

Complaint

IN THE MATTER OF

BUY-RITE SALES CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket C-2531. Complaint, Aug. 26, 1974—Decision, Aug. 26, 1974*

Consent order requiring a Union City, N. J., seller and distributor of swimming pools and swimming pool accessories, among other things to cease using deceptive sales plans; disparaging merchandise offered for sale; misrepresenting prices and/or savings available to customers; failing to maintain adequate records to substantiate savings claims; failing to disclose to consumers, in connection with the extension of consumer credit such information as is required by Regulation Z of the Truth in Lending Act; failing to include on the face of instruments of indebtedness a notice that all rights and defenses of purchasers are preserved upon sale to third parties.

Appearances

For the Commission: *John A. Crowley and Eileen Lerman.*
For the respondents: *Morton Kramer, Friedman & Friedman, Jersey City, N.J.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Buy-Rite Sales Corporation, a corporation, and Thomas Payne and Robert D. Blackburn, Jr., individually and as officers of said corporation, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Buy-Rite Sales Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 380 Mountain Road, Union City, N. J.

Respondents Thomas Payne and Robert D. Blackburn, Jr. are individuals and officers of said corporation. They formulate, direct and control the policies, acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of swimming pools and swimming pool accessories. In the course and conduct of their business as aforesaid, respondents negotiate to third parties conditional sales contracts, promissory notes or other instruments of indebtedness executed in connection with credit purchase agreements.

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents cause advertisements designed to secure leads to potential purchasers of swimming pools to be placed in various newspapers and other publications. The respondents are responsible for the content of said advertisements.

PAR. 4. In the further course and conduct of their business as aforesaid, respondents sell and distribute the aforementioned swimming pools and swimming pool accessories by causing said swimming pools and accessories to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States. There is now, and has been, at all times mentioned herein, a substantial and continuous course of trade in said swimming pools and swimming pool accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents and their salesmen or representatives have made statements and representations in advertising and promotional material inserted in newspapers and other periodicals of general interstate circulation.

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

Sensational PRE-SEASON OFFER
 \$589 COMPLETELY INSTALLED NEW 1972 SWIMMING POOL
 22' x 13' Outside Dimension 18' x 12' Swim Area 42" Depth

Sensational PRE-SEASON OFFER
 New 1972 Swimming Pool \$589 COMPLETELY INSTALLED
 8 Other Great Pools to choose from

PAR. 6. In the further course and conduct of their business as aforesaid, and for the purpose of inducing the purchase and installation of

their swimming pools and accessories, respondents and their salesmen or representatives have made, and are now making oral statements and representations to potential purchasers to the effect that their pools will be properly installed and completed by a date certain, that their pools will be used for the purpose of advertising respondents' pools, that respondents' 18' x 32' pool has been advertised in a national magazine at a much higher price than respondents' price, and that potential customers are being offered a special or reduced price.

PAR. 7. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. The offers set out in their advertisements are bona fide offers to sell swimming pools and accessories of the kind therein described and at the prices, and on the terms and conditions therein stated.
2. Their advertised offer of a 22' x 13' swimming pool for \$589 is a special offer made only during the "pre-season" period.
3. Their advertised price of \$589 for a 22' x 13' swimming pool is the only expenditure which a purchaser need make in order to have his pool completely installed.
4. Their swimming pools will be installed by competent, reliable and dependable personnel in a safe, workmanlike manner.
5. The pools will be installed, and usable by a specified date.
6. After the installation of respondents' swimming pool is completed, the purchaser's pool will be used for demonstration and advertising purposes by respondents, and, as a result of agreeing to allow their pools to be used as models, purchasers will be granted reduced prices or will receive allowances, discounts, commissions or referral fees.
7. Respondents' 18' x 32' swimming pool has been advertised in a nationally distributed magazine at a price of \$4995 and, therefore, respondents' customers are being offered a bargain or special price for said pool which would effect a savings amounting to the difference between the nationally advertised price and the price at which the product is being sold.

PAR. 8. In truth and in fact:

1. The offers set out in respondents' advertisements are not bona fide offers to sell swimming pools and accessories of the kind therein described and at the prices or on the terms and conditions therein stated, but are made for the purpose of obtaining leads to persons interested in the purchase thereof. After obtaining such leads, individual respondents Thomas Payne or Robert D. Black-

burn, Jr. or respondents' salesmen or representatives call upon such persons but make no effort to sell the advertised products at the advertised prices but instead disparage the advertised products in such a manner as to discourage their purchase and attempt to sell and frequently do sell different and more expensive swimming pools.

2. The advertised offer of a 22' x 13' swimming pool for \$589 is not a special offer made only during the "pre-season" period. Said pool is advertised regularly at the represented price and on the terms and conditions therein stated.

3. The advertised price of \$589 for a 22' x 13' swimming pool is not the only expenditure which a purchaser must make in order to have his pool completely installed. Said purchaser must bear the cost of ground preparation before installation can begin.

4. The installation of respondents' swimming pools is not, in many cases, performed by competent personnel in a safe, workman-like manner.

5. Respondents, in a substantial number of instances, have failed to complete installation of individual pools by the promised due date.

6. After the installation of respondents' swimming pool is completed, the purchaser's pool will not, in a substantial number of instances, be used for demonstration or advertising purposes by respondents. As a result of allowing, or agreeing to allow their pools to be used as models, purchasers are not granted reduced prices, nor do they receive allowances, discounts, commissions or referral fees.

7. Respondents have not intended and do not intend to sell their 18' x 32' swimming pool at the advertised price of \$4995, but use this price to mislead potential customers into the belief that they are receiving a special or discount price. In fact, respondents do not have regular selling prices, but the prices at which respondents' swimming pools and accessories are sold vary from purchaser to purchaser depending upon the resistance of the particular purchaser.

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

PAR. 9. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their swimming pools and swimming pool accessories, respondents and their

salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Five through Eight, above, respondents or their representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

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

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead 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' swimming pools and swimming pool accessories by reason of said erroneous and mistaken belief.

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

COUNT II

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 II as if fully set forth verbatim.

PAR. 13. In the ordinary course and conduct of their business as aforesaid, respondents regularly arrange and for some time last past have regularly arranged, for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer credit" are 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. 14. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and

310

Decision and Order

are causing their customers to enter into contracts for the sale of respondents' goods and services. On these contracts, hereinafter referred to as "the contract," respondents provide certain consumer credit cost information. Respondents do not provide these customers with any other consumer credit cost disclosures.

PAR. 15. By and through the use of the contract set forth in Paragraph Fourteen, respondents have:

Failed to disclose the annual rate of the finance charge expressed as an "annual percentage rate," as required by Section 226.8(b) (2) of Regulation Z.

PAR. 16. By and through the use of the contract, as set forth in Paragraph Fourteen, respondents retain or acquire a security interest in real property which is 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 have:

Failed, in some instances, to provide customers who have the right to rescind with copies of the prescribed notice of the right to rescind, as required by Section 226.9(b) of Regulation Z.

PAR. 17. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent Buy-Rite Sales Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 380 Mountain Road, Union City, N. J.

Respondents Thomas Payne and Robert D. Blackburn, Jr., are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation. The address of respondent Thomas Payne is 198 Exmore Avenue, Port St. Lucie, Fla. The address of respondent Robert D. Blackburn, Jr. is 486 Liberty Avenue, Jersey City, N. J.

2. Respondents have been served with notice of the Commission's determination to issue its complaint charging them with violation of Section 5 of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulation promulgated thereunder, and with a copy of the complaint the Commission intends to issue, together with a form of order the Commission believes warranted in the circumstances.

ORDER

PART I

It is ordered, That respondents Buy-Rite Sales Corporation, a corporation, its successors and assigns, and Thomas Payne and Robert D. Blackburn, Jr., individually and as officers of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of swimming pools or swimming pool accessories 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 purchase of

swimming pools or any other merchandise or service from respondents.

2. Advertising or offering merchandise for sale for the purpose of obtaining leads or prospects for the purchase of other or different merchandise when the advertised merchandise is inadequate to perform the functions for which it is offered and respondents do not maintain a reasonably adequate and readily available stock of said advertised merchandise.

3. Disparaging any product, merchandise or service which is offered for sale.

4. Representing, directly or by implication, that any product, merchandise or service is offered for sale when such offer is not a bona fide offer to sell such product, merchandise or service.

5. Representing, directly or by implication, that any price for products, merchandise or services sold by respondents is a special, pre-season or sale price, when such price does not constitute a significant reduction from an established selling price at which such products, merchandise or services have been sold in substantial quantities by respondents in the recent, regular course of their business.

6. (a) Representing, in any manner, that by purchasing any of said swimming pools or other products or merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such swimming pools or other products or merchandise have been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of business.

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

(c) Representing, in any manner, that by purchasing any of said swimming pools or other products or merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable swimming pools or other products or merchandise,

unless substantial sales of swimming pools or other products or merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade areas which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with products or merchandise of like grade and quality.

7. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' swimming pools or other products or merchandise.

8. Failing to maintain adequate records (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5, 6(a)-(c) and 7 of this order are based, and (b) from which the validity of any savings claim, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5, 6(a)-(c) and 7 of this order may be determined.

9. Failing to disclose the fact that the quoted price for a swimming pool does not include the cost of ground preparation.

10. Misrepresenting, in any manner, that the pool of any of respondents' purchasers or prospective purchasers will be used for any type of advertising or demonstration purpose or as a model pool or that as a result of such use, respondents' purchasers or prospective purchasers will be granted reduced prices or will receive discounts, referral fees or allowances of any type.

11. Misrepresenting, in any manner, that any swimming pool installation will be completed by a specified date.

12. Failing to incorporate the following statement on the face of all contracts executed by respondents' customers with such conspicuousness and clarity as is likely to be observed, read and understood by the purchaser:

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.

13. Negotiating to a third party, a conditional sales contract, promissory note or other instrument of indebtedness executed in

connection with the purchase of a swimming pool, or any other products or merchandise unless said conditional sales contract, promissory note or other instrument of indebtedness bears a legend to the effect that the third party assignee receives such conditional sales contract, promissory note or other instrument of indebtedness subject to all defenses which the debtor may have against the assignor, where such defense arise from conduct of the assignor which violates the Federal Trade Commission Act or any other law administered by the Federal Trade Commission.

14. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise, which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

15. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

16. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or service from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

Decision and Order

84 F.T.C.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (Name of seller), AT (address of seller's place of business), NOT LATER THAN MIDNIGHT OF _____
I HEREBY CANCEL THIS TRANSACTION. _____ (Date)

(Date)

(Buyer's Signature)

* * * * *

17. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

18. Including in any sales contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

19. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

20. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

21. Failing or refusing to honor any valid notice of cancellation by a buyer within 10 business days after receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

22. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

23. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or abandon any shipped or delivered goods.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

PART II

It is further ordered, That respondents Buy-Rite Sales Corporation, a corporation, its successors and assigns, and Thomas Payne and Robert D. Blackburn, Jr., individually and as officers of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, or under any other name, in connection with any consumer credit sale of swimming pools or any other products or merchandise as "consumer credit" and "credit sale" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub.L. 90 - 321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the annual rate of the finance charge expressed as an "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z.

2. Failing, in any transaction in which a security interest is or will be retained or acquired in any real property which is used or is

expected to be used as the principal residence of the customer, to provide each customer with notice of the right to rescind as required by Section 226.9(a), in the manner and form specified in Section 226.9(b) of Regulation Z.

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

PART III

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 change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That respondents distribute a copy of this order to all operating divisions of said corporation and also distribute a copy of this order to all personnel, agents or representatives concerned with the promotion, sale and distribution of swimming pools or other products or merchandise and secure from each such person a signed statement acknowledging receipt of said order.

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

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

IN THE MATTER OF

SILHOUETTE NATIONAL HEALTH SPAS, INC., ET AL.

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

Docket C-2532. Complaint, Aug. 26, 1974—Decision, Aug. 26, 1974

Consent order requiring an Indianapolis, Ind., operator of physical fitness and/or health salons, among other things to cease misrepresenting the efficacy of its facilities in weight reduction without regard to dietary considerations; the availability of memberships; their size; the extent, terms and conditions of special offers; and availability of facilities. Further, respondent is required to allow patrons to terminate programs within five business days and obtain a refund by delivering a letter from their physicians, stating that participation would be hazardous to their health.

Appearances

For the Commission: *William M. Rice, Jr.*

For the respondents: *William P. Wooden, Wooden, Stark, McLaughlin & Sterner*, Indianapolis, Ind., and *Donald Tunnell, Yarling, Winter, Tunnell, Robinson & Lamb*, Indianapolis, Ind.

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 Silhouette National Health Spas, Inc., a corporation, and Donald E. Gilman, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Silhouette National Health Spas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 7124 N. Tacoma Avenue, in the city of Indianapolis, State of Ind.

Respondent Donald E. Gilman is an individual and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is 7124 N. Tacoma Avenue, Indianapolis, Ind.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the operation of physical fitness and/or health salons, and in the advertising, offering for sale, and sale of memberships and related services to the public in said physical fitness and/or health salons.

PAR. 3. In the course and conduct of its business as aforesaid, respondents have caused, and do now cause, advertisements for said health salons to appear in media of interstate circulation, including the Indianapolis Star and the Indianapolis News, and on television broadcasts of interstate transmission, all of which are designed and intended to induce persons to purchase said memberships and related services.

Accordingly, all of said respondents have maintained, and do now maintain, a course and conduct of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their memberships and related services, respondents have made and are now making numerous statements and representations in advertisements inserted in newspapers of general circulation and by means of television broadcasts and promotional material, with respect to the price of said memberships and related services for the benefits and facilities available for those who purchase a membership.

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

LOSE 10-20-30 lbs. Or More the Easy, Fun, Way.

* * * * *

Come in for a free consultation.

* * * * *

ENROLL NOW!!!

Pay only \$1.25 PER VISIT (on a course basis).

* * * * *

Your Membership Honored in over 900 Spas World Wide.

* * * * *

60% OFF Regular Course Rate.

* * * * *

You save 50% on the regular price.

* * * * *

During this limited time offer . . . pay only \$1.25 per visit on a course basis!

* * * * *

Separate facilities for men and women.

Representative and illustrative, albeit neither verbatim nor all inclusive, of oral statements made in some instances to prospective purchasers by respondents and their sales representatives and agents, are the following:

Lifetime memberships will be available only for a limited period of time.

* * * * *

You can receive six months of free membership for a limited time, when you purchase a two year membership program.

