

Complaint

90 F.T.C.

IN THE MATTER OF
WALGREEN CO.

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

Docket C-2897. Complaint, Aug. 3, 1977—Decision, Aug. 3, 1977

This consent order, among other things, requires a Deerfield, Ill. retail drug store chain, to cease disseminating advertisements that offer any item for sale, unless such item is available for sale at or below advertised price, in reasonably sufficient quantities to meet anticipated demands. Further, respondent is required to conspicuously post advertisements and disclosure statements at designated locations; maintain specified business records; and institute a surveillance program designed to ensure that its stores comply with the terms of the order.

Appearances

For the Commission: *Richard A. Palewicz.*

For the respondent: *Pasquale A. Zambrino and John O'Connell,*
Deerfield, Ill.

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 Walgreen Co., a corporation, 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 Walgreen Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 200 Wilmot Road, Deerfield, Illinois.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the operation of a large chain of retail drug stores throughout the United States. Its national distribution of products is broadened by the franchising of over 1800 independently owned "Walgreen Agency Stores." Respondent's volume of business has been and is substantial. In the operation of its retail drug stores, respondent offers to its customers an extensive line of general merchandise, drug and cosmetic products. Many of the said products offered for sale and sold are manufactured or processed by respon-

dent through its various divisions, subsidiaries and affiliates at manufacturing and processing plants located in various states. Many of the said products, however, are purchased from numerous independent suppliers located throughout the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, directly or indirectly, the aforesaid general merchandise, drug and cosmetic products to be shipped and distributed from the aforesaid manufacturing and processing plants or from its other sources of supply to warehouses and distribution centers and thereafter to its retail drug stores located in various states other than the state of origination, distribution or storage of said products. Respondent maintains, and at all times mentioned herein has maintained a substantial course of trade in the production, processing, distribution, advertising, offering for sale and sale of the general merchandise, drug and cosmetic products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, as aforesaid, and for some time last past respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the aforesaid general merchandise, drug and cosmetic products by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation and other advertising media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said products from respondent; and respondent has been and is now disseminating, and causing the dissemination of, advertisements concerning said products by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase from respondent of the said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. Many of the said advertisements list or depict the aforesaid general merchandise, drug and cosmetic products and also contain statements and representations concerning the price or terms at which said products would be offered for sale. Many of the aforesaid advertisements contain further direct and express statements and representations concerning the time periods during which the offers would be in effect and geographical areas in which the offers would be made.

PAR. 5. Through the use of such advertisements disseminated and now being disseminated in various areas of the United States served

by respondent's retail drug stores, respondent has represented and is now representing directly or by implication that in those stores covered by such advertisements, during the effective periods of the advertised offers, the items listed or depicted in such advertisements would be or are:

- A. Readily available for sale to customers;
- B. Conspicuously available for sale at or below the advertised prices; and
- C. Sold to consumers at or below the advertised price.

PAR. 6. In truth and in fact, in a number of respondent's retail drug stores located in metropolitan areas in which the aforesaid advertisements were disseminated, and covered by such advertisements during the effective periods of the advertised offers, a substantial number of items listed or depicted in the said advertisement were or are:

- A. Not readily available for sale;
- B. Not conspicuously available for sale at or below the advertised prices; or
- C. Sold to customers at a price higher than the advertised price.

Therefore, the statements and representations as referred to herein, were and are false, misleading and deceptive.

PAR. 7. By disseminating or causing the dissemination of advertisements which offer or present for sale items as aforesaid, and by failing to have in each of its stores covered by such advertisements, during the effective periods of the advertised offers, in quantities sufficient to meet reasonably anticipated demands, the advertised items:

- A. Readily available for sale to customers; or
- B. Conspicuously available for sale at or below the advertised prices;

respondent has been and now is engaged in unfair acts and practices.

PAR. 8. By disseminating or causing the dissemination of advertisements which offer or present for sale items at specific prices, as aforesaid, and during the effective periods of such advertised offers at certain stores covered by said advertisements, by selling said items or other merchandise to customers at prices higher than the advertised prices, respondent has been and now is engaged in unfair acts and practices.

