implementing regulation (C, Para. 6). In addition, both respondents are charged with violation of Section 5 of the Federal Trade Commission Act by reason of their alleged failure to comply with the Truth in Lending Act (C, Para. 7).<sup>2</sup>

Both respondents filed answers denying these allegations. At the trial, however, the parties stipulated substantially all of the facts in issue, admitting the use of the contract and forms forming the basis for the alleged violations and the authenticity of the various documents and made various admissions of other allegations of the complaint (Tr. 11-12).

Accordingly, the principal issues during the hearing before the hearing examiner centered on these two questions:

<sup>1</sup> The following abbreviations will sometimes be used:

Tr. — Transcript  
 C — Complaint  
 A — Answer  
 ID — Examiner's initial decision  
 ZX — Respondents' exhibit  
 CX — Complaint counsel's exhibit  
 CRB — Complaint counsel's reply brief  
 RRB — Respondents' reply brief  
 CPF — Complaint counsel's proposed findings  
 RPF — Respondents' proposed findings

<sup>2</sup> Section 108(c) of the Truth in Lending Act provides that:

"... For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement of that Act." (Emphasis supplied.)

1. Did the documents admittedly used by the respondents violate the Truth in Lending Act; and

2. If an order is entered, can it be properly applied to the more than 1,000 wholly-owned subsidiaries through which respondents transacted their business in the United States?<sup>3</sup>

The examiner found against respondents on all issues. He sustained the allegations in the complaint and determined that an order can and must be issued covering the entire scope of the respondents' business whether transacted directly or through subsidiaries.

Respondents have appealed. Their appeal centers primarily on the questions of the necessity and scope of an order and on the propriety of the extension of an order issued in the case to their wholly-owned subsidiaries (RRB 3-4).<sup>4</sup>

## II

### The Background Facts Respecting Respondents' Business Operations

Respondent Zale Corporation is a combination holding company and operating company, organized in the State of Texas and doing business throughout the United States (C 1; A 1; ZX 1-10). Zale Corporation is engaged in the retail sale of jewelry and other merchandise, both directly through its ownership of 13 jewelry stores and 87 junior department stores (Tr. 13, 14), and indirectly through a network of 1056 wholly-owned subsidiaries and sub-subsidiaries (ZX 1-10). Respondent Corrigan-Republic is one of Zale Corporation's wholly-owned subsidiaries engaged in the retail sale of jewelry (C 1; A 1; ZX 5). The aggregate sales for Zale Corporation and its subsidiaries for the fiscal year ending May 1970, were \$384,172,196; approximately 33% of this amount resulted from retail transactions involving the extension of consumer credit (Tr. 20).

Zale's retail business is administered by three operating divisions: the Jewelry Store Division (Tr. 16), The Retail Marketing Division (Tr. 16), and the Butler Shoe Division (Tr. 15).<sup>5</sup> Each of these divi-

<sup>3</sup> Respondents raised several other defenses challenging various individually alleged violations for the interpretations of the statutory and regulatory language contained therein. Respondents also raised the question of whether or not the case had become moot by reason of changes in respondents' practices prior to the issuance of the complaint (ID 1203).

<sup>4</sup> Respondents' brief on appeal to the Commission admitted the violations charged in Paragraphs V and VI of the complaint. The errors assigned to the initial decision are directed at the examiner's conclusions on the necessity and scope of an order drawn from the findings and not from the findings themselves (RRB 4).

<sup>5</sup> Zale Corporation also has two non-retailing operations or divisions, the Zale International Diamond Division and the Jewelry Manufacturing Division. Neither of these is directly involved in the present action (Tr. 16).

sions is responsible for the operation of Zale Corporation's retail outlets throughout the United States. Some of these retail outlets are incorporated as wholly-owned subsidiaries and others are run directly by the Zale organization or by other wholly-owned subsidiaries. For example, the Jewelry Store Division has three subdivisions, the largest of which is the Zale Store Division. That subdivision is responsible for some 468 corporate subsidiaries and sub-subsidiaries engaged in the sale of jewelry at retail, and 13 retail jewelry stores operated directly by Zale Corporation (ZX 2; Tr. 13; ID 1205-06). All but 45 stores operated by this Zale Store Division bear the name "Zale" (ZX 2).

Respondent Corrigan-Republic is a part of another subdivision of Zale Corporation's Jewelry Store Division known as the Fine Jeweler's Guild. Like its counterpart, Zale Store Division, the Fine Jeweler's Guild subdivision is responsible for some 133 corporate subsidiaries and sub-subsidiaries engaged in the sale of jewelry at retail (ZX 5; Tr. 14; ID 1207). The majority of the retail outlets in this division do not bear the name "Zale" (ZX 5).

The third subdivision of Zale Corporation's Jewelry Store Division, known as the Leased Jewelry Division, is, again, responsible for the retail operations of some 108 wholly-owned subsidiaries and sub-subsidiaries (ZX 4; Tr. 14; ID 1206).

Zale Corporation's second principal operating division, the Retail Marketing Division, is organized along comparable lines. It comprises within its retailing operations both jewelry and non-jewelry merchandising. Its jewelry outlets are clustered principally within the Levine Store subdivision, which conducts its retail operations through various directly-owned outlets as well as wholly-owned subsidiaries and sub-subsidiaries (Tr. 16). The Levine Store subdivision is responsible for 87 junior department stores owned and operated directly by Zale Corporation, as well as some 67 corporate subsidiaries and sub-subsidiaries which are wholly-owned by Zale Corporation (Tr. 15; ZX 3; ID 1206).

Zale Corporation is the sole stockholder in each of the subsidiaries or sub-subsidiaries within its corporate network, either through original subscription to all the capital stock when issued, or through purchases of capital stock, or other form of acquisition (Tr. 16-17; ID 1210). All directors of these Zale Corporation subsidiaries are elected by Zale Corporation, the sole stockholder. The directors elect the officers. The directors of sub-subsidiaries are elected by the wholly-owned subsidiary of Zale Corporation which owns the sub-subsidiary. Directors, again, elect officers (Tr. 16; ID 1210).

The overlap of officers and directors throughout the subsidiaries within Zale Corporation's three marketing divisions is extensive. The officers and directors for each subsidiary and sub-subsidiary in its two operating divisions (the Jewelry Division and Retail Marketing Division) are identical. Each of these officers and directors holds the same office in the parent, Zale Corporation (with the exception of one vice president who is a vice president of the subsidiary grouping only) (ZX 1-10).