* * * * *

PAR. 6. By and through the use of said advertisements, and others of similar import and meaning, but not expressly set out herein, and by oral statements and representations made by their sales representatives and agents, respondents have represented in some instances and are now representing, directly or by implication, that:

1. Patrons can lose from ten (10) to thirty (30) pounds in a one month period at respondents' salons or can attain other stated changes in weight in specified periods of time, usually without dieting, regardless of age.
2. Purchasers may purchase a membership in one of respondents' physical fitness and/or health salons for one dollar and twenty-five cents (\$1.25) per visit on a full course basis.
3. Respondents are part of a nationwide chain of physical fitness and/or health salons in most major cities of the United States.
4. The prices of memberships and services which are being offered are discount prices or special prices available for a limited time period.
5. Respondents' facilities are open to both men and women every day of the week.
6. A certain number of free months of membership are available with the purchase of certain programs, for a limited period of time.

PAR. 7. In truth and in fact:

1. All patrons cannot lose from ten (10) to thirty (30) pounds in a one month period, nor are all stated changes in weight possible in specified periods of time, regardless of dietary restrictions.
2. Purchasers may not purchase memberships in one of respondents' physical fitness and/or health salons for one dollar and twenty-five cents (\$1.25) per visit, for less than twenty-four (24) months. The minimum membership available to respondents' patrons is for one year.
3. Respondents are not part of a nationwide chain of reducing salons with facilities in most major cities of the United States. Respondents are members of associations which honor respondents' members' memberships to some extent.

4. Generally the prices at which memberships and services are sold are not discount prices or special prices, nor are they available for only a limited period of time. They are the usual and customary prices charged for respondents' memberships and services, and they have been substantially the same for an extended period of time.

5. Each of respondents' spas is not open to all patrons every day of the week. At each spa there are separate days specifically set aside when either men or women may use the facilities of the spa.

6. Offers of a number of free months membership with the purchase of a membership are not limited to stated periods of time.

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

PAR. 8. Respondents by means of oral statements and representations of their salesmen and representatives, in some instances, have misrepresented and/or failed to disclose certain material facts relating to contracts to be executed by prospective purchasers. Knowledge of such facts would indicate the full nature of the obligation being undertaken by the prospective purchaser. Thus, respondents have failed to disclose material facts which, if known by certain prospective purchasers would be likely to affect their consideration of whether or not to purchase respondents' memberships or services. Therefore, the aforesaid acts and practices were false, misleading, and deceptive or unfair.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition in commerce with corporations, firms, and individuals in the sale of memberships and related services in their physical and/or health clubs, said memberships and services being of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the unfair, false, misleading, and deceptive statements, representations, and practices, their failure to disclose material facts, 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, representations, and advertisements are true and complete, and into the purchase of memberships in respondents' health clubs and/or physical fitness facilities by reason of said erroneous and mistaken belief.

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

practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Silhouette National Health Spas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 7124 North Tacoma Avenue, city of Indianapolis, State of Indiana.

Respondent Donald D. Gilman is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents Silhouette National Health Spas, Inc., a corporation, its successors and assigns, and its officers, and Donald E. Gilman, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, and sale of health club memberships or other services or products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing, that purchasers of memberships in respondents' physical fitness and/or health salon facilities will lose weight as a result of using the facilities of respondents' physical fitness and/or health salons without regard to dietary habits.
2. Representing, directly or by implication, orally or in writing, that health club memberships are available for any period of time less than the shortest period for which a significant number of memberships are in fact sold to the public.
3. Representing, directly or by implication, orally or in writing, that respondents operate physical fitness and/or health salons in more than one state in the United States or in other countries.
4. Representing, directly or by implication, orally or in writing, that the availability of any service, specially-priced program, free treatments or other inducement for membership is limited in time or otherwise when they are not a bona fide limited period sale; or failing to disclose completely and accurately in immediate conjunction with any represented promotional inducement all conditions and limitations on its availability.
5. Representing, directly or by implication, orally or in writing, that any facilities are available at all clubs referred to in any particular advertisement unless they are, in fact, available at all facilities, and are available to persons of either sex at all said clubs during all of said clubs' business hours. If the facilities are not available to all members at all hours at each club referred to in such advertisement, such representation shall be qualified by a clear and conspicuous disclosure in immediate conjunction therewith providing that "such facilities and hours may differ at each location."
6. Failing to provide each purchaser a copy of each contract, note or other instrument of indebtedness executed by or on behalf of

such customer; and failing to include, clearly and conspicuously, on the face of all such documents:

- (a) A statement that the document is a contract and will become legally binding on said purchaser upon its acceptance by respondents.
- (b) All terms and conditions of such document.
- (c) The following statement:

NOTICE

If you are obtaining credit in connection with this purchase, you will be required to sign a promissory note, a sales contract or other instrument of indebtedness which may be purchased from the seller by a bank, finance company or any other third party. If such is the case, you will be required to make your payments to someone other than the seller. You should be aware that if this happens, you will have to pay the note, contract or other instrument of indebtedness in full to its new owner even if your purchase contract is not fulfilled.

7. Failing to disclose clearly, conspicuously, completely and accurately, both orally and in writing, before enrolling any person in any program:

- (a) That prospective patrons with health problems or who are under a doctor's care should consult their physician to be sure that respondents' programs are not incompatible with figure control or other health plans prescribed by such physician.

- (b) That the patron may terminate his program, cancel any indebtedness in connection with said program and obtain a refund of any monies paid to respondents by delivering a letter from his physician, stating clearly that participation in respondents' program would be hazardous to his health and setting forth the medical reasons for such opinion, to respondents within five (5) business days from the date of execution of said contract.

8. Failing to terminate the contract of any patron who requests termination pursuant to Subparagraph b of Paragraph 7, and failing to mail, within ten (10) business days of receipt of said request, a refund in accordance with said Subparagraph.

It is further ordered, That respondents herein deliver by registered mail a copy of this Decision and Order to each of the present and future employees, salesmen, agents, solicitors, independent contractors, advertising agent, or to any other person who promotes, offers for sale, sells or distributes any health club membership or any other product or service offered by respondents.

Complaint

84 F.T.C.

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

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

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

IN THE MATTER OF

CARE-FREE SWIMMING POOL MANUFACTURING CORP.,
ET AL.

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

Docket C-2533. Complaint, Aug. 27, 1974—Decision, Aug. 27, 1974

Consent order requiring a Copiague, N. Y., manufacturer, seller, and installer of in-ground and above-ground swimming pools and two wholly-owned subsidiaries, among other things to cease misrepresenting its offers as limited, prices as special or reduced; its guarantees; and the qualifications and abilities of its personnel and staff.

Appearances

For the Commission: *John A. Crowley, Phyllis L. Kaye and Eileen Lerman.*

For the respondents: *Smith, Panish & Getlan, New York, N. Y.*

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 Care-Free Swimming Pool

Manufacturing Corp., Care-Free Swimming Pool of Copiague, Inc., and Monaco Mfg. Corp., corporations, and Lewis Goldstone and Michael Weiss, individually and as officers of said corporations, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Care-Free Swimming Pool Manufacturing Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondent Care-Free Swimming Pool of Copiague, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and is a wholly-owned subsidiary of Care-Free Swimming Pool Manufacturing Corp., with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondent Monaco Mfg. Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and is a wholly-owned subsidiary of Care-Free Swimming Pool Manufacturing Corp., with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondents Lewis Goldstone and Michael Weiss are individuals and officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now and have been, for some time last past, engaged in the manufacturing, advertising, offering for sale, sale, distribution and installation, at retail, of in-ground swimming pools. Also, respondents are now and have been, for some time last past, engaged in the advertising, offering for sale, sale, distribution and installation of above-ground swimming pools.

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 New York 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 and installation of their swimming pools, respondents and their salesmen or representatives have made,

and are now making, numerous statements and representations in advertising and promotional material and through oral statements and representations with respect to the nature and limitations of their offers, their prices, their purchasers' savings, and the quality of their product and workmanship.

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

HUGE PRE-SEASON SALE * * *
\$2695 COMPLETELY INSTALLED
* * * * MADE TO LAST A LIFETIME
* * * * REQUIRE NO PAINTING
* * * * ALMOST MAINTENANCE FREE
LIFETIME FILTRATION SYSTEM

PAR. 5. In the further course and conduct of their business as aforesaid, and for the purpose of inducing the purchase and installation of their products, respondents and their salesmen or representatives have made, and are now making oral statements and representations to potential purchasers that respondents' swimming pools are unconditionally guaranteed and that the installation of said swimming pools will be carried out by trained, competent personnel without damage to the purchaser's property or danger to said purchasers, their relatives or neighbors. Additionally, respondents and their salesmen or representatives are making and have made representations regarding the date on which installation will be completed and the customer will be able to use the pool.

PAR. 6. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, separately and in connection with oral statements and representations of their salesmen or representatives, respondents have represented, and are now representing, directly or by implication, that:

1. The advertised offer of a pool for \$2695 completely installed is a special price available only for a limited period of time.
2. Their swimming pools will never require painting.
3. Their swimming pools will require almost no maintenance.
4. The filters supplied with respondents' swimming pools are lifetime filters.
5. Their swimming pools are unconditionally guaranteed.
6. Their swimming pools will be installed by competent, reliable and dependable personnel in a safe, workmanlike manner.
7. The pools will be installed, and usable, by a specified date.

PAR. 7. In truth and in fact:

1. Respondents' advertised offer of a swimming pool for \$2695 is not a special price nor is it available for only a limited period of time. Said product is advertised regularly at the represented price and on the terms and conditions therein stated.

2. Respondents' above-ground swimming pools will require painting.

3. Respondents' swimming pools require regular maintenance and upkeep.

4. The filters supplied with respondents' pools are not lifetime filters.

5. Respondents' swimming pools are not warranted or guaranteed in every respect without conditions or limitations. Such warranty or guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the warranty and fails to set forth the nature and extent of the warranty, the identity of the warrantor and the manner in which the warrantor will perform thereunder.

6. The installation of respondents' swimming pools is not, in many cases, performed by competent personnel in a safe, workmanlike manner.

7. Respondents, in a substantial number of instances, have failed to complete installation of individual pools by the promised due date.

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

PAR. 8. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of their swimming pools by the general public, respondents directly or indirectly have engaged in the additional act and practice of promising prompt and continuous installations and after having delivered materials to a customer and begun excavation, have abruptly and arbitrarily ceased work, leaving the customer's property littered with dirt, sand, tools and equipment. In addition to the inconvenience and danger resulting from this condition, purchasers are prevented from contracting with other firms which are competitors of respondents for the sale and installation of swimming pools. Therefore respondents' statements, representations, acts and practices as set forth herein were, and are, false, misleading and deceptive acts and practices and unfair methods of competition in commerce.

PAR. 9. The acts and practices of respondents, as herein alleged in Paragraph Eight, are unethical, exploitative and cause substantial injury to consumers and have enabled respondents unfairly to receive remuneration and financial gain in connection with respondents' other

deceptive and unfair sales practices in commerce as set forth in Paragraphs Four, Five and Six. All of respondents' practices are intertwined and mutually supportive so as to comprise a totality of unfair and deceptive practices in commerce.

PAR. 10. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals in the sale and installation of swimming pools of the same general kind and nature as those sold by respondents.

PAR. 11. 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' swimming pools and installations by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty

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

1. Respondent Care-Free Swimming Pool Manufacturing Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondent Care-Free Swimming Pool of Copiague, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and is a wholly owned subsidiary of Care-Free Swimming Pool Manufacturing Corp., with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondent Monaco Mfg. Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and is a wholly owned subsidiary of Care-Free Swimming Pool Manufacturing Corp., with its office and principal place of business at 1270 Sunrise Highway, Copiague, N. Y.

Respondents Lewis Goldstone and Michael Weiss are individuals and officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

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

ORDER

It is ordered, That respondent Care-Free Swimming Pool Manufacturing Corp., its successors and assigns, Care-Free Swimming Pool of Copiague, Inc., its successors and assigns, and Monaco Mfg. Corp., its successors and assigns, and Lewis Goldstone and Michael Weiss, individually and as officers of said corporations, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution or installation of in-ground and/or above-ground swimming pools, or any other products, 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 of respon-

dents' offers to sell products, installations or services are limited as to time or restricted or limited in any other manner, unless such represented limitations or restrictions are actually in force or in good faith adhered to.

2. Representing, directly or by implication, that any price for respondents' products, installations or services is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products, installations or services have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, their prices or the savings available to their purchasers.

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

4. Making representations that installation of respondents' swimming pools will be handled by workmen who are skilled, reliable and dependable unless respondents can demonstrate to the Federal Trade Commission that their workmen have actually performed in the past for respondents or others in such manner.

5. Promising to complete pool installations by a given date, as an inducement to the customer or for any other reason, unless respondents have a reasonable basis for believing such promised completion date is realistic and can be met in the normal course of their business operations.

6. Failing, after work has commenced on the installation of any pool, to provide continuous installation until completion except where such is impossible due to circumstances beyond the control of respondents. Contract commitments to other purchasers either prior to or subsequent to the commencement of the installation shall not be considered circumstances beyond the control of respondents.

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, installations or services, in the consummation of any extensions of consumer credit or in any aspect of preparation, creation or placing of advertising and that respondents secure a signed statement acknowledging receipt of such 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 respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of this order.

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

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

IN THE MATTER OF

MR. HAIRMAKER, INC., TRADING AS TRANSWORLD
HAIRMAKERS, ETC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTIONS 5 & 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2534. Complaint, Aug. 28, 1974—Decision, Aug. 28, 1974

Consent order requiring a Philadelphia, Pa., operator of salons for and promoter of an implant hair replacement system, among other things to cease deceptively advertising its implant hair replacement system and to disclose the risks involved in the procedure. Further, respondent is required to offer a three-day cooling-off period during which time customers may cancel their contracts with full refund of monies paid.

Appearances

For the Commission: *Allen R. Caskie.*

For the respondents: *Shein and Brookman, Philadelphia, Pa.*

Complaint

84 F.T.C.

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 Mr. Hairmaker, Inc., a corporation, trading also as Transworld Hairmaker and the Hairmakers, and Edward Sacks, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mr. Hairmaker, Inc., trading also as Transworld Hairmakers and the Hairmakers, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at 1613 Walnut Street, Philadelphia, Pa.

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

PAR. 2. Respondents operate the Mr. Hairmakers salons and promote on their own behalf, among others, the implant hair replacement system (Hereinafter sometimes referred to as the "System"). The system involves surgical procedure whereby a synthetic suture (prolene) is used to stitch metal clips into the scalps of respondents' customers. Hair pieces are then attached to the metal clips. Respondents sell, install and maintain the system, except that the surgical procedure itself is performed by a medical doctor.

PAR. 3. In the course and conduct of their business, respondents promote the system by advertising in newspapers of general circulation which are distributed across state lines, and by mailing promotional literature to prospective customers who respond to such advertising. As a result of such newspaper advertising, and literature mailing, respondent has maintained a substantial course of trade in commerce, as "commerce" is used in Section 5 and 12 of the Federal Trade Commission Act, and as a result of such newspaper advertising and mailing of promotional literature, have disseminated and caused to be disseminated false advertisements by United States mails, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the hair implant replacement system, respondents directly have made numerous statements and

representations in advertisements inserted in newspapers of general circulation and in other promotional literature. Typical of the statements and representations contained in said advertisements and promotional literature, but not all inclusive, are the following:

Permanent hair replacement without surgery.