PAR. 9. In the course and conduct of its business, and at all times

referred to herein, respondent has been and now is in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail general merchandise, drug and cosmetic business.

PAR. 10. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices, has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said statement and representations were and are true, and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices and substantial quantities of items other than the advertised items.

PAR. 11. The acts and practices as aforesaid, 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 or deceptive acts or practice 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 Chicago 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 the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Walgreen Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 200 Wilmot Road, Deerfield, Illinois.

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

ORDER

I.

It is ordered, That respondent Walgreen Co., a corporation, its successors or assigns, and its 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 general merchandise, drug or cosmetic products, hereafter sometimes referred to as items, offered or sold in its retail drug stores, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing the dissemination of any advertisement by any means which offers any items for sale at a stated price, unless during the effective period of the advertised offer at each retail store covered by the advertisement:

1. Each advertised item is readily available for sale to customers in the public area of the store, or if not readily available there, a clear and conspicuous notice is posted where the item is regularly displayed which states that the item is in stock and may be obtained upon request, and said item is furnished on request;

2. There is a sign or other conspicuous marking at the place where an item advertised below regular shelf price is displayed for sale, clearly disclosing that the item is "as advertised" or "on sale" or words of similar import as appropriate, and disclosing on such sign or marking, the advertised price;

3. Each advertised item which is usually and customarily individually marked with a price, is individually, clearly, and conspicuously marked with the advertised price;

4. Each advertised item is sold to customers at or below the advertised price.

The Commission recognizes that technical per se violations of Section I of this order are inevitable despite the honest best efforts of

respondent to ensure availability and proper pricing of advertised items. Therefore, in determining compliance with Section I of this order, the Commission will consider (a) all circumstances surrounding nondelivery of advertised products which were actually ordered in quantities sufficient to meet reasonably anticipated demands but were not delivered due to circumstances beyond respondent's control, and (b) all circumstances surrounding failure to make advertised items conspicuous and readily available for sale at or below the advertised prices due to circumstances beyond respondent's control.

Provided, it shall constitute a defense to a charge of unavailability under subparagraph I.A.1. if respondent maintains and furnishes or makes available for inspection and copying upon the request of the Federal Trade Commission, such records and affidavits as will show that (a) the advertised items were delivered to its stores in quantities sufficient to meet reasonably anticipated demand, or (b) the advertised items were ordered but not delivered due to circumstances beyond respondent's control, and that respondent, upon notice or knowledge of such nondelivery acted immediately to contact the media to correct the advertisement or proposed advertisement to reflect the limited availability or unavailability of each advertised item, and (c) respondent immediately offered to customers on inquiry a "rain check" for each unavailable item which entitled the holder to purchase the item in the near future at or below the advertised price, or a similar product of equal or better quality at or below the advertised price of the unavailable product.

Provided, further, that it shall not be deemed a violation of subparagraphs I.A.1., I.A.2., I.A.3., or I.A.4., if respondent is complying with a specific exemption, limitation or restriction with respect to store, item or price which is clearly and conspicuously disclosed in all advertisements for the product in question.

Provided, further, that an advertised item which is usually and customarily individually marked with a price, need not be marked with the advertised price but may remain marked at its regular price if both (i) a conspicuous sign at the site of the display of such item clearly states that the cashiers know the sale price; and (ii) the cashiers do in fact have a written list containing such sale price, have been instructed to charge the sale price for said item, and do in fact charge the customer the sale price.

II.

It is further ordered, That throughout each advertised sale period in each of its retail stores covered by an advertisement, respondent shall post conspicuously (1) at or near each doorway affording

entrance to the public, and (2) at or near the place where customers pay for merchandise, notices which contain the following information:

- A. A copy of the advertisement.
- B. A statement that: "All items listed in the advertisement are required to be available for sale at or below the advertised price."
- C. A clear and conspicuous statement of respondent's rain check program which will inform customers that:
 1. A rain check will be promptly issued by any store employee when an advertised item is unavailable.
 2. A rain check will enable customers to purchase an unavailable item at the advertised price when stocks are replenished or, if such replenishment is impossible, a similar item of equal or better quality will be substituted.
 3. A rain check will be valid for a period of thirty (30) days.