This organizational pattern differs in some respects for Zale Corporation's Butler Shoe Division, its third principal operating division and most recent acquisition.<sup>6</sup> All of the officers and directors of this division also serve as officers and directors of Zale Corporation but in different capacities (ZX 1, 9). One of the corporate subsidiaries in this division, Butler Shoe of Texas, shares the same president, vice president and other officers of the parent Zale Corporation, just as all the other subdivisions of the Jewelry Store Division and the Retail Marketing Division do. However, for the balance of the 247 Butler Shoe subsidiaries and sub-subsidiaries, the officers and directors are not the same as the officers and directors of the parent Zale Corporation.

The violations alleged and ultimately admitted by the respondents were based essentially on a retail installment contract form and a periodic statement form which the record affirmatively shows were used by several Zale Corporation retail outlets from July 1, 1969, to December 31, 1969 (ZX 11, 23; Tr. 71, 19; ID 1212, 1218). The Truth in Lending Act became effective on July 1, 1969 (§ 504, Title V).

The retail installment contract was used by retail outlets of the Zale Corporation whether incorporated or unincorporated. This contract was used throughout the Zale Store Division stores, some of which, as noted above, were directly owned by Zale Corporation, and others of which were operated by wholly-owned corporate subsidiaries and sub-subsidiaries. Although there is no systematic and statistical showing of the exact number and identity of the stores using the form, respondent Zale Corporation stipulated that the form was identical in all material respects to the retail installment contract form "believed by Zale to have been used" by all stores in the Zale Store Division after July 1, 1969 (Tr. 17). Copies of this contract executed by three different Zale Corporation retail outlets, i.e., respectively: Zale Crenshaw-Imperial, a wholly-owned subsidi-

<sup>6</sup> The Butler Shoe Corporation and its subsidiaries were acquired by the Zale Corporation September 11, 1969 (Tr. 36; ID 1210).

ary (CX 1-91); Zale Corporation d/b/a Mission Jewelers (CX 92-101); and Zale Corporation d/b/a Zale Jewelers (CX 12-21), directly operated retail stores, were received as evidence of its undifferentiated use (Tr. 17-18).

The periodic statement used by respondent Corrigan-Republic and admitted to violate the requirements of the Truth in Lending Act as alleged in the complaint were apparently also used by the approximately 133 retail outlets administered by Zale Corporation's second major marketing division, the Fine Jeweler's Guild (Tr. 18-19).

In its stipulation, Zale asserted that:

Prior to July 1, 1969, respondent Zale Corporation and its subsidiaries, with some exceptions (as illustrated by CX 129-138), revised their credit agreements in an effort to comply with the Truth in Lending Act effective July 1, 1969. (Tr. 17.)

Respondents allege, and the hearing examiner found, that some time after the initiation of the Commission's investigation of Zale Corporation, Zale again changed the form of its retail installment contract and periodic billing statement. Zale Corporation offered into evidence new revised forms of a retail installment contract which it claimed had gone into use throughout its Zale Store Division on January 31, 1970 (ZX 22; Tr. 18). It also offered into evidence a revised periodic statement form which it also claimed had gone into use throughout Zale's Fine Jeweler's Guild after January 31, 1970 (ZX 24, Tr. 19).

Zale Corporation admitted in its stipulation the complaint's allegation that it "controls numerous wholly-owned subsidiaries, one of which is respondent Corrigan-Republic, and respondent Zale Corporation formulates, directs and controls the acts and practices of respondent Corrigan-Republic, including the acts and practices hereinafter set forth" (C 2; Tr. 20).

Zale Corporation also stipulated that both Zale and Corrigan-Republic regularly advertised for the extension of consumer credit (Tr. 36). The total Zale network expenditures for advertising Zale's merchandise offered for retail sale in fiscal 1969 (ending March 31) amounted to \$10,240,000, 70% of which was for newspaper ads (Tr. 36).<sup>7</sup>

<sup>7</sup> This figure does not include advertising for the Butler Shoe Division since Butler Shoe and its subsidiaries were not acquired until September 11, 1969. Sporting goods and furniture are similarly excluded (Tr. 36).

Figures submitted for the advertising budgets of five individual Zale retail outlets ranged from \$5,000 to \$15,000 (Tr. 37-38). The stores involved were wholly owned subsidiaries of respondent Zale in Zale's Jewelry Store and Retail Marketing Divisions (Tr. 37-38).

## III

## The Necessity for and Scope of Remedial Action

It is against the background of this corporate organization that respondents' arguments with respect to the proper reach of the order must be evaluated. Respondents urge three arguments as to why an order should not issue here. First, Zale Corporation argues that the need for an order is moot and lacks public interest; second, if an order is deemed necessary, Zale argues that the notice order entered by the hearing examiner is improper as reaching too broadly into respondents' corporate hierarchy and applying to practices beyond those challenged in the complaint. We will deal with each of these arguments *seriatim*.

## A. The Issues of Abandonment and Mootness

Respondents argue that the alleged violations had already been abandoned by them before the complaint in this matter issued. Moreover, they contend that an order is unnecessary here since respondents' violations were essentially due to their unfamiliarity with the Act's requirements which had only gone into effect a short time before the Commission's investigation (RRB 4).

The hearing examiner considered these two arguments and rejected them as both factually and legally unwarranted (ID 1221-22). Our reading of the record and the applicable case law convinces us that the hearing examiner was correct in his rejection of these arguments.

The Truth in Lending Act was passed on May 29, 1968, to become effective thirteen months later, on July 1, 1969. Regulation Z, the implementing regulation, was issued in final text on February 10, 1969, after all members of the public had had an opportunity to consider it and propose revisions or make other comments. In addition to the publication of the text of Regulation Z, the Federal Reserve Board also published a pamphlet entitled, "What You Should Know About Regulation Z" which contained sample contracts and statements to further guide the industry as to the interpretation of the Act. The record does not reflect the date of the Commission's initiation of the investigation of respondents. The Commission's complaint, however, was first sent to respondents in October 1969, three months after the date the Act went into effect, nine months after Regulation Z was promulgated and seventeen months after the Act was passed. The complaint was formally served on respondents in March 1970. It was in this intervening period between October 1969,

and March 1970, when the claimed revisions to respondents' credit papers were effected.

We do not believe that respondents can seriously contend that they had not been given sufficient time within which to bring their credit forms and practices into conformity. Indeed, respondents admit that they were aware of the Act's provisions and had made revisions in some of their contract forms and credit statements prior to July 1969, the effective date of the Act. They made further revisions "after [they] were advised by the staff of the Federal Trade Commission" (RRB 3).