Hair that becomes part of your own anatomy.

Hair that you have all the time.

Mr. Hairmaker has scientifically conquered baldness* * *

Hair that becomes part of you, like you used to look.

We add the finest quality European Hair on your head that cannot be taken off* * *It BECOMES PERMANENTLY PART OF YOU.

No painful surgery. No expensive transplant. No tape. No glue. Shower, swim, sleep, play all sports.

PAR. 5. Through the use of the above advertisements, and others of similar import and meaning but not expressly set out herein, and by oral statements and representations made by employees and agents of the respondents, respondents have represented, directly or by implication, that:

1. The implant system does not involve wearing a hairpiece, or toupee.

2. The hairpiece applied becomes part of the anatomy like natural hair, and has characteristics of natural hair, including the following:

(a) The same appearance as natural hair upon normal observation and upon extreme close up examination.

(b) It may be cared for like natural hair, particularly in that actions such as washing, combing, brushing and mussing may be performed on it in the same manner as might a person with natural hair.

(c) The wearer may engage in physical activities with as much disregard for his hairpiece as might a person with natural hair.

3. After the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system, and that the customer will not incur charges over and above the charge for installing the system.

PAR. 6. In truth and in fact:

1. The system does involve the wearing of a hairpiece or toupee.

2. The hairpiece applied does not become part of the anatomy like natural hair. The system involves the suturing with synthetic thread of metal clips into the scalp by a surgical procedure and which may be rejected by the body. The hairpiece differs from natural hair in many respects, including the following:

(a) It does not have the same appearance as natural hair in a substan-

tial number of instances. It is often discernible as a hairpiece or toupee upon normal observation, and upon extreme close examination.

(b) It cannot be cared for like regular hair but requires special care and handling. Strong pulling on the hair, such as may be expected to occur in washing, combing, brushing, and mussing, can cause pain because of the pressure exerted on the sutures in the scalp, may cause bleeding, and may cause the sutures to pull out. As a consequence, washing the hair and scalp is difficult. Because washing is difficult, foreign particles and dead skin tissue tends to accumulate beneath the implant hair application and become a significant source of irritation. The hair styles into which the hairpiece may be combed or brushed without professional treatments are limited.

(c) The wearer may not engage in physical activities with as much disregard for his hairpiece as might a person with natural hair. The wearer must at all times be careful that the hair does not pull or get pulled, or become tangled, or strained. Discomfort and pain may be caused by common actions, such as rolling the head on a pillow during sleep.

3. The wearer cannot in most instances care for the hairpiece himself; he must seek professional or skilled assistance on many occasions. Medical problems associated with the surgery or the continuing presence of synthetic thread in the scalp may require subsequent visits to a medical doctor. A substantial additional charge for such service could be incurred. Respondents' applied hair is subject to bleaching in sunlight and other discoloration normally associated with hairpieces, and where the hairpiece has been color-dyed, loss of dye through washing and normal wear; thus replacement hairpieces are required at intervals in order to maintain a color match with any natural hair the wearer may have.

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

PAR. 7. In the course and conduct of their business, respondents have represented in advertisements the asserted advantages of the system, as hereinbefore described. In many cases, respondents have represented their system to be painless and have not disclosed in such advertisements that surgical procedure is a required step in the system. In no case have respondents' advertisements disclosed:

(a) that clients may experience discomfort and pain as a result of the surgical procedure, from the synthetic sutures themselves, and from pulling normally incident to wearing the hairpiece;

(b) that clients will be subject to the risk of irritation, infections, and

skin diseases as a result of the surgical procedure and as a result of the synthetic sutures remaining in the scalp;

(c) that permanent scarring to the scalp may result from the required surgical procedures, and as a result of the synthetic sutures remaining in the scalp.

The consequences described in this paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur. Furthermore, the surgical procedure has not been used in conjunction with respondents' system for a sufficient experimental period to determine the extent of seriousness of the above side effects, and whether there are any other side effects, including but not limited to rejection of the synthetic sutures through the human body's natural rejection process.

Therefore, the advertisements referred to in Paragraph Seven are false and misleading and the acts and practices referred to in said Paragraph are unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of the system, respondents entice members of the purchasing public to their salon with advertisements of "a permanent head of hair that will not come off" as a solution to baldness and like advertisements to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations. In most cases respondents do not disclose details of their system unless and until a prospect visits their salon. When members of the purchasing public have visited the salon, they have been subjected to emotional sales pressure, for the purpose of persuading them to sign a contract for the application of the implant system, and to make a substantial down payment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the synthetic suture in the scalp. Persons are insistently urged to sign such contracts and make such down payments, through the use of persistent and emotionally forceful sales presentations employing the following tactics, among others:

1. Representing that the psychological benefit of having hair replaced is so significant as to be of immediate necessity and that, subconsciously, bald men are desperate for prompt relief.

2. Inducing prospects to sign contracts and/or make down payments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of the

surgical procedure, and of the synthetic suture being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery, by which time the client is likely to feel pressured to go through with the application.

Therefore, the advertisements referred to in Paragraph Eight were and are false and misleading, and the acts and practices set forth in such paragraph were and are false and deceptive.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above unfair and deceptive representations and practices has had, and now has, the capacity and tendency to mislead consumers, and to unfairly influence consumers to hurriedly and precipitately sign contracts for the application of the implant hair replacement system, and to make partial or full payment therefor, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, or the seriousness of the surgical procedure, and the possibilities of discomfort, pain, disease or disfigurement related thereto, and related to the continual presence of the synthetic suture in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms, and individuals selling baldness concealment cosmetics, devices, and treatment to the purchasing public.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Mr. Hairmaker, Inc., trading also as Transworld Hairmakers and The Hairmakers, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business, located at 1613 Walnut Street, Philadelphia, Pa.

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

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

ORDER

It is ordered, That respondent Mr. Hairmaker, Inc., a corporation, trading also as Transworld Hairmakers and The Hairmakers or under any other name or names, its successors and assigns and its officers, and Edward Sacks, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device or through franchisees or licensees, in connection with the advertising, offering for sale, or distribution of the implant replacement system or other hair replacement product or process involving surgery (hereinafter sometimes referred to as the "System"), in commerce, as "commerce" is defined in the Federal Trade Commission Act, or by the United States

mails within the meaning of Section 12(a)(1) of the Federal Trade Commission Act do forthwith cease and desist from representing, directly or by implication:

1. That the system does not involve wearing a device or cosmetic which is like a hairpiece or toupee;
2. That after the system has been applied, the hair applied becomes part of the anatomy like natural hair, and has the following characteristics of natural hair.
 - a. the same appearance in all applications as natural hair, upon normal observation, and upon extreme close-up examination;
 - b. it may be cared for like natural hair where care involves possible pulling on the hair;
 - c. the wearer may engage in physical activity and movement with the same disregard for his hair as he would if he had natural hair.
3. That after the system has been applied, the wearer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the system, and that the customer will not incur maintenance costs over and above the cost of applying the system.

It is further ordered, That respondents, in advertising, offering for sale, selling or distributing the system, disclose clearly and conspicuously that:

1. The system involves a surgical procedure resulting in the implantation of synthetic sutures in the scalp, to which hair is affixed.
2. By virtue of the surgical procedure involving implantation of synthetic sutures in the scalp, and by virtue of the synthetic suture remaining in the scalp, there is a risk of discomfort, pain, infection, scarring, and other skin disorders.
3. Continuing special care of the system is necessary to minimize the probabilities and risks referred to in Subparagraph Two of this paragraph, and such care may involve additional costs for medications and assistance.
4. The purchaser is advised to consult with his personal physician about the system before deciding whether to purchase it.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement or presentation used in connection with the advertising, offering for sale, sale, or distribution of the system, and shall devote no less than 15 percent of each advertisement or presentation to such disclosures. *Provided, however,* That in

advertisements which consist of less than ten column inches in newspapers and periodicals, and in radio and television advertisements with a running time of one minute or less, respondents may substitute the following statement, in lieu of the above requirements:

Warning: This application involves surgery whereby synthetic sutures are placed in the scalp. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician.

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

It is further ordered, That respondents, in connection with the sale of the system, provide prospective purchasers with a separate disclosure sheet containing the information required in the immediately preceding paragraph of this order, Subparagraphs One (1) through Four (4) thereof, and that respondents require that, prior to executing any contract to purchase said system, such prospective purchasers, sign and date the disclosure sheet after the sentence, "I have read the foregoing disclosures and understand what they mean," and that Mr. Hairmaker, Inc. provide a copy of said disclosure sheet to the customer and retain such signed disclosure sheet for at least three years.

It is further ordered, That, in connection with the sale of the system, no contract for application of the system shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed, and that:

1. Respondents shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the system, that the purchaser may rescind or cancel any obligation incurred by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale, or distribution of the system, serve a copy of this order upon each present and every future licensee or franchisee, and upon each physician participating in application of respondents' system, and obtain written acknowledgment of the receipt thereof; and that respondents obtain from each present and future licensee or franchisee an agreement in writing, (1) to abide by the terms of this order, and (2) to cancellation of their license or franchise for failure to do so; and that respondents cancel the license or franchise of any licensee or franchisee that fails to abide by the terms of this order. Respondents shall retain such acknowledgments and agreements for so long as such persons or firms continue to participate in the application or sale of respondents' system.

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

It is further ordered, That respondents notify the Commission at least 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 in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *Provided,* That if said respondent wishes to present to the Commission any reason why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

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

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

Amended Complaint
IN THE MATTER OF
HOLIDAY MAGIC, INC., ET AL.

Docket 8834. Interlocutory Order, Aug. 29, 1974

Order amending complaint to substitute executor of estate of deceased respondent for purpose of effecting restitution of funds in the estate subject to any order of restitution. Executor to file appeal brief from initial decision with answering brief by complaint counsel.

Appearances

For the Commission: *Joseph S. Brownman* and *D. Stuart Cameron*.
For the respondents: *Stein, Mitchell & Mezines*, Wash., D. C.

ORDER AMENDING COMPLAINT BY SUBSTITUTING PARTY

Complaint counsel have filed an "Application to Amend Complaint by Substituting Sam Olivo, Executor of the Estate of William Penn Patrick for Decedent Respondent William Penn Patrick," dated Jan. 14, 1974, and counsel for Sam Olivo has replied in opposition in documents dated Jan. 22 and Feb. 5, 1974.

Patrick died shortly after entry of the initial decision by the administrative law judge, which ordered him, among other things, to pay back substantial sums of money obtained from individuals as a result of numerous violations of law. The basis of restitution under Section 5 of the Federal Trade Commission Act is that it is a continuing violation of that Act, redressable by cease and desist order, for an individual or corporation to retain monies obtained as a result of unfair or deceptive acts or practices or methods of competition. It is equally, we believe, a violation of the Act for the estate of a law violator to retain monies obtained as a result of fraud and overreaching, and disburse such funds in accord with the wishes of the law violator, and the question raised by complaint counsel's motion is whether or not the Commission may, in the exercise of its broad powers to enforce its law [*Jacob Siegel Co. v. F.T.C.*, 327 U.S. 612 (1946)], substitute a respondent's executor for the respondent to effect restitution and remedy a continuing violation.

This is unquestionably a matter of first impression for the Commission.¹ Complaint counsel argue that the proposed substitution is appro-

¹The Rules of Practice of the Commission do not give definitive guidance. Section 3.15 of the Rules of Practice provides for amendments to complaints. Substitution may be regarded as merely a form of amendment. Since the motion to amend arose after an appeal had been taken from the initial decision, its disposition is for the Commission to render in the first instance [§§3.51(d)(2), 3.54(a)].

priate both under the Federal Survival Statute (28 U.S.C. 2404) and the common law. The survival statute applies in terms to a "civil action for damages commenced by or on behalf of the United States." At least one court has construed the term "damages" to mean "compensation or remedial recovery as distinguished from imposition of penal exactions." *Federal Savings and Loan Insurance Corporation v. Fielding*, 316 F. Supp. 82, 85 (D. Nev. 1970). This interpretation would support complaint counsel's view, since restitution is unquestionably a remedial recovery of funds and not a punitive one. Nonetheless, the reading of *Fielding* proposed by respondents, and other authority, suggest that the survival statute may more appropriately be construed to apply only to "actions for damages," that is, actions in which the United States is in the role of an aggrieved and injured party. [Cf. *United States v. Price*, 290 F.2d 525, 526 (6th Cir. 1961)] That is not the Commission's role here; it acts merely to remedy a continuing public injustice. We would thus be reluctant to find the requested substitution appropriate based solely on 28 U.S.C. 2404.

A firmer basis for the action requested by complaint counsel is to be found in the common law, whose principles govern where there is no provision for survivorship either in the statute upon which a federal cause of action is based, or elsewhere.

In general, at common law an action would abate upon the death of either party. An important exception was made, however, for actions in equity, which would not abate where the cause of action survived, and which might be revived merely by the substitution of the appropriate party. ("Abatement and Revival," 1 C.J.S. §160(b), p. 212; "Abatement, Revival, and Survival," 1 Am. Jur. 2d, §51, p. 87.)² Complaint counsel argue that the Commission's function in ordering restitution is most closely analogized to that of a court of equity, and that the equity rule should thus govern in resolving the issue of substitution. We agree.

It is clear that the cause of action with respect to money unlawfully obtained by respondent Patrick does not abate upon his death. To be sure, the Commission's interest in restraining Patrick from engaging in continued fraud and deception ended when his plane struck the moun-

²On the law side, when an action abated but the cause of action did not die, suit could be reinstated against the appropriate party. One purpose of survival statutes was to eliminate the need for this burdensome and, as it were, inequitable procedure. Obviously, reinstatement of these proceedings is an alternative which the Commission might consider, though we do not think it is required. Respondents argue that the Federal Trade Commission Act does not confer authority to proceed at all against executor Olivo. We believe, however, that if it is a violation of the Act for Patrick to retain unlawfully procured funds, it is no less so for Olivo, in his capacity as Patrick's executor, to retain such funds and disburse them in such manner as respondent Patrick would desire, either pursuant to a will or under presumptions embodied in state estate law. Therefore, we believe the Federal Trade Commission Act does confer authority to pursue the executor in his capacity as successor to the wrongdoer, and the issue is whether this may be done via substitution of the executor in the pending proceeding.

tain. The same is not so, however, as regards action involving money unlawfully obtained by him, unlawfully held by him at the time of his death, and subject to disposition according to his wishes (or legally presumed wishes) under a will or applicable intestate succession law. Under common law, causes of action in which the wrong complained of affected primarily *property* or *property rights* survived, and that is clearly so with respect to an action for restitution. [See *Barnes Coal Corporation v. Retail Coal Merchants Association*, 128 F.2d 645, 649 (4th Cir. 1942); *Moore v. Backus*, 78 F.2d 571 (7th Cir. 1935), *cert. denied*, 296 U.S. 640 (1935); *Geiger v. Merle*, 360 Ill. 497, 196 N.E. 497 (1935), *cert. denied*, 296 U.S. 630 (1935); *U.S. v. Kellert*, 101 F. Supp. 698, 699 (D. Conn. 1951); *Edgerton v. Johnson*, 178 F.2d 106, 110 (7th Cir. 1949).]