III.

It is further ordered, That respondent shall cause the following statement to be clearly and conspicuously set forth in each advertisement which represents that items are available for sale at a stated price at any of its stores: "Each of these advertised items is required to be readily available for sale at or below the advertised price in each Walgreen store, except as specifically noted in this ad."

IV.

It is further ordered, That:

- A. Respondent shall forthwith deliver a copy of this order to each of its operating divisions and to each of its present and future officers and other personnel in its organization down to the level of and including assistant store directors who, directly or indirectly, have any supervisory responsibilities as to individual retail stores of respondent, or who are engaged in any aspect of preparation, creation, or placing of advertising, and that respondent shall secure a signed statement acknowledging receipt of said order from each such person;
- B. Respondent shall institute and maintain a program of continuing surveillance adequate to reveal whether the business practices of each of its retail stores conform to this order, and shall confer with any duly authorized representative of the Commission;
- C. Respondent shall, for a period of three (3) years subsequent to the date of this order:
 1. Maintain business records which show the efforts taken to

insure continuing compliance with the terms and provisions of this order;

2. Grant any duly authorized representative of the Federal Trade Commission access to all such business records;

3. Furnish to the Federal Trade Commission copies of such records which are requested by any of its duly authorized representatives.

D. Respondent shall, all other provisions of this order notwithstanding, on or before each of the first three (3) anniversary dates of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order in the preceding year.

It is further ordered, That no provision of 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. No provision of this order shall be construed to imply that any past or future conduct of respondent complies with the rules and regulations of, or the statutes administered by, the Federal Trade Commission.

It is further ordered, That respondent shall notify the Commission at least thirty 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 respondent which may affect compliance obligations arising out of this order.

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

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

AMREP CORPORATION

Docket 9018. Interlocutory Order, Aug. 10, 1977

General counsel directed to petition United States District Court (S.D.N.Y.) for grand jury testimony; and procedures established for *in camera* review by ALJ and access to testimony by counsel for both sides.

ORDER GRANTING REQUEST FOR APPLICATION TO UNITED STATES DISTRICT COURT FOR GRAND JURY TESTIMONY

In a report of August 2, 1976, the administrative law judge in this proceeding recommended that the Commission seek access to grand jury testimony presented by a prospective witness in this proceeding, Mr. Paul W. Heinz, in a criminal proceeding against this respondent, *United States v. Amrep Corp.*, No. 75 Cr. 1023 (S.D.N.Y.). We took that recommendation under advisement pending completion of the criminal proceedings in the expectation that Mr. Heinz' testimony would be turned over to respondent in those proceedings, 88 F.T.C. 457 (1976). The law judge, in a report of July 27, 1977, now informs us that respondent has not secured access to transcripts of the testimony, and the criminal case has concluded. Respondent requests access to the transcripts for their potential value in impeaching Mr. Heinz' prospective testimony. Accordingly,

It is ordered, That the Commission's General Counsel shall expeditiously petition the United States District Court for the Southern District of New York for discretionary release, pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, of all transcripts of grand jury testimony presented by Paul W. Heinz, in connection with *United States v. Amrep Corp.*, No. 75 Cr. 1023.

It is further ordered, That should any such transcripts be secured by the General Counsel acting on the Commission's behalf, they shall be delivered to the Administrative Law Judge in this proceeding, who shall review them *in camera* to determine whether they would be producible after direct examination of Mr. Heinz, under the standards in conformity with the Jencks Act which the Commission has established, *Ernest Mark High*, 56 F.T.C. 625, 632-633 (1959); *L. G. Balfour Co.*, 69 F.T.C. 1118 (1969); *Inter-State Builders, Inc.*, 69 F.T.C. 1152 (1969); *Star Office Supply Co.*, 74 F.T.C. 1595 (1968). Access may be granted to complaint counsel in advance of hearings to enable them to reassess whether to elicit testimony from Mr. Heinz. Access to respondent should be granted after direct examination of Mr.

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Interlocutory Order

Heinz if such transcripts are within the Commission's Jencks Act standards.