It is well established that the mere fact that the offending practices have been discontinued prior to the issuance of a complaint does not provide, by itself, the requisite assurance that an order is unnecessary and not in the public interest. As the courts have noted, it is the timing and circumstances of the claimed abandonment which is of importance to the issue of the necessity for an order. Where, as here, the abandonment took place only after the Commission's hand was on the respondent's shoulder, the courts are clear that abandonment of the practices under such circumstances will not support a conclusion that the practices will not be resumed.<sup>8</sup>

Moreover, in the instant case, the examiner found that, contrary to respondents' assertions of abandonment, in fact, some parts of respondents' newly revised forms issued in January 1970, three months after the Commission's complaint was first sent to respondents, were still in violation since they failed to provide the prescribed notice on the first page (ZX 22; ID 1217-18, 1221).

The violations charged did not involve isolated and minor departures from the disclosure requirements of the statute. Rather, they embraced 13 different instances in which respondents' installment contracts failed to make the disclosures required by the statute and six instances in which respondents' open-end statement contained similar deficiencies. Respondents' retail sales of jewelry are national in scope. Their contract forms found to have been in violation of the Act were used extensively throughout the Zale Corporation organization.

We conclude, therefore, that an order is necessary in this case in order to ensure that the offending practices will not be resumed.

<sup>8</sup> See, e.g., *Eugene Dietzgen Co. v. F.T.C.*, 142 F. 2d 321, 330 (7th Cir. 1944); *F.T.C. v. Goodyear Tire & Rubber Co.*, 304 U.S. 257, 260 (1938); *Art National Mfg. Dist. Co.*, 58 F.T.C. 719, 724 (1953).

## B. The Scope of the Order

We turn next to respondents' contentions that the examiner's order is improper and its scope too broad.

Respondents' first contention is that the order's prohibitions go beyond the precise practices found to have violated the statute and are, therefore, improper (RRB 6).

The order proposed by the examiner is not, as respondents suggest, a broad undifferentiated order simply prohibiting respondents from violating the statute or the regulation irrespective of whether the particular provision applies to the type of business in which respondents are engaged. Rather, the examiner's order is carefully limited to those full sections of the implementing regulation that regulate the specific kinds of practices in which respondents have been shown to be engaged. The order prohibitions are carefully tailored to exclude any section of this regulation which bears no relationship to the practices of Zale Corporation and its network of subsidiaries.<sup>9</sup>

It is clear that the Act and the Regulation establish a comprehensive regulatory scheme designed to ensure that creditors make full disclosure of all of the various terms involved in credit transactions which they enter into or offer to prospective customers.

Respondents' violations of the Act were extensive and went to the heart of the statute. For example, in the use of the periodic statement, respondents failed to disclose the terms "payments," "periodic rates" and "new balance," which were mandated by the Regulation. It is not unreasonable, therefore, in order to ensure future compliance with the statute, to extend the order prohibitions to other disclosure terms mandated by the Act and Regulation, such as the "annual percentage rate," "finance charge" or "previous balance" (§ 226.7). Where the respondents have admitted, as here, to failing to disclose the terms and conditions of credit in their proper place, i.e., clearly and conspicuously and in meaningful sequence, under

<sup>9</sup> The examiner's order includes within its prohibitions three full sections of Regulation Z. These sections embrace the practices in which respondents admittedly engaged and in which there were admitted violations. These sections also cover the types of practices in which respondents' activities are concentrated. For example, Section 226.7 governs the specific disclosure requirements for credit other than open end. The retail installment contract of the Zale Store Division owned by the Zale Corporation falls directly under this section. Section 226.8 governs the specific disclosure requirements for open end credit. The periodic statement of Corrigan-Republic which was used throughout the Fine Jewelers Guild Division, owned by the Zale Corporation, falls under this section. Section 226.6 sets out the general disclosure requirements of type, size, and placement that ties into the other two sections (ID 1227).



§ 226.6(a), it likewise seems not unreasonable to include in the order § 226.7(a), which mandates the specific time in credit transactions when disclosures should be made.

The same point comparison can be made for § 226.8 (credit other than open end) and respondents' retail installment contract. A respondent who has failed to disclose "cash down payment" and "unpaid balance of cash price" is just as likely to fail to disclose "annual percentage rate" or "total down payment." A respondent who has failed to disclose the method of computing the unearned portion of the finance charge after prepayment, may be just as likely to fail to disclose the method of computing the charge for delinquency. It is unnecessary for the Commission to pick through these sections that regulate the point-of-sale credit disclosures and the monthly statement credit disclosures and discuss which subsections are related to respondents' practices and which are not.

In addition, the order includes in the general prohibitory provision § 226.10, which deals with advertising of credit terms. While there are no allegations or proof of violations of this section in the record, the parties have stipulated that there is extensive corporate activity throughout the Zale network in the field of advertising (Tr. 36-37).

Respondents' advertising is just as important to their business as their extension of credit. The respondents have advertised extensively throughout the period covered by the complaint (Tr. 36-37). The advertising provision of the Truth in Lending Act and Regulation Z are directly parallel to the other substantive sections which require disclosures. Wherever applicable, the same terminology mandated in the contract forms is mandated in the advertising. Given the purpose of the statute, to enhance competition among financial institutions and other firms extending consumer credit and to increase the informed use of credit by consumers (§ 102, Title I), and the structure of the regulation, the advertising provisions of the Act are clearly part and parcel of the general disclosure scheme.

The advertising is the first contact with the consumer. The accuracy of such advertising in the specific terminology of the statute is imperative if the statute is to foster competition. These respondents have failed to make the necessary disclosures mandated by the Act and regulation on the contracts and statements, when they already had the consumer in the store and ready to buy. In these circumstances, we believe simply to require the disclosures under the Act on the written contracts and not to include the mandated disclosures in their advertising of credit terms within the order prohibition

would be to leave open to the respondents an opportunity to entice customers into their stores without the previous benefit of the Truth in Lending disclosures to aid the consumer in evaluating the credit terms and price.

We agree with the examiner that the order to be entered here must extend beyond the precise dimensions of the practices here found to have violated the law. Respondents are engaged in a nationwide business of selling jewelry and other merchandise through more than 1,000 retail outlets. Their aggregate sales totaled \$384 million, one third of which involved the extension of credit. Their advertising budget for fiscal 1969 amounted to \$10 million, 70 percent of which was placed in newspapers.

It is well settled that in framing the remedy which the Commission believes is essential in a matter, the Commission is in no way limited to a prohibition of the illegal practice in the precise form in which it was found in the past. As the Supreme Court held in *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952):

If the Commission is to attain the objectives which Congress envisioned, it cannot be required to confine the road block to the narrow lane the transgressor has traveled, it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.