We agree further with complaint counsel that the restitutionary action is most properly analogized to equitable action, since it is, in essence, injunctive, intended to prevent a continuing wrong. [*Porter v. Warner Holding Co.*, 328 U.S. 395, 402 (1946); 42 Am. Jur. 2d §1, p. 727, "Injunctions."] To be sure, the Commission is not itself a court of equity. The question, however, is whether the equitable analogy should govern in the resolution of this matter, absent specific statutory directive prescribing one approach (substitution) or another (a new suit).³

The Supreme Court has recognized that the "authority to mold administrative decrees is indeed like the authority of the court to frame injunctive decrees [*Pan American Airways v. United States*, 371 U.S. 296, 312, n. 17, citing *Labor Board v. Express Publishing Co.*, 312 U.S. 426, 433, 436 (1941)]. And the Court has recently likened the Commission itself to a court of equity in the scope of its authority to attack and remedy unfair trade practices:

Thus, legislative and judicial authorities alike convince us that the Federal Trade Commission does not arrogate excessive power to itself, if, in measuring a practice against the elusive but congressionally mandated standard of fairness, it, like a court in equity, considers public values beyond simply those enshrined in the letter or encompassed in the spirit of the anti-trust laws. *Federal Trade Commission v. Sperry & Hutchinson Co.*, 405 U.S. 233 (1970). See also *In the Matter of Ekco Products Co.*, 65 F.T.C. 1163, 1213 (1964), *aff'd* 347 F.2d 745 (7th Cir. 1965).

On balance, we believe that complaint counsel are correct in urging that the equitable analogy apply, and that Executor Olivo be substituted for respondent Patrick for the purpose of any restitutionary order which may issue in this case.

³The same process of analogizing is conducted by courts when they determine whether an individual is entitled to a jury trial under the 7th Amendment, which guarantees it in actions in which such right was accorded at "common law." When a case is brought under a statute with no common law counterpart, a determination must then be made as to whether the action is most clearly analogized to an equitable or a legal action, there being a right to a jury trial in the latter case. See *Ross v. Bernhard*, 396 U.S. 531 (1970); *Dairy Queen v. Wood*, 369 U.S. 469 (1962).

Complaint

84 F.T.C.

It may be noted that the alternative would be institution of a new action for restitution against Olivo in his capacity as executor. It is hard for us to see how the public interest, the statutory purpose, or due process would be particularly served by such a result. Respondent Patrick died following lengthy administrative hearings and issuance of the administrative law judge's initial decision ordering restitution on his part. The executor stands in the stead of his decedent, and should of course expect to answer for the obligations of the estate. It is difficult, in fact, to imagine a situation in which a substituted party could less justifiably claim to be surprised or unfairly prejudiced by his substitution.

For the foregoing reasons, we shall grant the motion of complaint counsel that Sam Olivo, executor of the estate of respondent Patrick, be substituted as a party respondent in this matter for the purposes of any restitutionary order which may issue against the decedent's estate. Therefore,

It is ordered, That the complaint in this matter be, and it hereby is, amended to substitute Sam Olivo, Executor of the Estate of William Penn Patrick, for deceased respondent Patrick for the purpose of effecting restitution of such funds as are in the estate of decedent Patrick and are subject to any order of restitution entered in these proceedings.

It is further ordered, That Respondent Olivo shall file, within 30 days from receipt of this order, such appeal brief from the initial decision in this matter as he may wish, and that complaint counsel shall answer within 15 days thereafter. No oral argument shall be held upon these briefs.

Commissioner Nye did not participate.

IN THE MATTER OF

BEACON OIL COMPANY

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

Docket 8948. Complaint, Jan. 2, 1974—Decision, Sept. 3, 1974

Consent order requiring a Hanford, Calif., seller and distributor of petroleum and related products, among other things to cease issuing credit cards without specific request or application.

Appearances

For the Commission: *Paul R. Peterson*, and *David M. Newman*.

For the respondent: *Pearson & Holding*, Hanford Calif., and *Pierson, Ball & Dowd*, Wash., D. C.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act, as amended, 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 Beacon Oil Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Beacon Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 525 West Third Street, Hanford, Calif.

PAR. 2. Respondent is now, and for some time in the past has been, engaged in the advertising, offering for sale, sale and distribution of petroleum and related products to the public through its own service stations and those operated by independent dealers.

PAR. 3. In the ordinary course and conduct of its business, as aforesaid, respondent regularly issued credit cards, as "credit card" 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, and subsequent to Oct. 26, 1970, has caused and is causing such credit cards to be issued to its customers as a means by which said customers may obtain products and services from respondent on credit, as "credit" is defined in Regulation Z.

PAR. 4. In a substantial number of instances, a consumer uses an oil company credit card other than a Beacon Oil credit card to purchase gasoline or other goods or services from various Beacon stations. Respondent supplies forms, sometimes hereafter referred to as "sales drafts," to be used both by its wholly-owned stations and those operated by independent dealers when a consumer charges a purchase with another oil company credit card.

On such sales drafts, in addition to the consumer's name and address and other information applicable to the particular sale, is the following language in small print:

Decision and Order

84 F.T.C.

I understand that by using the credit card of another oil company as charge authorization, I have opened an account with Beacon Oil Company, and wish to have a Beacon Oil Credit Card.

Many consumers have made purchases using other oil company credit cards and have signed the aforementioned sales drafts unaware of the above-quoted language, solely for the purpose of authorizing credit sales and without intending to request or apply for Beacon credit cards.

Thereafter said sales drafts are forwarded to respondent. Pursuant to the language appearing on the sales drafts, and the consumers' signatures thereon, said respondent issued a substantial number of Beacon Oil credit cards to such consumers.

PAR. 5. By and through the use of the practice described in Paragraph Four hereof, respondent issued credit cards without a request or application therefor, and said credit cards were neither in renewal of nor in substitution for an accepted credit card, as "accepted credit card" is defined in Regulation Z, in violation of Section 132 of the Truth in Lending Act and Section 226.13(b) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failure to comply with Section 226.13 of Regulation Z constitutes a violation of that Act, and pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on Jan. 2, 1974, charging respondent named in the caption hereof with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder; and

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days,

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

1. Respondent Beacon Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its principal office and place of business presently located at 525 West Third Street, Hanford, Calif.

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

ORDER

It is ordered, That respondent Beacon Oil Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the issuance of credit cards, as "credit card" is defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act, as amended, (Pub. L. 90-321, 15 U.S.C. 1601, *et seq.*), shall forthwith cease and desist from:

Issuing any credit card, other than a credit card issued in renewal of or in substitution for an accepted credit card, as "accepted credit card" is defined in Section 226.13(a) of Regulation Z, unless:

1. In response to the recipient's separate, signed, affirmative and specific written request or written application therefor.

Or

2. In response to the recipient's specific oral request obtained pursuant to a telephone solicitation; *Provided*, That the following procedures are employed:

A. The person making the oral solicitation must state the following, or words of similar meaning and import, at the very outset of the conversation with the person being solicited:

The purpose of this telephone call is to find out if you would like to have a Beacon Oil Company [or other specific name, as applicable] credit card.

And

B. A detailed log of all oral solicitations is maintained for a period of at least two years, such a log to include:

(1) The name of the individual who made the oral solicitation;

(2) The name of the person with whom the solicitor spoke;

- (3) The time and date of the solicitation; and
- (4) Whether or not a credit card was requested.

Or

3. In response to recipient's specific oral request obtained pursuant to an oral solicitation at any of its own service stations or those operated by its independent dealers or distributors; *Provided*, That the following procedures are employed:

A. The person making the oral solicitation must state the following, or words of similar meaning and import, at the very outset of the conversation with the person being solicited:

The purpose of this conversation is to find out if you would like to have a Beacon Oil Company [or other specific name, as applicable] credit card.

And

B. A detailed log of all oral requests is maintained for a period of at least two years, such a log to include:

- (1) The name of the individual who made the oral solicitation;
- (2) The name and address of the person who requested the credit card;
- (3) The date and place of the solicitation; and
- (4) The nature and number of the credit identification used.

And

C. The following notice captioned "IMPORTANT NOTICE" printed on at least 4-1/4" x 5-1/2" paper in type not smaller than eleven point shall be given to each person requesting a credit card immediately after the request:

IMPORTANT NOTICE

Thank you for requesting a Beacon Oil Company [or other specific name, as applicable] credit card. This card will be mailed to you in the near future, if approved. If you reconsider your need for this card, contact us by telephone [Beacon Oil Company's telephone number including area code] or write Beacon Oil Company [Beacon Oil Company's address].

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondent or other persons engaged in the solicitation for or issuance of respondent's credit cards, whether or not employed by respondent, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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

355

Complaint

dent 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 service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

 IN THE MATTER OF

LENS CRAFT RESEARCH AND DEVELOPMENT CO., ET AL.

 CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
 SECTIONS 5 & 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. 8950. Complaint, Jan. 17, 1974—Decision, Sept. 4, 1974

Consent order requiring an Escondido, Calif., seller of contact lenses and advertising literature and brochures designed to assist in the sale of the lenses, among other things to cease making false claims for its Burnor hard plastic contact lenses, and to run corrective advertisements.

Appearances

For the Commission: *Rosemary P. Capodieci, Bertrand E. Christian and Blanche Deight.*

For the respondents: *Kedrick & Subkow, Los Angeles, Calif.*

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 Lens Craft Research and Development Co., a corporation, and John L. Burnor and Terry E. Gustine, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Lens Craft Research and Development Co., hereinafter sometimes referred to as Lens Craft, is a corporation organized, existing, and doing business under and by virtue of the laws

of the State of California with its principal office and place of business located at 1720 E. Valley Parkway in the city of Escondido, State of California.

Respondent John L. Burnor is an officer of the corporate respondent. He helps formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. In addition respondent John L. Burnor is the sole proprietor of Lens Craft Optical of Escondido, 1720 E. Valley Parkway, Escondido, Calif., Lens Craft Optical of San Diego, 2550 5th Avenue, Suite 148, San Diego, Calif., and Lens Craft Optical of Riverside, 6859 Magnolia Avenue, Riverside, Calif.. His address is the same as that of the corporate respondent.

Respondent Terry E. Gustine is an officer of the corporate respondent. He helps formulate, direct, and control 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. Respondent Lens Craft Research and Development Co. is now, and for some time last past has been, engaged in the sale of contact lenses to opticians who sell them to the public.

The corporate respondent Lens Craft Research and Development Co. also sells and distributes, and has sold and distributed, to sellers of contact lenses various types of advertising literature and brochures designed to assist in the sale of its said lenses. Contact lenses are designed to correct errors and deficiencies in the vision of the wearer and are devices, as "device" is defined in the Federal Trade Commission Act.

Respondent John L. Burnor doing business as Lens Craft Optical of Escondido, Calif., Lens Craft Optical of San Diego, Calif., and Lens Craft Optical of Riverside, Calif., sells and distributes, and has sold and distributed contact lenses to the public.

PAR. 3. In the course and conduct of their business as aforesaid, corporate respondent Lens Craft Research and Development Co. now causes, and for some time last past has caused, its products when sold, to be shipped from its place of business in the State of California to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business respondents have disseminated and have caused the dissemination of, 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 of general circulation, radio, brochures and in oral sales presentations to opticians, prospective purchasers and purchasers, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices; and respondents have also disseminated, and caused the dissemination of, advertisements concerning their said devices by the aforesaid means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Written Representations

Burnor Contact Lenses are the result of 12 years of extensive research. Burnor Contact Lenses are specially designed for 24 hour wear. These hard plastic lenses can be worn for 5 to 7 days continuously in comfort. * * * [V]irtually anyone whose visual problem can be corrected with eyeglasses is a candidate for Burnor Contact Lenses. * * * Symptoms normally expected from conventional contact lenses such as excessive tearing, extreme sensitivity to light, etc., are either non-existent with Burnor Contact Lenses or experienced only to a very mild degree. * * * Most Burnor Contact Lens wearers are able to sleep in their lenses. The lenses enable patients (under the supervision of their eye specialists) to sleep in their lenses with comfort.

A revolutionary new technique in the fitting of contact lenses has recently been introduced by Lens Craft Research and Development Company, founded by John L. Burnor. These lenses are known as the Burnor Contact Lenses. * * * [N]ow, anyone whose healthy eyes can be corrected can wear Burnor Contact Lenses! Begin by wearing them from 8 to 15 hours the first day!

Oral Representations

Sleeping in the lens will improve the comfort and the eyesight of the wearer. * * * specifically designed for 24 hour wear. The longer you wear the Burnor Lenses the better it is for you. * * * [T]he use of a lacometer to measure the cornea is a unique feature of the Lens Craft fitting process. The advertising claims made by respondents are approved by the California Board of Medical Examiners.

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

1. The Burnor Contact Lenses are the result of 12 years of extensive research.
2. Members of the medical profession generally prescribe 24 hour wear for the respondents' contact lenses.

3. Sleeping in respondents' contact lenses and wearing them for 5 to 7 days continuously will not result in harm to wearers thereof.

4. Persons who desire to sleep in respondents' contact lenses do so under the supervision of their eye specialist.

5. There is little or no discomfort associated with wearing respondents' contact lenses.

6. Respondents' contact lenses are unique or substantially different from other hard plastic contact lenses presently available on the market.

7. Any person whose healthy eyes can be corrected can successfully wear respondents' contact lenses.

8. Respondents have introduced a revolutionary, new fitting technique which includes the use of a lacometer, a special instrument developed by John Burnor to map the cornea.

9. Wearing the respondents' contact lenses for continuous periods will result in an improvement in eyesight and increase wearing comfort.

10. Respondents' hard plastic contact lenses are specifically designed for 24 hour wear.

11. The advertising claims of respondents are approved by the California Board of Medical Examiners.

PAR. 6. In truth and in fact:

1. Burnor Contact Lenses are not the result of 12 years of extensive research. The only experimentation with the lens was a limited trail study conducted by a medical doctor which showed that a significant number of people could not safely undertake 24 hour wear.

2. Members of the medical profession do not generally prescribe 24 hour wear for respondents' contact lenses.

3. Sleeping in respondents' contact lenses and wearing them 5 to 7 days continuously has resulted in harm to respondents' customers. The longer and the more continuous the periods of wear of respondents' contact lenses the greater the probability of harm to the eyes.