IN THE MATTERS OF

BRISTOL-MYERS COMPANY, ET AL. D. 8917

AMERICAN HOME PRODUCTS CORPORATION, ET AL.
D. 8918

STERLING DRUG INC., ET AL. D. 8919

Dockets 8917, 8918, 8919. Interlocutory Order, Aug. 11, 1977

Denial of motion by complaint counsel for extension of time in which to file application for interlocutory appeal.

ORDER DENYING MOTION FOR EXTENSION OF TIME

Complaint counsel in these three related proceedings jointly move for an extension of time for filing with the Commission an application for interlocutory review under Section 3.23(a)(1) of our Rules of Practice. Applications for review under this provision are required to be filed "within five (5) days after notice of the Administrative Law Judge's ruling." The order from which counsel intend to appeal would grant respondents access to what are described as "two non-contemporaneous interview reports prepared by a staff attorney."

An extension of time is sought, in complaint counsel's words, "in order to seek appeal alternatively under Section 3.23(b) of the Rules," evidently because of counsel's view that the Administrative Law Judge would be inclined to rule that the question presented was suitable for interlocutory appeal. Delaying their filing under subsection (a)(1) until the filing under subsection (b) is due would assertedly "avoid the needless duplication in filing essentially identical motions before both the Commission and the Administrative Law Judge."

We have great difficulty in following complaint counsel's reasoning in this matter. An application for review under Section 3.23(a)(1) addresses itself directly to the Commission's discretion, without the necessity for a ruling by the Administrative Law Judge. On the other hand, no application may be filed with the Commission under Section 3.23(b) in the absence of:

a determination by the Administrative Law Judge in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy.

Even if such a determination is made, the decision whether or not to entertain an appeal would still be committed to the Commission's

discretion; that is, the posture of the appeal would in no way have been advanced by the additional time and effort involved in pursuing subsection (b) procedures.

Moreover, the granting of complaint counsel's request would make a nullity of the 5-day time limit contained in subsection (a). Similarly situated applicants could always seek subsection (b) certification as well as a subsection (a) appeal, thereby avoiding the time constraint. Because the time limitation serves the important purpose of reinforcing the ALJ's control over the orderly progress of adjudicative hearings, we cannot countenance such a result.

It is therefore ordered, That the motion is denied.

Complaint

90 F.T.C.

IN THE MATTER OF

TRW INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SECTION 8 OF THE
CLAYTON ACT

Docket 9084. Complaint, June 17, 1976 — Decision, Aug. 11, 1977

This consent order, among other things, requires a Shaker Heights, Ohio firm, Addressograph-Multigraph Corporation, to cease interlocking directorates by seating on its board of directors any person who is simultaneously serving on the board of directors of any competitive company.

Appearances

For the Commission: *John Mendenhall* and *Paul Eyre*.

For the respondents: *Brent L. Henry* and *Robert H. Lawson, Jr.*, *Jones, Day, Reavis & Pogue*, Cleveland, Ohio for TRW Inc. *Joseph D. McGrath*, Shaker Heights, Ohio for Addressograph-Multigraph Corporation.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have been and are in violation of the provisions of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent TRW Inc. (hereinafter TRW), is an Ohio corporation and maintains its principal office at 23555 Euclid Ave., Cleveland, Ohio. TRW has capital, surplus, and undivided profits aggregating more than One Million Dollars (\$1,000,000). TRW is engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, and is engaged in or its business affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 2. Respondent Addressograph—Multigraph Corporation (hereinafter Addressograph) is a Delaware corporation and maintains its principal office at 20600 Chagrin Boulevard, Shaker Heights, Ohio. Addressograph has capital, surplus, and undivided profits aggregating more than One Million Dollars (\$1,000,000). Addressograph is engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, and is engaged in or its business affects commerce, as

"commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 3. Respondent Horace A. Shepard is an individual. His business address is the same as that of TRW.

PAR. 4. On or about April 29, 1969, respondent Horace A. Shepard was elected director and chief executive officer of TRW and has served in such capacities with TRW from on or about April 29, 1969, until the present. On or about November 4, 1971, respondent Horace A. Shepard was elected director of Addressograph and has served in such capacity with Addressograph from on or about November 4, 1971, until on or about November 6, 1975.