We conclude that the substantive scope of the order proposed by the examiner is reasonable. Nor do we believe that the need for the type of order entered here is in any way minimized because of the alleged complexities of the provisions of the law and the regulation. As respondents have pointed out, the Federal Reserve Board is constantly issuing interpretations to ease whatever burdens may arise for industry members in complying with the Act. Moreover, the respondents, in addition, have available to them the Commission's advisory opinion procedures should any particularly complex question of interpretation arise.

Respondents, however, also argue that the examiner's proposed order is improper because it reaches beyond respondents and extends also to respondents' subsidiaries (RRB 4). We agree with the examiner that this argument too is wholly without factual basis and legal justification and must be rejected.

Zale Corporation admits that it formulates the acts and practices of its subsidiary, respondent Corrigan-Republic (RRB 8). It admits its stock ownership of the vast network of its subsidiaries and sub-subsidiaries (RRB 2). It admits its administration of these subsidiaries and sub-subsidiaries through its three operating divisions, each of which is presided over by one of its group vice presidents. It also

admits the propriety of the binding effect of the order on the three operating divisions, as well as on those of its retail outlets within these divisions which are part of its organization and not separately incorporated.<sup>10</sup> Zale has also admitted that after the enactment of the Truth in Lending Act, it and its subsidiaries revised and reissued their credit agreement forms (RRB 3).<sup>11</sup> Indeed, one of its arguments during this proceeding, and reiterated on its appeal before the Commission, was that it needed time in order to complete these revisions in view of the size of its marketing organization (RRB 7). The record is clear that the form of retail installment contract found here to have been in violation of the Act was in use throughout at least the respondent Zale Store Division which was responsible for the retail operation of 468 corporate subsidiaries and 13 directly operated retail outlets.

We find nothing in the record which demonstrates or even suggests that respondent Zale Corporation was not entirely in control of the marketing operations of all of its retail outlets, irrespective of whether they were incorporated or unincorporated. Indeed, respondent Zale agrees that the order is properly binding on its unincorporated retail outlets which are organizationally operated by two of its marketing divisions, along with other retail outlets in these divisions which are incorporated as wholly-owned subsidiaries or sub-subsidiaries. Yet, respondent cites nothing in the record to indicate that the control of its three marketing divisions over the retail outlets for which each is responsible, differs in any way in terms of whether these outlets are incorporated or unincorporated. Nothing in the record suggests that Zale made any distinction in its treatment or organizational structure between those of its outlets which were incorporated and those which were not. Indeed, the record makes *clear* that Zale totally intermixed—apparently quite indiscriminately—its incorporated and unincorporated retail outlets within its three operating divisions. Thus, it admits controlling the acts and practices of respondent Corrigan-Republic which was simply one of 133 corporate subsidiaries operated by its Fine Jeweler's Guild Division (Tr. 20). Executed copies of the same credit forms on which the violations were based were introduced into evidence as having been used both by Zale Corporation's directly operated retail outlets as well as by its incorporated retail outlets (Tr. 17-18). Moreover, the record indicates that the same personnel in charge of

<sup>10</sup> These directly operated non-incorporated retail outlets include some 87 department stores and 13 jewelry stores.

<sup>11</sup> See page 1238, *supra*.

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## Complaint

the incorporated retail outlets are also in charge of the operating division to which each reports, thus providing further evidence of the identity which exists between all parts of the Zale network irrespective of the interposition of corporate structures in some of these network members.

The hearing examiner carefully considered respondents' argument that the order should not properly apply to respondent Zale Corporation's subsidiaries. He rejected the argument as not borne out by the evidence (ID 1204, 1222). We agree with the examiner's conclusion.

We conclude, therefore, that the decision and order proposed by the hearing examiner is fully supported by the evidence and should be sustained.

## FINAL ORDER

This matter being before the Commission on respondents' appeal upon briefs from the hearing examiner's initial decision; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the aforesaid appeal should be denied;

*It is ordered,* That the initial decision of the hearing examiner, modified to the extent necessary to conform to the views expressed in the accompanying opinion, be, and hereby is, adopted as the decision of the Commission.

## IN THE MATTER OF

## GAMBLE-SKOGMO, INC.

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

*Docket C-1944. Complaint, June 14, 1971—Decision, June 14, 1971*

Consent order requiring a Minneapolis, Minn., national merchandising company to cease fixing and maintaining prices to be charged by one of its women's and children's ready-to-wear dealers and requiring them to handle only respondent's products.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been, and is now, violating the provisions of Section 5

of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. 45) and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Gamble-Skogmo, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its principal executive offices are at 5100 Gamble Drive, Minneapolis, Minnesota. Respondent and its merchandising subsidiaries sell household, automotive and personal merchandise, *inter alia*, at retail through company-owned stores, through mail-order catalogs and at wholesale to independent dealers. Gamble-Skogmo's gross sales for the 53 weeks ending January 31, 1970, were \$1,257,580,000. In 1969, respondent was the fourteenth largest retailing company in the United States.

In January 1966, Gamble-Skogmo merged with Founders Incorporated, a Delaware corporation. By means of this merger, Gamble-Skogmo acquired control over and ownership of Mode O'Day Company, a division of Founders Incorporated and Mode O'Day Frock Shops of Hollywood, a subsidiary of Founders Incorporated. Since January 1966, Mode O'Day Company has operated as a division and Mode O'Day Frock Shops of Hollywood has operated as a subsidiary of Gamble-Skogmo, with their principal offices located at 2130 North Hollywood Way, Burbank, California. On January 30, 1971, Mode O'Day Frock Shops of Hollywood was merged into Gamble-Skogmo.

Gamble-Skogmo's division, Mode O'Day Company, manufactures a low-priced line of dresses, lingerie and sportswear in nine factories located in Illinois, Missouri, California, Iowa, Kansas, Nebraska and Utah. In addition to the manufactured items, Mode O'Day Company purchases certain ladies accessories from other manufacturers. This merchandise is sold by approximately 660 dealer stores located in approximately 29 States and also is sold by approximately 55 company-owned stores. Sales for the 53 weeks ending January 31, 1970, for Mode O'Day Company, a division of respondent Gamble-Skogmo, were approximately \$30,000,000.

PAR. 2. Mode O'Day dealers are individuals, partnerships or corporations carefully selected by respondent for the purpose of selling to the public merchandise under the Mode O'Day name. Respondent selects store sites, grants each dealer a license to use the Mode O'Day name as his trade name at a particular location, negotiates lease agreements, improves and fixtures the premises, provides accounting systems, advertising, displays and other services, and supplies on

consignment various types and quantities of merchandise preticketed with retail prices.