4. Persons who desire to wear the Burnor Lens while sleeping do not do so under the supervision of their eye specialist, but do so under the supervision of employees of Lens Craft or their licensees, none of whom are qualified eye specialists.

5. Many persons who attempt to wear respondents' lenses will experience some discomfort after wearing them. In a significant number of cases the discomfort will be prolonged and in some cases will never be overcome.

6. The respondents' contact lenses are not unique nor are they substantially different from other hard plastic contact lenses presently available on the market.

7. A significant number of persons whose healthy eyes can be corrected cannot successfully wear respondents' contact lenses.

8. Respondents' fitting process is not revolutionary or new because a lacometer is essentially the same as a topogometer, an instrument which has been commonly used for some time to map the surface of the cornea.

9. Continuous wear of respondents' contact lenses does not result in an improvement in the wearer's eyesight, nor does it increase wearing comfort.

10. Respondents may have specifically designed their lenses for 24 hour wear; however, the lenses do not constitute a significant improvement in contact lens design and are not medically accepted for 24 hour wear.

11. The advertising claims of the respondents have not been approved by the California Board of Medical Examiners.

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

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

PAR. 8. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices, has had, 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 or deceptive acts or practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereto with violations of Sections 5 and 12 of the Federal Trade Commission Act; and

The Commission having withdrawn the matter from adjudication for

the purpose of negotiating a settlement by the entry of a consent 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, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint and waivers and other provisions as required by the Commission's rules; and

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

1. Respondent Lens Craft Research and Development Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1720 East Valley Parkway, in the city of Escondido, State of California.

Respondents John L. Burnor and Terry E. Gustine are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondent Lens Craft Research and Development Co., a corporation, its successors and assigns, and John L. Burnor and Terry E. Gustine, individually and as officers of said corporation, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale, advertising, offering for sale, or the transportation or distribution of any contact lens or any related products, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commis-

sion Act, which advertisement represents, directly or indirectly that:

1. The respondents' contact lenses are the result of 12 years of extensive research; or misrepresents in any manner the length of time or amount of research conducted on respondents' contact lenses or on any of their related products.

2. Members of the medical profession generally prescribe 24 hour wear for respondents' contact lenses.

3. Sleeping in respondents' contact lenses and wearing them for 5 to 7 days continuously is possible without disclosing, clearly and conspicuously, that such practices may be injurious to the eyes; or misrepresents in any manner the wearing characteristics of any of their contact lenses or any related products.

4. Persons who wear the Burnor lenses while sleeping do so under the supervision of an ophthalmologist, if such is not the fact; or misrepresents in any manner that the supervision provided for Burnor lens wearers is by a person or persons professionally qualified to do so.

5. All persons can wear respondents' contact lenses without discomfort, or that most people can wear said contact lenses without discomfort except after they have become fully adjusted thereto; or misrepresents in any manner the wearing comfort or the period of time required for the initial adjustment.

6. Respondents' contact lenses are unique; or misrepresents in any manner the character or quality of any of respondents' contact lenses or any of their related products.

7. Every person whose healthy eyes can be corrected can successfully wear respondents' contact lenses.

8. Respondents' fitting process is revolutionary or uniquely different from other processes; or that the use of a lacometer in the fitting process is revolutionary or a new technique in fitting contact lenses; or misrepresents in any manner the ability of respondents to fit contact lenses or any related products.

9. Sleeping in respondents' contact lenses will improve the eye comfort or the eyesight of the wearer.

10. Respondents' hard plastic contact lenses are specifically designed for 24 hour wear; or misrepresents in any manner

that their design is a significant improvement over other contact lenses; or misrepresents in any manner that their design is generally approved by persons professionally qualified to make such approval.

11. The content of respondents' advertising claims has been approved by the California Board of Medical Examiners; or misrepresents in any manner that an approval of any product or service or an approval of advertising claims relating to any product or service has been obtained from any individual or organization.

B. Disseminating, or causing the dissemination of any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said contact lenses, or any related products, which advertisements contain any of the representations prohibited in Paragraph A hereof.

C. Communicating orally, in writing or in any other manner, directly or by implication, any of the representations prohibited in Paragraph A hereof; except, that this order provision is not intended to apply to representations made orally, in writing or in any other manner, directly or by implication, to ophthalmologists or optometrists in furtherance of research and development of respondents' contact lenses.

It is further ordered, That respondents shall cause dissemination, clearly and conspicuously, of the affirmative disclosure attached hereto as Appendix A in the same section of each newspaper used by Lens Craft or licensees of said Lens Craft to advertise the Burnor lens two or more times in the past two years. The affirmative disclosure shall be at least 4-3/4 inches by 4-3/4 inches in size and shall be published thirty (30) days after this order becomes final, at least once each week in each publication for four consecutive weeks.

It is further ordered, That respondents shall cause dissemination of the affirmative disclosure attached hereto as Appendix B on each radio station used by Lens Craft or licensees of Lens Craft to advertise the Burnor lens two or more times in the last two years. Thirty (30) days after this order becomes final, said affirmative disclosure shall be made on each radio station for one week in the exact manner and time periods as previous advertising.

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

business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

It is further ordered, That respondents obtain from each present and future distributor, franchisee, licensee or sales representative an agreement in writing (a) to abide by the prohibitions of Paragraphs A, B and C of this order, and (b) to cancellation of their license or franchise for failure to do so; and cancel the license or franchise of any distributor to do so; and cancel the license or franchise of any distributor, franchisee or licensee, or terminate the employment of any sales representative, who fails to abide by the prohibitions of Paragraphs A, B and C of this order; *Provided, however,* That no such agreement is required from an ophthalmologist or optometrist who is a distributor, franchisee or licensee, whether or not engaged in research, if a copy of this order is given to such exempted ophthalmologist or optometrist, and a signed acknowledgement of receipt of this order is secured and retained by respondents in a manner available for inspection by the Commission staff upon reasonable notice.

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

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

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

Decision and Order

84 F.T.C.

APPENDIX A

NOTICE

* * * * *

* * * * *

BURNOR CONTACT LENSES

We have previously advertised our Burnor lenses as 24 hour sleeping lenses that could be worn 5 to 7 days continuously with little or no discomfort.

Wearing *any* hard plastic contact lens while sleeping is not generally recommended by members of the medical profession. The research studies conducted to date indicate that wearing hard plastic contact lenses during sleep may be a health hazard. Thus, our lenses should not be worn while sleeping or continuously for more than a period of time prescribed by a physician. Not all persons with correctable vision problems can successfully wear our contact lenses.

LENS CRAFT RESEARCH AND DEVELOPMENT CO. ESCONDIDO,
CALIFORNIA

APPENDIX B

RADIO

ANNOUNCER: RECENTLY, WE HAVE ADVERTISED THE BURNOR CONTACT LENS FROM LENS CRAFT RESEARCH AND DEVELOPMENT COMPANY AS A LENS THAT CAN BE WORN WHILE SLEEPING! AND FOR 5 TO 7 DAYS CONTINUOUSLY WITH LITTLE OR NO DISCOMFORT! WEARING ANY HARD PLASTIC CONTACT LENS WHILE SLEEPING IS *NOT* GENERALLY RECOMMENDED BY MEMBERS OF THE MEDICAL PROFESSION. RESEARCH STUDIES CONDUCTED TO DATE INDICATE THAT WEARING HARD PLASTIC CONTACT LENSES WHILE SLEEPING MAY BE A HEALTH HAZARD! THUS OUR LENSES SHOULD NOT BE WORN WHILE SLEEPING OR CONTINUOUSLY FOR MORE THAN A PERIOD OF TIME PRESCRIBED BY A PHYSICIAN. NOT ALL PERSONS WITH CORRECTABLE VISION PROBLEMS CAN SUCCESSFULLY WEAR OUR CONTACT LENSES. THIS ANNOUNCEMENT IS MADE BY LENS CRAFT RESEARCH AND DEVELOPMENT COMPANY OF ESCONDIDO, CALIFORNIA.

IN THE MATTER OF

PIONEER ASSOCIATED CONTRACTORS, INC., ET AL.

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

Docket 8895. Complaint, Aug. 10, 1972—Decision, Sept. 5, 1974

Consent order requiring a Denver, Colo., home improvement firm, among other things to cease making false pricing, savings and guarantee claims; inducing purchasers to sign blank or partially blank legal documents; and failing to disclose to consumers in connection with the extension of consumer credit, such information as required by Regulation Z of the Truth in Lending Act. Further, respondent is required to include on the face of its notes, a notice that any subsequent holder takes the note with all conditions of the contract evidencing the debt.

Appearances

For the Commission: *Thomas H. Emmerson.*

For the respondents: *Gould, Moch & Bernick, Denver, Colo.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Pioneer Associated Contractors, Inc., a corporation, and Robert Rudey, Duane Morey, and Ray Grass, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Pioneer Associated Contractors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 4301 York Street, in the city of Denver, State of Colorado.

Respondents Robert Rudey, Duane Morey, and Ray Grass are individuals and officers of the corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale, distribution, and installation of residential siding and roofing materials to the public.

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents 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 Colorado 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, respondents have made and are now making, numerous statements and representations in promotional material and through oral statements made by their salesmen and representatives with respect to the nature of their offer, their prices, time limitations, guarantees and performance of their products.

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

Guaranteed for life.
Save 30% in heating bills

If someone purchases from us after seeing your home, we'll knock off some of the payments.

We're offering you a reduced price because we would like to use your home for advertising purposes.

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

1. The offer to sell respondents' materials is for a limited time only.
2. Respondents will provide a free gift such as shutters for windows, residential siding materials for auxiliary buildings, or electrical appli-

ances for purchasers or prospective purchasers of respondents' materials.

3. Respondents' siding materials are being offered for sale at special or reduced prices and that purchasers are thereby being offered a savings from respondents' regular selling prices.

4. Purchasers of respondents' siding materials will realize a 30 percent savings in the cost of heating or cooling their residences.

5. Siding materials sold by respondents will never require repairing.

6. Siding materials sold and installed by respondents are unconditionally guaranteed in every respect without limitation for a period of 25 years or more.

7. Homes of prospective purchasers have been specially selected for the installation of respondents' products and materials as model homes or advertising homes, and as a result of allowing their homes to be used for advertising purposes, purchasers would receive allowances, discounts, or commissions.

8. Respondents will perform all the services and provide all of the material as agreed, both orally and in writing, by the parties.

9. Purchasers of respondents' materials and installation will be able to pay for a substantial portion of the contract price with payments from respondents for referral of potential customers.

PAR. 6. In truth and in fact:

1. The offer set forth above was not for a limited time only. Respondents' merchandise is regularly available.

2. Purchasers or prospective purchasers of respondents' products have not received free gifts such as shutters, siding materials and electrical appliances.

3. Respondents' siding materials are not being offered for sale at special or reduced prices, and customers do not thereby enjoy savings from the regular price of respondents' products.

4. All purchasers of respondents' residential siding materials will not realize a 30 percent reduction in the cost of heating or cooling their residences. Few, if any, will realize such savings.

5. Residential siding materials sold and installed by respondents will require repairing.

6. Respondents' residential siding materials and installations are not unconditionally guaranteed in every respect without limitations for a period of twenty-five years (25). Such guarantee as may be provided is subject to numerous terms, conditions and limitations.

7. Homes of prospective customers are not specially selected as model homes for the installation of respondents' products; after instal-

lation, such homes are not used for demonstration or advertising purposes by respondents; and purchasers, as a result of allowing their homes to be used as models, are not granted reduced prices nor do they receive allowances, discounts or commissions.

8. Respondents have failed in several instances to provide the materials and perform the services as agreed to, both orally and in writing, by the parties.

9. Purchasers of respondents' materials and installation do not have a substantial portion of the contract price paid for by payments from respondents for referrals of potential customers.

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

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

1. In a substantial number of instances, and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading, and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, may cut off various personal defenses, otherwise available to the obligor, arising out of the respondents' failure to perform or out of other unfair, false, misleading, or deceptive acts and practices on the part of respondents.

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

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

PAR. 8. 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

365

Complaint

individuals in the sale of residential siding materials and other products of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead 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. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging 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 II as if fully set forth verbatim.

PAR. 11. In the 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. 12. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with credit sales as "credit sale" is defined in Section 226.2(n) of Regulation Z, have caused and are now causing their customers to execute retail installment contracts, hereinafter referred to as the contract.

PAR. 13. By and through the use of the contract, respondents, in a number of instances, have failed to:

1. Disclose the annual percentage rate as required by Section 226.5(b)(1) of Regulation Z.
2. Disclose the due dates or period of payments scheduled to repay the indebtedness, and the sum of such payments, using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.
3. Provide a clear identification of the property to which any security interest relates or if such property is not identifiable, an explanation of

the manner in which the creditor retains or may acquire a security interest in such property the creditor is unable to identify, as required by Section 226.8(b)(5) of Regulation Z.

4. Disclose the cash price of the goods or services sold, using the term "cash price," as required by Section 226.8(c)(1) of Regulation Z.

5. Use the terms, "cash downpayment" and "total downpayment" and give the corresponding disclosures with those terms, as required by Section 226.8(c)(2) of Regulation Z.

6. Use the term "deferred payment price" and give the corresponding disclosure with that term, as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Disclose the difference between the amount of the cash price of the property and/or service and the amount of the downpayment, using the term "unpaid balance of cash price" as required by Section 226.8(c)(3) of Regulation Z.

8. Disclose all other charges, individually itemized which are included in the amount financed but which are not a part of the finance charge as required by Section 226.8(c)(4) of Regulation Z.

9. Use the term "unpaid balance" and provide the corresponding disclosure with that term as required by Section 226.8(c)(5) of Regulation Z.

PAR. 14. By and through the use of the contract respondents have in various instances induced and caused their customers to affix their signatures to such contracts prior to the completion and insertion of all terms and figures relevant to such contract. In such manner the respondents have failed to provide those disclosures required by Section 226.8(a) (b) (c).

PAR. 15 . By and through the use of respondents' contract to perform various home improvements, a security interest, as "security interest" is defined in Section 226.2 (z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of respondents' customers. Respondents' retention or acquisition of such security interest in said real property thereby entitles his credit customers to be given the right to rescind that transaction until midnight of the third business day following the consummation of the transaction or the date of delivery of all the disclosures required by Regulation Z, whichever is later.

Respondents have failed in a number of instances to provide their customers with a notice of the customers' right to rescind as required by Section 226.9 (b) of Regulation Z.

Respondents have caused the following additional information and clause to appear in the contract:

Owner agrees that in event of cancellation of this contract before work is started, Owner shall pay to Contractor on demand twenty-five (25%) per cent of the contract price as its stipulated damage for the breach.