The dealer pays the respondent for the lease improvements and fixture costs advanced by respondents; takes delivery of merchandise from respondent under the terms of a "License and Consignment Agreement" under which title to the merchandise remains in the respondent until sold by the dealer; pays for the merchandise upon sale, if sold; pays certain operating expenses, including rent, utilities and insurance, and bears certain risks normally associated with an independent businessman; but other such risks, including the risks of unsold merchandise, markdowns, and damaged or out-of-season goods, are borne by respondent.

The typical Mode O'Day dealer occupies a store with a small square footage. The majority of the approximately 660 dealers are women, such as retired school teachers, widowed ladies, former employees of dress shops and department stores, who are desirous of operating their own business.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent has caused and now causes various products to be shipped and transported from states of manufacture to its stores located in states other than the states where said shipments originate.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated, as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, distribution and sale of products similar to those described hereinabove.

PAR. 5. Respondent, in combination, agreement, understanding and conspiracy with its Mode O'Day dealers, is now and for the last several years has been establishing, maintaining and pursuing a planned course of action which:

- (a) Fixes and maintains certain specified prices at which respondent's products are sold to the public;
- (b) Prevents its Mode O'Day dealers from selling or dealing in products of a competitor or competitors of respondent.

PAR. 6. By means of all the aforesaid acts and practices, and more, respondent in combination, agreement, understanding and conspiracy with its Mode O'Day dealers, establishes, maintains and pursues a planned course of action to fix and maintain prices at which respondent's products will be resold; and prevents dealers from selling or dealing in the products of respondent's competitors.

PAR. 7. The acts and practices of respondent by and through combining, agreeing, understanding, and conspiring with its Mode O'Day dealers, as hereinabove described, for the last several years has been and is now having the effect of hindering, lessening, restricting, restraining and eliminating competition in the sale of respondent's products; and constitutes unfair methods of competition in commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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

1. Respondent Gamble-Skogmo, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5100 Gamble Drive, Minneapolis, Minnesota. Mode O'Day Company, with its office and principal place of business located at 2130 North Hollywood Way, Burbank, California, is a division of respondent, Gamble-Skogmo, Inc.

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

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## Decision and Order

## ORDER

## I

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

1. Entering into any agreement, combination, understanding, or conspiracy with any Mode O'Day dealer which fixes or maintains or has the effect of fixing or maintaining prices to be charged by Mode O'Day dealers for any product.

2. Entering into any agreement, combination, understanding, or conspiracy with any Mode O'Day dealer which requires or has the effect of requiring, any Mode O'Day dealer to purchase, distribute, or sell only products manufactured, sold or supplied by the respondent.

This order shall not prevent respondent from operating under fair trade agreements, where applicable and legal.

## II

*It is further ordered,* That within forty-five (45) days from the issuance of this order that respondent shall notify each Mode O'Day dealer by letter that:

(1) He is free to obtain merchandise of the type customarily sold in women's and children's ready-to-wear stores from any source of his selection and to sell it in the same store in which Mode O'Day merchandise is sold; provided that the dealer shall identify such merchandise as non-Mode O'Day-supplied merchandise; and

(2) He is free to sell Mode O'Day products at any price he wishes; subject, only, to products being sold under any lawful fair trade program.

## III

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

## IV

*It is further ordered,* That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries



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

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

IN THE MATTER OF

## CHEMWAY CORPORATION

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

*Docket C-1945. Complaint, June 14, 1971—Decision, June 14, 1971*

Consent order requiring a Wayne, N.J., manufacturer of toothbrushes to cease misrepresenting that any of its toothbrushes will prevent infectious diseases of the oral cavity and using any chemical substance on its brushes unless it can adequately demonstrate that no harm to the user is involved.

## 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 Chemway Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that 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 Chemway Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Fairfield Road in the city of Wayne, State of New Jersey.

PAR. 2. Respondent Chemway Corporation is now and for some time last past has been engaged in the sale and distribution of Dr. West's "Germ Fighter" toothbrush.

PAR. 3. Respondent Chemway Corporation causes said product, when sold, to be transported from its place of business located in the

State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. This respondent maintains a course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of Dr. West's "Germ Fighter" toothbrush, respondent has advertised said Dr. West's "Germ Fighter" toothbrush by means of TV broadcasts transmitted by stations located in the District of Columbia, and in various States of the United States having sufficient power to carry such broadcasts across State lines, in which certain representations were made with respect to Dr. West's "Germ Fighter" toothbrush, for the purpose of inducing, and which is likely to induce, directly or indirectly, the purchase of such product.

PAR. 5. Among and typical of the representations contained in said advertising is the following:

Citizens, throw away your toothbrushes. They're crawling with germs, things like Staphylococcus Aureus and Streptococcus Pyogenes. As soon as you crack a toothbrush out of its plastic case, the collection starts. And by the time you brush a few times there may be millions of germs \* \* \* Buy the Germ Fighter toothbrush by Dr. West's. It's treated with a compound that inhibits the growth of germs at least four months.

PAR. 6. Through the use of said advertisements and others similar in nature, but not specifically set out herein, respondent has represented, and does now represent, directly or by implication, that the antibacterial property of the Dr. West's "Germ Fighter" toothbrush is of medical significance in the mitigation or prevention of infectious diseases of the oral cavity.

PAR. 7. In truth and in fact, the antibacterial property of Dr. West's Germ Fighter toothbrush is of no medical significance in killing germs likely to cause infectious diseases of the oral cavity, and use of such product has no significant effect in the mitigation or prevention of infectious diseases of the oral cavity.

Therefore, the advertisements referred to in Paragraphs Four and Five above were and are false, misleading and deceptive.

PAR. 8. The nylon bristles and handle of the Dr. West's "Germ Fighter" toothbrush have been treated with a solution of phenylmercuric acetate, which may be leached off and ingested during normal brushing. The placing of such product on the market which has little or no recognized therapeutic benefit and which may constitute a

danger to the consumer by adding to the body's burden of mercury is an unfair trade practice.

PAR. 9. Respondent at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of toothbrushes of the same general kind and nature as that sold by respondent.

PAR. 10. The use by respondent of the aforesaid advertisements and the false, misleading and deceptive representations used in connection therewith has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of respondent's product by reason of said erroneous and mistaken belief.

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

#### DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a pe-

## Decision and Order

riod of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent Chemway Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at Fairfield Road, Wayne, New Jersey.

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

## ORDER

## I

*It is ordered,* That Chemway Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Dr. West's Germ Fighter toothbrush, or any other dental product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such product is effective in the mitigation or prevention of infectious diseases of the oral cavity.

2. Incorporating phenylmercuric acetate or any other chemical substance onto any such product or selling any such product containing any such substance unless respondent can show through adequate and well-controlled studies that use of the product in the ordinary and intended manner does not constitute a danger to the user.

## II

*It is further ordered,* That respondent, Chemway Corporation, instruct each of its direct customers that they have an opportunity to return their stock of Dr. West's Germfighter toothbrushes in exchange for an equal number of untreated brushes.

## III

*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 respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate

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

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

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IN THE MATTER OF

RON-EL BUILDERS, INC., ET AL.

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

*Docket C-1946. Complaint, June 15, 1971—Decision, June 15, 1971*

Consent order requiring Pittsburgh, Pa., sellers and distributors of home improvements, including residential siding, to cease using bait advertising, false pricing claims, deceptively guaranteeing its work, and making other false representations; respondents are also required to cease violating the Truth in Lending Act by failing to disclose the annual percentage rate, the amount financed, the deferred payment price, the total of payments, and other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Ron-El Builders, Inc., a corporation, and Elliotte L. Greenberg, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the 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 Ron-El Builders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 4209 Penn Avenue, Pittsburgh, Pennsylvania.

Respondent Elliotte L. Greenberg is an officer of the corporate re-

## Complaint

spondent. 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 home improvements, including residential siding, and in the installation thereof.

## COUNT ONE

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

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products and installations, respondents and their salesmen or representatives have represented, and now represent, directly or by implication, in advertising and promotional material and in oral solicitations to prospective purchasers, that:

1. The offer set forth in respondents' advertisements was a bona fide offer to sell home improvements of the kind therein described at the prices and on the terms and conditions stated.

2. Respondents' products and installations are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondents' regular selling prices.

3. Homes of prospective purchasers had been specially selected as model homes for the installation of respondents' siding; after installation such homes would be used for demonstration and advertising purposes by respondents; and, as a result of allowing their homes to be used as models, purchasers would be granted reduced prices or would receive allowances, discounts or commissions.

4. Their siding materials are unconditionally guaranteed.

5. Respondents operate business offices in Toronto, Ohio and Allison Park, Pennsylvania.

6. Respondents manufacture the home improvement products which they sell and install, and respondents sell and install their home improvement products direct from their factory.

PAR. 5. In truth and in fact:

1. The offer set forth in respondents' advertisements was not a genuine or bona fide offer but was made for the purpose of obtaining leads as to persons interested in the purchase of respondents' products and installations. After obtaining such leads, respondents or their salesmen or representatives would call upon such persons at their homes or wait upon them at respondents' place of business. At such times and places, respondents, their salesmen or representatives would disparage the advertised home improvements and otherwise discourage the purchase thereof and would attempt to sell, and in many instances, did sell different and more expensive home improvements.

2. Respondents' products and installations are not being offered for sale at a special or reduced price and savings are not granted respondents' customers because of a reduction from respondents' regular selling price. In fact, respondents do not have a regular selling price but the price at which respondents' products and installations are sold vary from customer to customer depending on the resistance of the prospective purchaser.

3. Homes of prospective purchasers are not specially selected as model homes for installation of respondents' siding; after installation such homes are not used for demonstration and advertising purposes by respondents; and purchasers, as a result of allowing their homes to be used as models, are not granted reduced prices, nor did they receive allowances, discounts or commissions.

4. Respondents' siding materials and installations are not unconditionally guaranteed. Such guarantee as may have been provided was subject to numerous terms, conditions and limitations, and the guarantee failed to set forth the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor would perform thereunder.

5. Respondents do not operate business offices in either Toronto, Ohio or Allison Park, Pennsylvania.

6. Respondents do not manufacture the home improvement products which they sell and install and respondents do not own a factory from which their home improvement products are shipped.

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

PAR. 6. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their home improvement products and installations, including residential siding materials, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

1. Respondents and their salesmen or representatives have obtained purchasers' signatures on blank completion certificates and other instruments by making false and misleading representations and deceptive statements, including false and deceptive representations with respect to the nature and effect of such documents, to hurry purchasers into signing said instruments.

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

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

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 of home improvements, including residential siding, of the same general kind and nature as that sold by respondents.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products 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.



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## COUNT TWO

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count Two as if fully set forth verbatim.

PAR. 10. 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. Further, in the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their goods and services, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods or services.

PAR. 11. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing their customers to execute retail installment contracts, hereinafter referred to as "the contract."

PAR. 12. By and through the use of the contract, respondents:

1. In a number of instances fail to disclose the annual percentage rate, and in other instances fail to disclose the annual percentage rate to the nearest quarter of one percent, computed as prescribed by Section 226.5(b)(1) of Regulation Z, as required by Section 226.8(b)(2), of the aforementioned Regulation.

2. Fail to disclose accurately the sum of the unpaid balance of cash price and all other charges, individually itemized, which are part of the finance charge, and to describe that sum as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

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

4. Fail to disclose accurately the sum of all charges required to be disclosed by Section 226.4 of Regulation Z, and to describe that sum as the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

5. Fail to disclose the identity of the creditor, as required by Section 226.8(a) of Regulation Z.

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

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

8. Fail to disclose the cost of credit life insurance purchased by the customer, and fail to obtain a separate signed and dated statement that the customer desires to purchase credit life insurance, when not required by the creditor, as required by Section 226.4(a)(5)(ii) of Regulation Z.

9. Fail to maintain evidence of compliance with Regulation Z for two years after the date of each disclosure, as required by Section 226.6(i) of Regulation Z.

10. Retain a security interest in property in connection with their credit sales, and fail to describe the type of security interest retained and fail to describe or identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

PAR. 13. By and through the use of the contract, as set forth in Paragraph Eleven above, respondents retain or acquire a security interest in real property which is used or is expected to be used as the principal residence of the customer. The customer thereby has the right to rescind the transaction, as provided in Section 226.9(a) of Regulation Z. Having consummated a rescindable credit transaction, respondents:

1. Fail to provide each customer who has the right to rescind with two copies of the notice prescribed by Section 226.9(b) of Regulation Z, as required by that section. In some instances, respondents fail to provide customers who have the right to rescind with any copies of the required notice.

2. Make physical changes in the property of the customer and perform work and services for the customer before the rescission period provided in Section 226.9(a) of Regulation Z has expired, in violation of Section 226.9(c) thereof.

PAR. 14. Pursuant to Section 103(k) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

Decision and Order

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## DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 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 Ron-El Builders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 4209 Penn Avenue, Pittsburgh, Pennsylvania.