By and through the use of the above-quoted additional information and clause respondents have and are representing to their customers that they are liable for damages in the event that these customers exercise their right to rescind, thereby violating Section 226.9(d) of Regulation Z. And, said additional information is stated and utilized so as to mislead or confuse the customer and contradicts, obscures and detracts attention from the information required by Regulation Z to be disclosed, thereby violating Section 226.6(c) of Regulation Z.

PAR. 16. By and through the use of the contract, respondents have agreed to deliver to the owner of the property receiving the home improvements, the requisite lien waivers, to the end, that no lien may attach to the owners' property by virtue of the work and materials to be furnished under the contract.

Respondents have not delivered the above referred to lien waivers to their customers in a number of instances where delivery of such waivers was contracted for by the parties. In these instances, the security interests which have been or will be retained or acquired, have not been effectively waived.

Respondents, therefore, remain obligated to make the proper disclosures and otherwise act in accordance with Section 226.9 of Regulation Z.

In the instances referred to above, in which respondents have failed to deliver the requisite lien waivers, respondents have also failed to make the proper disclosures and act in accordance with Section 226.9 of Regulation Z.

PAR. 17. Pursuant to Section 103 (q) of the Truth in Lending Act, respondents' aforesaid failure 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 having subsequently issued and served its complaint upon respondents under Part III of its rules of practice charging respondents

with violation of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation thereunder, and then upon joint motion of counsel the matter was withdrawn from adjudication for the purpose of negotiating a consent agreement, and;

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

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

1. Respondent Pioneer Associated Contractors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 4301 York Street, city of Denver, State of Colorado.

Respondents Robert Rudey and Ray Grass are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above-stated address.

Respondent Duane Morey was an officer of the corporation until July 10, and prior to that time cooperated and assisted in formulating, directing and controlling the policies, acts and practices of said corporation.

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

ORDER

COUNT I

It is ordered, That respondents Pioneer Associated Contractors, Inc., a corporation, its successors and assigns, and its officers, and Robert Rudey, Duane Morey, and Ray Grass, individually and as officers of said corporation trading under said corporate name or any trade name or names, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device,

in connection with advertising, offering for sale, sale, distribution or installation of residential siding materials or other home improvement products or services or other products, 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 respondents' offer of products or services is limited as to time or limited in any other manner.

2. Representing directly or by implication that any price for home improvement materials or other products or services, sold or installed by respondents, is a special or reduced price; unless respondents can affirmatively show that such price constitutes a significant reduction from the price at which respondents have sold or installed substantially similar home improvements, or other products or services, for a reasonably substantial period of time in the regular course of their business.

3. Representing directly or by implication that purchasers of respondents' residential siding materials and/or services will realize any specific percentage or amount of savings in the cost of heating or air conditioning their property as a result of the installation of respondents' siding materials.

4. Representing directly or by implication that residential siding materials sold and/or installed by respondents will never require repairing, or misrepresenting, in any manner, the durability, performance or quality of respondents' products.

5. Representing directly or by implication that any of respondents' products or installations are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in writing to the purchaser before the transaction is consummated, and unless the guarantor will, in fact, perform as stated in the disclosed guarantee.

6. Representing directly or by implication, that the home of any of respondents' customers or prospective customers has been specially selected as a model home, or otherwise, for advertising, demonstration or sales purposes.

7. 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.

8. Representing directly or by implication that purchasers of respondents' materials and installation will receive referral commissions from respondents for referral of potential customers in such amount as to pay for a substantial portion of the cost to the purchaser of the materials and installation; or, in any manner, misrepresenting the amount of referral commissions receivable by purchasers of respondents' materials and installation.

9. Representing that purchasers will receive referral commissions; or misrepresenting, in any manner, the amount of referral commissions that purchasers will receive.

10. Inducing or causing purchasers or prospective purchasers of respondents' merchandise or service to sign blank or partially completed sales contracts, or any other instruments.

11. Failing to deliver any and all free gifts and other promotional materials as promised to respondents' customers or prospective customers.

12. Failing to install all materials and perform all work as agreed to by both parties.

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 with respect to such indebtedness are preserved and may be asserted against any assignee or subsequent holder of such note, contract, or other such documents evidencing the indebtedness.

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

NOTICE

Any holder 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.

15. Failing to furnish the buyer with a fully completed copy of any contract pertaining to such sale at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used

and in bold face type of a minimum size of ten (10) points, a statement in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

16. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract and easily detachable, and which shall contain in ten (10) point bold face type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

(Enter date of transaction)
(Date)

You may cancel this transaction, without any penalty or obligation, within three (3) business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller and if the seller does not pick them up within twenty (20) days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, to (name of seller) at (address of seller's place of business) not later than midnight of (Date)

I hereby cancel this transaction.

(Date)

(Buyer's signature)

17. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

18. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

19. Misrepresenting in any manner the buyer's right to cancel.

20. Failing or refusing to honor any valid notice of cancellation by a buyer and within ten (10) business days after the receipt of such notice, to (a) refund all payments made under the contract or sale; (b) return any goods or property traded in, in substantially as good condition as when received by the seller; (c) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

21. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

22. Failing, within ten (10) business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

COUNT II

It is further ordered, That respondents Pioneer Associated Contractors, Inc., a corporation, its successors and assigns, and its officers, and Robert Rudey, Duane Morey, and Ray Grass, individually and as officers of said corporation, trading under said corporate name or trading or doing business under any other name or names, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any extension of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act, (Pub. L. 90-321, 15 USC 1601, *et seq.*), do forthwith cease and desist from:

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

2. Failing to disclose the due dates or period of payments scheduled to repay the indebtedness, and the sum of such payments, using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

3. Failing to provide a clear identification of the property to which any security interest relates or, if such property is not

identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property the creditor is unable to identify as required by Section 226.8(b)(5) of Regulation Z.

4. Failing to disclose the cash price of the goods or services sold, using the term "cash price," as required by Section 226.8(c)(1) of Regulation Z.

5. Failing to use the terms "cash downpayment" and "total downpayment" and failing to provide the corresponding disclosures with those terms, as required by Section 226.8(c)(2) of Regulation Z.

6. Failing to use the term "deferred payment price" and failing to provide the corresponding disclosure with that term as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Failing to disclose the difference between the amount of the cash price of the property or service and amount of the downpayment, and failing to use the term "unpaid balance of cash price" as required by Section 226.8(c)(3) of Regulation Z.

8. Failing to disclose all other charges, individually itemized which are included in the amount financed but which are not a part of the finance charge as required by Section 226.8(c)(4) of Regulation Z.

9. Failing to use the term "unpaid balance" and failing to provide the corresponding disclosure as required by Section 226.8(c)(5) of Regulation Z.

10. Failing to provide the "notice to customer required by federal law" to the customer on one side of a separate statement which identifies the transaction to which it relates, and in the form prescribed by Section 226.9(b) of Regulation Z.

11. Failing to set out the "effect of rescission," required by Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

12. Failing to furnish two copies of the "notice to customer required by federal law," as prescribed by Section 226.9(b) of Regulation Z.

13. Representing directly or by implication on retail installment contracts, promissory notes, or on any written document or orally, that customers will or may be liable for damages, penalties, or any other charges for exercising their right to rescind that is provided by Section 226.9 of Regulation Z.

14. Supplying any additional information, contract clause, or other statement about the customer's liability or obligations in the event that the customer exercises his right to rescind except that

information furnished in accordance with Section 226.9 of Regulation Z.

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

16. Supplying any additional information, contract clause, or other statement pertaining to a transaction generally; unless such additional information, contract clause, or other statement is provided in a fashion which complies with Section 226.6(c) of Regulation Z.

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

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

It is further ordered, That respondents maintain adequate records which disclose the factual basis for any representations or statements as to any type of savings claims, including reduced price claims and comparative value claims, and as to any similar representations or statements of the type disclosed in the various paragraphs of this order; and from which the validity of the aforesaid representations or statements can be determined.

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

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

IN THE MATTER OF

CONSOLIDATED CHEMICAL CORPORATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2535. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974*

Consent order requiring a now bankrupt Houston, Tex., seller and distributor of hot beverage dispensing machines and dried beverage cartridges, routes, licenses, franchises and distributorships, among other things to cease misrepresenting the nature of franchises or distributorships, the security of investment, earnings and profits a prospective purchaser may expect, and the quality or durability of its machines or product. Further respondents are required to furnish prospects with full particulars on the franchise operation in writing at the first contact, and allow future purchasers a 10-day cooling-off period to cancel the contract with full refund rights.

Appearances

For the Commission: *Andre Trawick, Jr.*

For the respondents: *Robert A. Markowitz* and *Larry G. Myers*,
Houston, Tex.

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 Consolidated Chemical Corporation, Inc., a corporation, and David E. Worthington, William F. Wilson, and Judyann Duffala, individually and as officers of said corporation, and Harold L. Thornton and Thomas Norton, individually and as former officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, (15 U.S.C. Section 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 in that respect as follows:

PARAGRAPH 1. Respondent Consolidated Chemical Corporation, Inc., is a corporation that was organized, existed and did business under and by virtue of the laws of the State of Texas, and is presently in liquidating bankruptcy, pending in the U.S. District Court for the Southern District of Texas, Houston Division, in Bankruptcy No. 73-H-134, and its address is 730 Bankers Mortgage Building, in care of Daniel E. O'Connell, Trustee in Bankruptcy, in the city of Houston, State of Texas.

Respondents David E. Worthington, William F. Wilson, and Judyann Duffala are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondents Harold L. Thornton and Thomas Morton are individuals and are former officers of the corporate respondent. They formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of Harold L. Thornton is 2635 Parana Street, Houston, Tex. and the address of Thomas Norton is in care of Joe McHale and Associates, 3930 Kirby Drive at Southwest Freeway, Houston, Texas.

PAR. 2. Respondents are now or have been and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of hot beverage dispensing machines and dried beverage cartridges, and routes, licenses, franchises and distributorships in relation thereto to franchisees or distributors for resale to members of the general public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from respondents' place of business in the State of Texas to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned hereinabove 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 the other aforesaid business opportunities, respondents have made numerous statements and representations in oral sales presentations to prospective purchasers and in newspaper advertisements and promotional literature respecting profits, locations of routes, character of business, business success, security of investment, the quality of the machines and the quality of the products.

Typical and illustrative of the statements and representations contained in said advertising and promotional material, but not all inclusive thereof, are the following:

* * * YOU SERVICE COMPANY ESTABLISHED ACCOUNTS. The company establishes all accounts to insure that you get a fast moving return on your investment which can be as little as \$1595.00. Get started early with Selecta Master. It's outstanding and so is the profit potential, earnings grow to \$25,000 or more per year.

WHOLESALE DISTRIBUTORS WANTED
NO SELLING * * * KEEP YOUR PRESENT JOB!

Simply service company established all cash accounts in this area. This is not a coin operated vending route. Fine Nestle's products sold in locations such as offices, employee lounges in retail stores, financial institutions, small manufacturing plants, warehouses and small institutional accounts. The distributor we select will be responsible for maintaining these locations and restocking inventory. All locations are established by our company. We need a dependable distributor, male or female, in this area with \$900.00 minimum to invest in equipment and inventory which can turn over up to two times monthly. Earnings can grow to \$45,000 annually and up. We will consider part-time applicants. Write for number and Area Code. All inquiries confidential.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning, but not specifically set forth herein, and through oral statements and representations to prospective purchasers, respondents now represent, and have represented, directly or by implication, orally, in writing or visually, that:

1. Exclusive distributorships or franchises for established retail accounts are offered.
2. Any amount invested is secured by an inventory worth the amount invested and there is no risk of losing any part of the investment.
3. Profitable accounts and routes are established.
4. Persons who purchase any such products or services and engage in business can expect to receive substantial earnings up to \$25,000 or \$45,000 per year.
5. Persons who purchase any such products or services and engage in business must be specially selected to qualify for purchases of any such products or services and engage in business.
6. Continuing assistance and advice to distributors and franchisees is offered.
7. Any such machines are well constructed and are durable.
8. Any such products are top quality merchandise and have a long life.

PAR. 6. In truth and in fact:

1. Exclusive distributorships or franchises for established retail accounts are not available.
2. Invested sums of money are not secured by an inventory worth the amount invested and there is a real and substantial risk assumed by the purchaser of losing all or a substantial portion of the money invested.
3. Profitable accounts or routes are not established.
4. Persons who purchase any such products or services and engage in business do not make substantial earnings up to \$25,000 or \$45,000 per year.

5. An offer is not made to specially selected persons only, but to anyone who has the money to purchase any such products or services and engage in business.

6. Little or no assistance or advice is given once the purchase price is paid.

7. Any such machines are not of top quality and durable.

8. Any such products are not of a long life, but tend to spoil or become stale in a short period of time.

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

PAR. 7. Respondents offered for sale franchises, distributorships, licenses, routes, and products or services intended to establish franchisees or distributors in a lucrative business without disclosing in advertising or through their sales representative: (1) the business experience and background of the franchisor and various key personnel; (2) the number of franchises or distributorships which operated at a loss during the previous year; (3) other material facts relating to the success of the franchises or distributorships sold by the respondents. Knowledge of such facts would indicate the possibility of success and risk involved in the franchises and distributorships. Thus, respondents have failed to disclose material facts, which if known to potential franchisees or distributors would be likely to affect their consideration of whether or not to purchase such franchise or distributorship. Therefore, the aforesaid acts and practices were, and are, false, misleading and deceptive acts or practices.

PAR. 8. (a) Respondents as aforesaid have been, and are now using, false, misleading or deceptive acts or practices, which a reasonably prudent person should have known, under all the facts and circumstances, were false, misleading, deceptive or unfair, to induce persons to pay over to respondents substantial sums of money to purchase products or services whose value to the said persons for a business opportunity was virtually worthless. Respondents have received the said sums and have failed to offer to refund and refused to refund such money to purchasers who were unable to recover all or any part of their investment.

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

(b) In the alternative and separate from Paragraph Eight (a) herein, respondents, who are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of business opportunities have been and are now using, as aforesaid, false, mislead-

ing, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase products or services.

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

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

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been and now are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of franchises, distributorships and products or services of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead 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 numbers of respondents' franchises, distributorships, and products or services by reason of said erroneous and mistaken belief.

PAR. 11. 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 (15 U.S.C. Section 45).

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for

settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

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

1. Respondent Consolidated Chemical Corporation Inc., is a corporation that was organized, existed and did business under and by virtue of the laws of the State of Texas, and is presently in liquidating bankruptcy pending in the U.S. District Court for the Southern District of Texas, Houston Division, in Bankruptcy No. 73-H-134, and its address is 730 Bankers Mortgage Building, in care of Daniel E. O'Connell, Trustee in Bankruptcy, in the city of Houston, State of Texas.