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

2. 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 Ron-El Builders, Inc., a corporation, and its officers, and Elliott L. Greenberg, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or

distribution or installation of home improvements, including residential siding, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of other merchandise or services.
2. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.
3. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale.
4. Representing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.
5. Representing, directly or by implication, that any price for respondents' products and installations is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products and installations have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.
6. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraph Five of this order are based, and (b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraph Five of this order can be determined.
7. Representing, directly or by implication, that the home of any of respondents' customers, or prospective customers, has been selected to be used or will be used as a model home, or otherwise, for advertising purposes.
8. Representing, directly or by implication, that any allowance, discount or commission is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed to be used for model homes or demonstration purposes.

9. Representing, directly or by implication, that any of respondents' products and installations are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such guarantee.

10. Representing, directly or by implication, that respondents operate or maintain business offices in Toronto, Ohio or Allison Park, Pennsylvania, or any other locality where such offices are not actually open and fully operative; or misrepresenting, in any manner, the size or extent of respondents' business.

11. Representing, directly or by implication, that respondents manufacture any of the home improvement products which they sell and install, or that respondents sell their home improvement products directly from their factory; or misrepresenting, in any manner, the nature or scope of respondents' business.

12. Inducing or causing purchasers or prospective purchasers of respondents' products or services to sign blank or partially filled in completion certificates or other legal instruments or documents; or misrepresenting, in any manner, the true nature or effect of such documents.

13. Assigning, selling or otherwise transferring respondents' notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other documents evidencing the indebtedness.

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

"Notice"

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

*It is further ordered*, That respondents Ron-El Builders, Inc., a corporation, and its officers, and Elliotte L. Greenberg, individually and as an officer of said corporation, and respondents' agent, representatives and employees, directly or through any corporate or other

device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do cease and desist from:

1. Failing to disclose the annual percentage rate computed to the nearest quarter of one percent in accordance with Section 226.5(b)(1) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Failing to disclose accurately the sum of the unpaid balance of cash price and all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, and to describe that sum as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

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

4. Failing to disclose accurately the sum of all charges required by Section 226.4 of Regulation Z, and to describe that sum as the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

5. Failing to disclose the identity of the creditor, as required by Section 226.8(a) of Regulation Z.

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

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

8. Failing to disclose the cost of credit life insurance purchased by the customer, and failing to obtain a separate signed and dated statement that the customer desires to purchase credit life insurance, when not required by the creditor, as required by Section 226.4(a)(5)(ii) of Regulation Z.

9. Failing to maintain evidence of compliance with Regulation Z for two years after the date of each disclosure, as required by Section 226.6(i) of Regulation Z.

10. Failing to describe the type of any security interest retained in property in connection with any credit sale, and to describe or identify the property to which that security interest relates as required by Section 226.8(b)(5) of Regulation Z.

11. Failing to provide each customer who has the right to rescind a credit sale with two copies of the notice prescribed by Section 226.9(b) of Regulation Z, as required by that section.

12. Making any physical changes in the property of the customer who has the right to rescind, or performing work on premises for any customer who has the right to rescind, before expiration of the rescission period, as required by Section 226.9(c) of Regulation Z.

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

*It is further ordered,* That respondents herein shall, within sixty days after service upon them of this order, deliver notice of right to rescind, in the number, manner and form set forth in Section 226.9(b) of Regulation Z, to each customer who purchased products from respondents on or after July 1, 1969, in any credit transaction in which the respondents have retained or acquired or will retain or acquire a security interest in real property which is used or is expected to be used as the customer's principal place of residence.

*It is further ordered,* That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale or sale of respondents' products or services, 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 the receipt of said order from each such person.

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

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

## Complaint

IN THE MATTER OF

## COMMUNITY HEARING CENTER, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-1947. Complaint, June 17, 1971—Decision, June 17, 1971*

Consent order requiring a Providence, R.I., seller and distributor of hearing aids to cease advertising that any hearing aid is a new invention, or making other claims without disclosing that some individuals will not be benefited, misrepresenting that its hearing aids are guaranteed, failing to disclose that the firm is selling hearing aids, and misrepresenting in any manner the purpose of the business or the efficacy of its products.

## 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 Community Hearing Center, Inc., a corporation, and Edward J. McElroy, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Community Hearing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 69 Empire Street, in the city of Providence, State of Rhode Island.

Respondent Edward J. McElroy is an individual and 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 69 Empire Street, in the city of Providence, State of Rhode Island.

PAR. 2. Respondents, under the trade or assumed name of Community Hearing Center, Inc., are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of hearing aids which come within the classification of "device" as the term "device" is defined in the Federal Trade Commission Act. Respondents do not manufacture said devices but purchase them from one or more manufacturers.



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

PAR. 4. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning their said devices by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to advertisements inserted in newspapers and other advertising media for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices; and have disseminated, and caused the dissemination of advertisements concerning said devices by various means, including, but not limited to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

MODEL OF NEW HEARING AID GIVEN. . . . Here is truly new hope for the hard of hearing.

American and Japanese engineering has produced a new Hearing Miracle.

Now Undreamed of Hearing Help \* \* \* Now everyone can have the hearing help they have always dreamed of. \* \* \*

HEAR CLEARLY AGAIN With Nothing in Either Ear. . . . Thousands of people who suffered from hearing loss are amazed and delighted to discover that, at last, they can hear again with almost unbelievable clearness, yet without any embarrassment.

A bone conduction method makes correction of hearing loss as easy as putting on a pair of attractive glasses. \* \* \*

Worn ALL-IN-EAR . . . NO WIRES . . . Hides Under a dime. \* \* \*

Its Here! The amazing new HEARING AID. \* \* \* So Tiny it hides completely in your ear. \* \* \* So powerful just slip it in and hear instantly. SIZE miniaturized so nothing shows. . . .

This hearing invention has no buttons, no tubes, no bulky batteries. You may wear it without your closest friend realizing its a hearing aid unless you tell them. \* \* \*

. . . a new Hearing Aid that automatically eliminates unpleasant background noises. \* \* \*

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## Complaint

PAR. 5. By and through the use of said advertisements, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that:

1. They merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.
2. Their hearing aids will be beneficial regardless of an individual's type and/or degree of hearing impairment.
3. They merchandise a hearing aid utilizing bone-conduction principles which will be beneficial to an individual regardless of the type and/or degree of the individual's hearing impairment.
4. The hearing aids will enable an individual to consistently distinguish and understand sounds in group situations or when background noise is present.
5. Their hearing aids are invisible or indiscernible when worn.