Respondents David E. Worthington, William F. Wilson and Judyann Duffala are officers of said corporation. They formulated, directed, and controlled the policies, acts and practices of said corporations and their addresses are as follows: David E. Worthington, 2100 Tanglewood, Houston, Tex.; Judyann Duffala, 9642 Richmond Avenue, Houston, Tex.; William F. Wilson, 812 Glenhollow, Conroe, Tex.

Respondents Harold L. Thornton and Thomas Norton are former officers of said corporation. They formulated, directed and controlled the policies, acts and practices of said corporation, and their addresses are as follows: Harold L. Thornton, 5723 Old Lodge Drive, Houston, Tex.; Thomas Norton, c/o Joe McHale and Associates, 3930 Kirby Drive at SW Freeway, Houston, Tex.

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

ORDER

I

It is ordered, That respondents Consolidated Chemical Corporation, Inc., a corporation, and its officers, David E. Worthington, William F. Wilson, and Judyann Duffala, individually and as officers of said corporation and its successors and assigns and Harold L. Thornton and Thomas Norton, individually and as former officers of said corporation,

and respondents' representatives, agents and employees directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of hot beverage dispensing machines and dried beverage cartridges and routes, licenses, franchises, or distributorships in relation thereto, or any other route, franchise, license, distributorship, or product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication, orally, in writing or visually, that:

1. Exclusive franchises or distributorships are being offered for established retail accounts or misrepresenting, in any manner, the nature of the franchises or distributorships.

2. Any amount invested is secured by an inventory worth the amount invested and there is no risk of losing all or any part of the investment or misrepresenting, in any manner, the amount of security provided by the inventory or the risk of losing all or any part of the investment.

3. Profitable accounts and routes are established or misrepresenting, in any manner, the profitability of the accounts and routes.

4. Persons who purchase any such products or services and engage in business can or will derive any stated amount of sales, profits or earnings, or representing directly or by implication, the past or present sales, profits or earnings of purchasers of any such products or services, routes, licenses, franchises or distributorships unless in fact the past sales, or the profits and earnings represented, are those of a substantial number of purchasers and accurately reflect the average sales, profits or earnings of such purchases under circumstances similar to those of the franchisee or distributor or prospective franchisee or distributor to whom the representation is made or misrepresenting, in any manner, the past, present, or future sales, profits or earnings from the engagement in business and resale of any such products or services.

5. Persons who purchase any such products or services to engage in business must be specially selected to qualify for purchases of any such products and engagement in business, or misrepresenting, in any manner, the qualifications for purchasing any such products or services and engaging in business.

6. Continuing assistance and advice to their franchisees or distributors is offered, or misrepresenting, in any manner, the nature, amount and duration of assistance and advice offered.

7. Any such machines are well constructed and are durable, or

misrepresenting, in any manner, the quality and durability of the machines.

8. Any such products are top quality merchandise and have a long life, or misrepresenting, in any manner, the quality and durability of the products.

It is further ordered, That respondents maintain accurate records which substantiate that the past or present sales, profits or earnings represented are accurate and are those of a substantial number of franchisees or distributors and accurately reflect the average sales, profits or earnings, of such franchisees or distributors under circumstances similar to those of the franchisee or distributor or prospective franchisee or prospective distributor to whom the representation is being made.

II

It is further ordered, That the respondents named in the preamble to Section I of this order shall furnish any prospective purchaser of its routes, licenses, franchises or distributorships, at the time when contact is first established between such prospective purchaser and such respondents, a written statement in a clear, permanent and straightforward form with the following information and none other in the indicated order:

1. A distinctive and conspicuous cover sheet with the following notice and none other in bold face type of not less than 12 point size:

INFORMATION FOR PROSPECTIVE PURCHASERS REQUIRED BY
FEDERAL TRADE COMMISSION DECISION AND ORDER

This information is provided for your own protection. It is in your best interest to study it carefully before making any commitment. If you do sign a contract, you may cancel it, and obtain a full refund of any money paid, for any reason, within ten business days after either signing such contract or receiving this disclosure statement, whichever occurs later. Details appear on the contract itself.

2. A factual description of the route, license, franchise or distributorship offered or to be sold.

3. The business experience, stated individually, of each of the respondents' directors, stockholders owning more than ten percent of the stock, and the chief executive officers for the past ten years; and biographical data concerning all such persons.

4. The business experience of the respondents, including the length of time the respondents have conducted a business of the type to be operated by the purchaser; has granted routes, licenses, franchises or distributorships for such business, and has granted

routes, licenses, franchises or distributorships in other lines of business.

5. Where such is the case, a statement that the respondents or any of their directors or stockholders owning more than ten percent of the stock, or chief executive officers:

a. have been held liable in a civil action, convicted of a felony, or pleaded nolo contendere to a felony charge in any case involving fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

b. are subject to any currently effective injunctive or restrictive order or ruling relating to business activity as a result of action by any public agency or department; or

c. have filed bankruptcy or been associated with management of any company that has been involved in bankruptcy or reorganization proceedings; or

d. are, or have been, a party to any cause of action brought by purchasers against the respondent.

Such statement shall set forth the identity and location of the court, date of conviction or judgment, any penalty imposed or damages assessed, and the date, nature, and issuer of each such order or ruling.

6. The financial history of the respondent, including balance sheets and profit and loss statements for the most recent five-year period; and a statement of any material changes in the financial condition of the respondent since the date of such financial statements.

7. A description of the fee to be paid by the purchaser; and a statement indicating whether all or part of the fee may be returned to the purchaser and the conditions under which the fee will be refunded.

8. The formula by which the amount of such fee is determined if the fee is not the same in all cases.

9. A statement of the number of routes, licenses, franchises or distributorships presently operating and the number proposed to be sold, indicating which existing routes, licenses, franchises or distributorships, if any, are company owned and their addresses.

10. A statement of the number of franchises, if any, that operated at a loss during the previous year.

11. A statement that the prospective purchaser may inspect the profit and loss statements of all existing operators. (The names and addresses of the operators may be deleted from these profit and loss statements.)

12. A statement whether, by the terms of the agreement or by other device or practice, the purchaser is required to purchase or lease from the respondent or affiliated persons or their designee, services, supplies, products, signs, fixtures, or equipment relating to the establishment or operation of the business.

13. A statement of the amount and basis for any revenue received by the respondent from suppliers to its operators during the past 12 months.

14. A statement of the conditions under which the agreement may be terminated or renewal refused or repurchased at the option of the respondent, and a statement of the number of routes, licenses, franchises, or distributorships that fell into each of these categories during the past 12 months.

15. A statement of the conditions and terms under which the respondents allow the operator to sell, lease, assign, or otherwise transfer his interests, or any part therein.

16. A statement whether, by the terms of the agreement or other device or practice, the purchaser is limited in the goods or services he may offer for sale.

17. A statement whether the respondent requires the purchaser to participate personally in the direct operation of the business.

18. A statement of the terms and conditions of any financing arrangement offered directly or indirectly by the respondents or affiliated persons, and a description of any payments received by the respondents from any persons for the placement of financing with such persons.

19. A list of at least ten representative operators with addresses and telephone numbers, similarly situated to the interests offered and located in the same geographic area, if possible.

20. A statement of the territorial protection granted by the respondents, in which the respondents will not establish another operator who is permitted to use the same trade name or trademark; in which the respondents will not establish a company-owned outlet using the same trade name or trademark; and in which the respondents or its parent will not establish other operators or company-owned outlets selling or leasing similar products or services under a different trade name or trademark.

21. If the respondents use the name of a "public figure," a statement of the promotional assistance the "public figure" is committed to provide to the respondents for the next year and the promotional assistance that the "public figure" will provide specif-

ically to the new purchaser, and a description of any fees or conditions attendant upon such assistance.

22. A statement of the average length of service of personnel who are responsible for assisting the purchaser at his location, and the average number of hours such personnel spent during the past year with each purchaser that was in business for less than one year.

23. If the respondents inform the prospective purchaser that they intend to provide him with training, the respondents must state the number of hours of instruction and furnish the prospective purchaser with a brief biography of the instructors who will conduct the training.

24. A statement explaining clearly the terms and effects of any covenant not to compete which a purchaser may be required to enter into.

III

It is further ordered, That the respondents named in the preamble to Section I of this order shall not make any representations, directly or indirectly:

1. In any advertising, promotional material, or disclosure statement, or in any oral sales presentation, solicitation, or discussion between respondents' representatives and prospective purchasers, for which the respondents do not have substantiation in its possession, which substantiation shall be made available to prospective purchasers upon demand. This provision applies, but is not limited, to statements concerning the experience or qualifications, or lack of experience or qualifications, needed for success as an operator.

2. In any advertising or promotional material, or in any oral sales presentation, solicitation, or discussion between a respondent's representatives and prospective purchasers which contradicts or exceeds any of the statements required to be disclosed by Section II of this order.

IV

It is further ordered, That the respondents named in the preamble to Section I of this order, in connection with the sale of routes, licenses, franchises or distributorships, shall:

1. Inform orally all persons to whom solicitations are made and provide in writing immediately above and on the same page as the purchaser's signature line or any contract establishing or confirming a route, license, franchise or distributorship, the following

statement in bold face print at least 50 percent larger than any other print in the body of such contract, or in bold face print of a contrasting color:

NOTICE: YOU ARE ENTITLED TO CERTAIN IMPORTANT INFORMATION CONCERNING THIS TRANSACTION ENTITLED, "INFORMATION FOR PROSPECTIVE PURCHASERS REQUIRED BY FEDERAL TRADE COMMISSION DECISION AND ORDER." IT IS IN YOUR BEST INTEREST TO DEMAND AND STUDY SUCH INFORMATION. *YOU MAY CANCEL THIS CONTRACT FOR ANY REASON WITHIN TEN BUSINESS DAYS AFTER EITHER SIGNING THIS CONTRACT OR RECEIVING THE REQUIRED INFORMATION, WHICHEVER OCCURS LATER.* If you do choose to cancel, you will be entitled to receive a full refund within ten business days after the seller receives notice of your cancellation. You may use any reasonable method to notify him of your cancellation within the grace period. For your own protection you may wish to use certified mail with return receipt requested, or a telegram, either of which should be sent to the address below. (Respondent will insert here the address and telephone number to which such notices should be sent.)

2. Cancel any contract for which a notice of cancellation was sent by any reasonable means within ten business days after either the contract's execution, or the purchaser's receipt of all required information, whichever occurs later, and refund any money paid by the purchasers within ten business days after the date of receipt of such notice of cancellation.

3. Furnish the prospective purchaser upon request at any time, and in the absence of any request, before consummation of any agreement, with a copy of the agreement proposed to be used.

V

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

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

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

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

Notwithstanding any other provision contained herein, Daniel E. O'Connell, Trustee in re Consolidated Chemical Corporation, Inc., Bankrupt, Bankruptcy No. 73-H-134, United States District of Texas, Houston Division, is executing this order as trustee on behalf of Consolidated Chemical Corporation under authority of an order entered in said Bankruptcy No. 73-H-134, and nothing in this order shall limit or restrict his activities as trustee or individually nor shall anything in this order broaden his obligations individually or as trustee.

IN THE MATTER OF

THOMAS L. POGUE, TRADING AS TOM POGUE STUDIOS
 CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
 FEDERAL TRADE COMMISSION ACT

Docket C-2536. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974

Consent order requiring a Tuscaloosa, Ala., photographer, among other things to cease using bait advertisements; misrepresenting goods as free, promotional sales plans, connections or arrangements with others, and prices.

Appearances

For the Commission: *Ronald C. Cougill.*
 For the respondent: *Pro se.*

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 Thomas L. Pogue, an individual trading as Tom Pogue Studios, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Thomas L. Pogue is an individual trading and doing business as Tom Pogue Studios, with his principal place of business and office located at 1107-25th Avenue, Tuscaloosa, Ala.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the photographing, developing and processing of portraits, and in connection therewith, is engaged in the advertising, offering for sale and sale of portraits to the public.

PAR. 3. In the ordinary course and conduct of his business, as aforesaid, respondent has disseminated, and caused the dissemination of certain advertisements by the United States mails in commerce, and has caused his said products, when sold to be shipped from his place of business in the State of Alabama to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the purchase of his products, respondent has made various statements and representations in advertisements in newspapers of general circulation and in direct mail literature, of which the following are typical and illustrative, but not all conclusive thereof:

You are one of over 100 lucky people who will receive a brand new color camera WITHOUT charge along with * * *

One of the world's largest manufacturers has chosen us to test their new color camera. You will be photographed for your LIFE SIZE COLOR PORTRAIT. Your camera will

be given to you without charge. You pay just \$1.95 for the portrait.

This portrait regularly sells for \$50 or more all over the nation. This portrait will be a lifetime treasure.

We will refund your \$1.95 if you are not delighted.

Every family testing this camera will also receive a beautiful LIFE SIZE 16 X 20" NATURAL COLOR SEMIGLOSSY BUST VIGNETTE PORTRAIT * * *

We could not give the camera away without the help of the manufacturer.

The camera is yours to keep just for helping with the test.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, respondent represents, and has represented, directly or by implication:

1. That respondent is making an offer to specially selected persons or to a significantly small number of persons.
2. That a camera manufacturer or international distributor has chosen respondent to test a new color camera or comparatively test four different snapshot color cameras.
3. That respondent is conducting a bona fide test on a camera as the representative of a large manufacturer or international distributor.
4. That a color camera will be given without charge for helping with the test.

5. That the color camera will be given when the photograph is taken.

6. That, at the time respondent made the representations, the respondent was and is reasonably certain that like grade and quality merchandise was being offered by representative retail outlets all over the nation at higher prices quoted and that substantial sales of the merchandise were being made nationwide at those higher prices.

7. That customers will be allowed a full refund of purchase price upon customer request.

8. That the quoted price of \$1.95 would be the only cost incurred by the customer in receiving the offered portrait.

9. That respondent is making a bona fide offer to sell the advertised 16 X 20" color portrait.

PAR. 6. In truth and fact:

1. Respondent's offer is not being made to specially selected persons, but to the contrary, is being made to a substantial segment of the general public.

2. Respondent has no reasonable basis to claim that he had been chosen to test a new camera or to comparatively test four different snapshot color cameras for a manufacturer or an international distributor.

3. Respondent has no reasonable basis to claim that he was conducting a bona fide testing program or service on a camera or series of cameras as the representative of a manufacturer or an international distributor.

4. The color camera is not given without charge but constitutes a gift only if a portrait is ordered and no refund is requested.

5. The color camera given without charge is not tendered or delivered when the customer responds to have the photograph taken, but to the contrary, is tendered or delivered after the customer has made a second appearance for the purpose of viewing the proofs and placing an order.

6. At no time prior to making the comparative claims in his advertising, did respondent have a reasonable basis to conclude, nor to otherwise be reasonably certain, that like grade and quality merchandise was being offered by representative retail outlets in the nation, at the higher prices quoted, and that substantial sales of the merchandise were being made nationwide at those higher prices.