PAR. 6. In truth and in fact:

1. They do not merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.
2. Their hearing aids will not be beneficial to all individuals with a hearing impairment.
3. They do not merchandise a hearing aid utilizing bone-conduction principles which will be beneficial to an individual regardless of the type and/or degree of the individual's hearing impairment.
4. Their hearing aids will not enable individuals with hearing impairments to consistently distinguish and understand sounds in group situations or when background noise is present.
5. The hearing aids they merchandise are not invisible or indiscernible when worn.

Therefore, the advertisements referred to in Paragraphs Four and Five were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act; and the aforesaid statements and representations referred to in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the purchase of their hearing devices, respondents have represented that the hearing devices they merchandise are unconditionally guaranteed.

In truth and in fact said hearing devices merchandised by respondents are not unconditionally guaranteed, but, to the contrary, said guarantee is conditional, and the terms, conditions, identity of

the guarantor, nature and extent of the guarantee and manner in which the guarantor will perform thereunder are not disclosed in conjunction with said guarantee representations.

Therefore, the aforesaid guarantee representation is false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, respondents, through the use of advertisements disseminated by advertising mailers, newspapers and other publications, invite individuals who believe they may be suffering from impaired hearing to submit their names to respondents for the purpose of receiving free helpful information, free gifts, or certain devices at discount prices, relative to their hearing problem without obligation of any nature. Respondents through advertising disseminated as aforesaid also invite individuals with hearing problems to attend "Hearing Conferences" held monthly in various cities located in Rhode Island and Massachusetts. Such advertising literature contains the inference that the aforesaid "Hearing Conferences" are conducted by respondents as a public service. In addition, respondents, through the use of the aforesaid advertisements, represent that they seek to obtain information for a survey of individuals suffering from impaired hearing by inviting individuals to submit the names of others who may be suffering from impaired hearing.

In truth and in fact respondents' aforesaid representations were not, and are not, bona fide offers to furnish free of charge, helpful information as aforesaid to individuals suffering from hearing disabilities. Respondents are not in the business of performing such advertised acts as a public service, nor are they engaged in a bona fide survey of those suffering from impaired hearing; but, to the contrary, all of the aforesaid representations were and are made by respondents for the purpose of developing sales leads to prospective purchasers of respondents' hearing devices.

Respondents and respondents' sales personnel have contacted individuals whose names were submitted as aforesaid, and respondents and their sales personnel have attempted to sell, and have often sold, such individuals one or more of respondents' hearing devices.

PAR. 9. The dissemination by respondents of the aforesaid false advertisements and the use of the aforesaid false, misleading and deceptive statements, representations and practices have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were and are true and into the pur-

chase of substantial quantities of respondents' devices by reason of said erroneous and mistaken beliefs.

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

#### DECISION AND ORDER

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

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

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

1. Community Hearing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 69 Empire Street, in the city of Providence, State of Rhode Island.

2. Respondent Edward J. McElroy is an individual and 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 69 Empire Street, in the city of Providence, State of Rhode Island.

Decision and Order

78 F.T.C.

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

## ORDER

*It is ordered,* That respondents Community Hearing Center, Inc., a corporation, and Edward J. McElroy, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hearing aids, do forthwith cease and desist from:

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

(a) They merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.

(b) Their hearing aids will be beneficial to individuals with a hearing impairment unless in immediate conjunction therewith it is clearly and conspicuously disclosed that many individuals with a hearing impairment will not benefit from use of a hearing aid.

(c) They merchandise a hearing aid utilizing bone-conduction principles which will be beneficial to individuals with a hearing impairment, unless in immediate conjunction therewith it is clearly and conspicuously disclosed that many individuals with a hearing impairment will not benefit from use of a hearing aid utilizing bone-conduction principles.

(d) Their hearing aids will enable an individual with a hearing impairment to distinguish and understand sounds in group situations or when background noise is present, unless in immediate conjunction therewith it is clearly and conspicuously disclosed that many individuals with a hearing impairment will not receive such benefits from use of a hearing aid.

(e) Their hearing aids are either invisible or indiscernible when worn.

(f) Their hearing aids are guaranteed, unless in immediate conjunction therewith the identity of the guarantor, the

nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(g) Their hearing aids are guaranteed, unless in all instances respondents fully, satisfactorily and promptly perform all of their obligations and requirements under the terms of the guarantee.

2. Disseminating, or causing the dissemination of any advertisement by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which fails to clearly and conspicuously disclose that:

(a) The business of respondents is the sale of hearing aids to the public for a profit.

(b) Persons replying to respondents' advertisements will be contacted by salesmen, or otherwise, for the purpose of inducing them to purchase a hearing aid sold by respondents.

3. Misrepresenting in any manner:

(a) The nature and purpose of their business.

(b) The efficacy of their hearing aids.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of hearing aids in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1 of this order or which fails to comply with the affirmative requirements of Paragraph 2 of this order.

5. Failing to deliver a copy of this order to cease and desist to all operating divisions of the corporate respondent and to all officers, managers and salesmen, both present and future, any other person now engaged or who becomes engaged in the sale of hearing aids as respondents' agent, representative or employee; and failing to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

6. Failing to 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 corporate respondent which may affect compliance obligations arising out of the order.

Recommendations for Final Disposition

78 F.T.C.

*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.

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IN THE MATTER OF

LA SALLE EXTENSION UNIVERSITY

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

*Docket 5907. Complaint, July 18, 1951—Decision, June 24, 1971*

Order modifying an earlier order dated June 29, 1954, 50 F.T.C. 1083, which prohibited a correspondence school offering law courses from misrepresenting that students would be admitted to take bar examinations, by requiring the respondent to disclose in its advertising that its courses alone will not qualify a student for a bar examination.

*Mr. Quentin P. McColgin and Mr. William P. Bergsten* supporting the complaint.

*Dow, Lohnes and Albertson, Wash., D.C., by Mr. Thomas S. Markey, Mr. James A. Treanor, III, and Mr. James D. Monahan* for respondent.

CERTIFICATION OF RECORD OF THE COMMISSION WITH  
RECOMMENDATIONS FOR FINAL DISPOSITION

OCTOBER 19, 1970

PRELIMINARY STATEMENT

On July 18, 1951, the Commission issued a complaint *In the Matter of La Salle Extension University*, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After hearings, the Commission on June 29, 1954 [50 F.T.C. 1083], issued its findings, conclusions and order.

The Commission in issuing its order found that through the use of various statements and representations the respondent represented that students completing its courses of study and qualifying for its degree of Bachelor of Laws were eligible from the standpoint of education and legal training to be admitted to the bar examinations of the respective States.