7. On a substantial number of occasions, customers were not allowed a full refund after requesting such.

8. Respondent's product was incumbered by costs of mailing and handling, which were not clearly and conspicuously stated in the advertisement.

9. Respondent is not making a bona fide offer to sell the 16 x 20" color portrait. Said offer is made for the purpose of obtaining leads as to persons interested in the purchase of other more expensive portraits. After obtaining such leads, respondent's salesmen or representatives disparage the advertised portrait and otherwise discourage the purchase thereof and attempt to sell and frequently do sell higher-priced portraits.

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

PAR. 7. In the course of his business, at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of photographic portraits of the same general kind and nature as those sold by respondent.

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

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the 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 jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settle-

ment 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 sixty (60) days, and 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 Thomas L. Pogue is an individual trading and doing business as Tom Pogue Studios, with his principal place of business and office located at 1107-25th Avenue, Tuscaloosa, Ala.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and the respondent and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Thomas L. Pogue, an individual trading as Tom Pogue Studios, his successors and assigns, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, and sale of portraits, or any other products, 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 respondent is making an offer to specially selected persons; or misrepresenting, in any manner, the class or numbers of persons to whom such offers are being made.
2. Representing, directly or by implication, that respondent will give any product free or as a gift or without charge, or that any product can be obtained free or as a gift or without charge in connection with the purchase of, or agreement to purchase, any product or service, or in connection with the testing programs of any product or service, unless the product "given" or tendered "without charge" may be retained separate and apart from a request for refund for the product "charged for."
3. Representing, directly or by implication, that respondent is conducting a testing service or program on any product as the

representative of any manufacturer, distributor or other person or entity unless respondent is properly authorized to conduct tests as advertised or represented in writing and in fact is conducting or participating in such advertised testing or product evaluation program and maintains adequate records for a period of three (3) years which disclose the factual basis for any representations or statements as to a testing or product evaluation program of any product, to include copies of all customer correspondence, customer evaluation submissions and respondent's test report submissions to party authorizing such tests.

4. Using, in any manner, any market, performance or other testing scheme, or any advertising, 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.

5. 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.

6. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale.

7. 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.

8. Refusing or failing upon request to tender a refund when the representation has been made directly or by implication that a refund will be initiated upon request, and further failing to honor such refund requests and tender refund within twenty (20) days of notice of refund request.

9. Failing, clearly, emphatically and unqualifiedly to disclose in all advertising, initial sales contact, and all subsequent sales solicitations of purchasers or prospective purchasers the amount of any charge for mailing and/or handling or any other element of cost in connection with the purchase of any portrait or other product or service.

10. Failing, clearly, emphatically and unqualifiedly to disclose in all advertising and initial sales contact the time at which any product, which is offered "without charge" to customers or prospective customers in connection with a sale or prospective sale of any product or service, is to be tendered or delivered by the respondent to customers or prospective customers.

11. Representing, directly or by implication, that competing merchandise of like grade and quality is customarily offered at a retail price of fifty dollars (\$50), or misrepresenting in any manner, the price at which competing merchandise of like grade and quality is customarily offered for sale or sold.

12. Failing to maintain adequate records, for a period of three (3) years from the time of any representation, (a) which disclose the fact upon which any value claim, including comparative value claims discussed in Paragraph 11 of this order are based; and (b) from which the validity of any value claim and similar representations of the type described in Paragraph 11 of this order can be determined.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel employed or engaged by respondent in the advertising and sale of respondent's products and services, and that respondent secure a signed statement acknowledging receipt of a copy of said order and containing an agreement to be bound by the terms of said order from each such person.

It is further ordered, That respondent promptly notify the Commission of the discontinuance of his present business, incorporation or other change in business structure and of his affiliation with a new business or employment or any other change in business organization which may affect compliance obligations arising out of this order. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondent shall, for a period of three (3) years from the date hereof, establish and maintain a record of all business and customer complaints, oral and written, relating to the proscriptions of this order, and which record will be made available for Commission inspection upon reasonable notice.

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

Complaint

84 F.T.C.

IN THE MATTER OF
WILLIAM FISHER

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

Docket C-2537. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974

Consent order requiring a former officer of Camera Hut, Ltd., a now-bankrupt, corporate mail order seller of cameras and photographic equipment, located in Moorestown, N.J., among other things to cease misrepresenting the quality, performance or characteristics of photographic lenses or the quality or grade of photographic equipment or supplies; failing to make refunds as advertised; and failing to maintain records of transactions.

Appearances

For the Commission: *Myer S. Tulkoff.*

For the respondent: *Robert Pluese, Camden, N.J.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that William Fisher, an individual and as a former officer of Camera Hut, Ltd., Inc., hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent William Fisher is an individual and a former officer of Camera Hut, Ltd., Inc., a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Moorestown Mall, Route 38 and Lenola Road, Moorestown, N.J. Respondent William Fisher formerly formulated, directed and controlled the acts and practices of Camera Hut, Ltd., Inc., including the acts and practices hereinafter set forth. His address is the same as that of the corporation.

PAR. 2. Respondent for some time last past was engaged in the purchasing, advertising, sale, offering for sale and distribution of photographic equipment and supplies to the public at retail, through direct sales and through mail order.

PAR. 3. In the course and conduct of his business as aforesaid, and at all times mentioned herein, respondent was in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the advertising, offering for sale, and sale of merchandise of the same general kind and nature as that advertised, offered and sold by respondent.

PAR. 4. In the course and conduct of his business as aforesaid, respondent for some time last past caused his said merchandise, when sold, to be shipped from his place of business in the State of New Jersey, to purchasers thereof located in various States of the United States, and at all times mentioned herein maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of his business, and for the purpose of inducing the purchase of photographic equipment and supplies, particularly various types of lenses and 27 piece camera outfits, respondent made certain statements and representations in advertisements inserted in various newspapers and magazines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with respect to the qualities or characteristics of said merchandise.

PAR. 6. Respondent by means of the aforesaid advertisements represented directly and by implication that:

1. The teleconverter lens has unbelievable sharpness which compares with normal lens and even close-up auxiliary lens.
2. The Sun zoom lens, as sold by Camera Hut, Ltd., focuses up to 8''.
3. The Prinz 500 mm f/8 lens, as sold by Camera Hut, Ltd., focuses from only 10''.
4. The 27 Piece SLR outfit is of the same grade and quality as other comparative items that respondents list in their ad.
5. The pictures used in connection with said advertising matter are accurate demonstrations of the offered items.

PAR. 7. In truth and in fact:

1. The said teleconverter lens does not have unbelievable sharpness which compares with normal lens or close-up auxiliary lens.
2. The said Sun zoom lens does not focus up to 8''.
3. The said Prinz 500 mm f/8 lens does not focus from only 10''.
4. The 27 Piece SLR outfit is not of the same grade and quality as other comparative items that respondents list in their ad.
5. The pictures used in connection with said advertising matter are not accurate demonstrations of the offered items.

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

PAR. 8. In the course and conduct of his business, and for the purpose of inducing sale of said merchandise, respondent made certain statements and representations in advertisements inserted in various newspapers and magazines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with respect to the time in which delivery of merchandise may be expected.

PAR. 9. By and through the use of the aforementioned statements and representations, the respondent represented directly or by implication, that a purchaser can expect delivery on all merchandise within a reasonable period of time.

PAR. 10. In truth and in fact:

Respondent on numerous occasions and in a substantial number of instances, either failed to deliver prepaid merchandise, or delivered prepaid merchandise only after a long lapse of time and/or after several demands thereof were made to respondent and pleas for assistance were made to Better Business Bureaus, United States Postal Inspectors' offices, magazine publishers, and to governmental agencies. Such practices resulted in substantial expense and inconvenience to purchasers.

Therefore said practices, statements and representations were unfair and misleading and deceptive.

PAR. 11. The use by respondent of the aforesaid false, misleading and deceptive statements and representations, directly or by implication, has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of said merchandise from respondent's place of business by reason of said erroneous and mistaken belief.

PAR. 12. The use by respondent of the unfair, deceptive and misleading acts and practices described herein in connection with respondent's business enabled respondent unfairly to receive remuneration and financial gains in commerce. All of respondent's practices were intertwined and mutually supportive so as to comprise a totality of unfair and deceptive practices in commerce.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged were unethical, exploitative and caused substantial injury to consumers, and constituted and have constituted unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 14. The aforesaid acts and practices of respondent, as alleged herein, were and have been all to the prejudice and injury of the public and of respondent's competitors and constituted unfair methods of

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

DECISION AND ORDER

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

The individual respondent William Fisher and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the said individual 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 said individual respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

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

1. Respondent William Fisher is an individual and a former officer of Camera Hut, Ltd., Inc., a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Moores-town Mall, Route 38 and Lenola Road, Moorestown, N.J. Respondent William Fisher formerly formulated, directed and controlled the acts and practices of Camera Hut, Ltd., Inc., including the acts and practices hereinafter set forth. His address is the same as that of the corporation.¹

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.

¹ Camera Hut, Ltd., Inc., was originally listed as a proposed respondent in the proposed complaint issued by the Commission on Jan. 29, 1974 under Section 2.31 of the Commission's rules. On Mar 1, 1974 a Creditors' Petition in Bankruptcy was filed against Camera Hut, Ltd., Inc. and an Order Appointing Receiver was filed by Bankruptcy Judge William Lipkin in the United States District Court, District of New Jersey on Mar. 5, 1974 (B-74-303). The corporation thereafter ceased doing business, and the receiver was ordered to wind up the affairs of the corporation. Because of these facts, the corporation Camera Hut, Ltd., Inc., has not been named as a party in the Commission's final Complaint or this decision and order.

Decision and Order

84 F.T.C.

ORDER

It is ordered, That respondent William Fisher individually and respondent's agents, representatives, and employees directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of photographic equipment and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing by any means, directly or by implication, that respondent's lenses possess sharpness of focusing characteristics which in fact they do not possess or which do not perform in the manner or to the extent represented; or misrepresenting in any manner the quality, performance, or characteristics of photographic lenses and other photographic equipment.

2. Misrepresenting by any means, directly or by implication, that photographic equipment is of the same grade and quality as other comparative photographic equipment and supplies; or in any other manner misrepresenting the grade and quality of photographic equipment and supplies.

3. Representing by any means, directly or by implication, that pictures or depictions used in connection with respondent's advertising are accurate demonstrations of the advertised items where such is not the case; or misrepresenting in any manner through pictures, drawings, depictions or sketches the qualities, characteristics, or performance of photographic equipment and supplies.

4. Failing to make, without prior demand, a prompt refund to the buyer of all moneys paid for merchandise ordered by mail when the merchandise is not shipped within twenty-one (21) days from receipt of payment; *Provided,* That nothing in this paragraph (4) is intended to preclude the respondent from shipping merchandise at a later time without having made a refund if:

(a) a clear and conspicuous disclosure of the estimated time required for shipment has been made in all advertisements, catalogs, and other materials soliciting orders; or

(b) the respondent obtain the express written consent of the buyer to a specified delay.

5. Failing to make, without prior demand, a prompt refund to the buyer of all moneys paid for merchandise ordered by mail when the merchandise is not shipped within that time stated in the advertisement, catalogs or other materials soliciting orders, or within that

time expressly agreed to by the buyer, as provided in paragraph (4)(a) and (b).

6. Failing to disclose clearly and conspicuously in all advertisements, catalogs and other materials soliciting orders, the following statement:

NOTICE: ALL MERCHANDISE WILL BE SHIPPED WITHIN 21 DAYS OR ALL MONEY WILL BE REFUNDED WITHOUT PRIOR DEMAND.

This statement must appear in all materials soliciting orders unless such materials contain a clear and conspicuous disclosure of the estimated time required for shipment.

7. Failing to maintain for a period of one (1) year with regard to each and every transaction between the respondent and his customers, the nature of merchandise ordered, the date the order was received, and the date the merchandise was shipped.

It is further ordered, That nothing contained in this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies.

Nothing in this order shall be construed to imply that any past or future conduct of respondent is subject to and complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

It is further ordered, That respondent herein shall forthwith distribute a copy of this order to each of his operating officers, agents and representatives.

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

IN THE MATTER OF

FIELDSTON CLOTHES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND WOOL PRODUCTS LABELING ACTS*Docket C-2538. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974*

Consent order requiring a New Jersey corporation located in New York City, a manufacturer and distributor of wool products, including boy's clothing, among other things to cease misbranding its wool products.

Appearances

For the Commission: *James Manos.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Fieldston Clothes, Inc., a corporation, and Marvin Mantin and Stanley J. Miles, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fieldston Clothes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey.

Respondents Marvin Mantin and Stanley J. Miles are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the corporate respondent.

Respondents are engaged in the manufacture and distribution of wool products including, but not limited to boys' clothing. Respondents' office and principal place of business is located at 1330 Broadway, New York, N.Y.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products

Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were boys' clothing which were stamped, tagged, labeled, or otherwise identified by respondents as containing "75% reprocessed wool, 20% unknown reprocessed fibers and 5% other fibers" whereas, in truth and in fact, said wool products contained substantially different fibers and amounts of fibers than as represented.

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

Among such misbranded wool products, but not limited thereto, were wool products, namely boys' clothing which failed to have labels on or affixed thereto showing the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respect:

1. Samples, swatches or specimens of wool products used to promote or effect sales of such wool products in commerce, were not labeled or marked to show the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in violation of Rule 22 of the aforesaid rules and regulations.

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted,

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

DECISION AND ORDER

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

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

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

1. Respondent Fieldston Clothes, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey.

Respondents Marvin Mantin and Stanley J. Miles are officers of said corporation. They formulate, direct and control the acts, practices and policies of said corporate respondent.

Respondents are engaged in the manufacture and sale of boys' clothing.

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

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

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

3. Failing to securely affix labels to samples, swatches or specimens of wool fiber products, used to promote or effect the sale of such wool fiber products, showing in words and figures plainly legible all the information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act.

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 obligation arising out of the order.

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

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

It is further ordered, That respondents shall, within sixty (60) days

Complaint

84 F.T.C.

after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

IN THE MATTER OF

INTERNATIONAL SERVICE INDUSTRIES, INC., ET AL.

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

Docket C-2539. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974

Consent order requiring a Downey, Calif., operator of physical fitness and/or health salons, among other things to cease misrepresenting its promotional sales plans, services as free, limited offers, savings which purchasers may achieve, and guarantees.

Appearances

For the Commission: *William M. Rice, Jr.*

For the respondents: *Raymond Jackson, Beverly Hills, Calif., Kevin J. Quinn, Refkind & Sterling, Beverly Hills, Calif.*

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 International Service Industries, Inc., a corporation, and Sidney Craig and Allen Bergendahl, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent International Service Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 9132 East Stonewood Street, in the city of Downey, State of California.

Respondent Sidney Craig 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