PAR. 5. During all or part of the period January 1, 1973 through and including November 6, 1975, the business of TRW and Addressograph included, but was not limited to, the manufacture, sale and distribution in commerce of point-of-sale credit authorization equipment and teller-operated bank transaction equipment, and other such equipment used for credit validation, check cashing validation, recording of deposits and withdrawals from financial institutions, and inventory recordkeeping.

PAR. 6. By the nature of their business as hereinabove described and location of operations with respect thereto, Addressograph and TRW were competitors, concurrent with respondent Horace A. Shepard's membership on the Boards of Directors of TRW and Addressograph, during part or all of the period January 1, 1973 through and including November 6, 1975, so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

PAR. 7. The simultaneous membership of respondent Horace A. Shepard on the Boards of Directors of respondents TRW and Addressograph constitutes a violation of Section 8 of the Clayton Act, 15 U.S.C. 19, and Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent, Addressograph-Multigraph Corporation, named in the caption hereto, with violation of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, as amended, and the respondent, Addressograph-Multigraph Corporation, having been served with a copy of the complaint and with a copy of the notice of contemplated relief accompanying said complaint; and

The respondent and counsel for the Commission having thereafter

executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the 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 issued an order withdrawing the matter described in the caption hereto from adjudication for the purpose of considering the proposed consent agreement pursuant to Section 3.25 of its Rules; and

The Commission, having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days and no comments having been received by the Commission, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent Addressograph-Multigraph Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, maintaining an office at 20600 Chagrin Boulevard, Shaker Heights, Ohio.

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

ORDER

I

It is ordered, That Addressograph-Multigraph Corporation, its successors and assigns, shall forthwith cease and desist from having, and in the future shall not have, on its board of directors any individual who serves as a director of any other corporation if Addressograph-Multigraph Corporation and such other corporation are, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.

II

It is further ordered, That within thirty (30) days of the date of

service of this order Addressograph-Multigraph Corporation shall review and retain, as to each member of its board of directors, a descriptive listing of all products and services produced or sold by each corporation of which such director serves, or has been nominated to serve, as a director. Such listing shall include the name and address of each corporation.

III

It is further ordered, That Addressograph-Multigraph Corporation, prior to each election of directors or to the solicitation of proxies for such election, shall review and retain, as to each member of its board of directors (except directors whose terms expire at the next election and who are not standing for re-election) and each nominee for a directorship (who is not then a director), a descriptive listing of all products and services produced or sold by each corporation of which such director or nominee serves, or has been nominated to serve, as a director. Such listing shall include the name and address of each corporation.

IV

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

V

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

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

Docket 8918. Interlocutory Order, Aug. 18, 1977

Denial of complaint counsel's application for review of ALJ's order denying reconsideration of prior order which disallowed request for substitution of witnesses on previously submitted list.

ORDER DENYING APPLICATION FOR REVIEW

Complaint counsel here seek interlocutory review of a July 13, 1977 order by Administrative Law Judge Hyun, denying reconsideration of his June 14, 1977 order, which, in essence, disallowed a request for substitution of witnesses on a previously submitted list. Complaint counsel's application is filed notwithstanding the Administrative Law Judge's denial, by order of July 20, 1977, of a requested determination under Rules of Practice Section 3.23(b) which would have allowed interlocutory appeal.

Section 3.23 of our Rules, by its terms, exhausts the available avenues for interlocutory appeal to the Commission. Since no contention is or could be made that an appeal will lie in this case under subsection (a) of this section, and the requisite determination under subsection (b) was denied, there would appear to be no basis for entertaining the present application.

Complaint counsel nonetheless urge that the assertedly grave impact of the Administrative Law Judge's ruling invokes our "inherent power to review a ruling by an administrative law judge" even where the requirements of Section 3.23 are not met. As authority for the existence of such a power, they cite two rulings in *Kellogg Co., et al.*, reported at 83 F.T.C. 1756 (1974) and 86 F.T.C. 650 (1975). Both of these rulings dealt with applications, like the present one, premised upon our inherent power to review interlocutory rulings. In both instances the applications were denied. To be sure, there is language in both rulings indicating that review might be granted on a showing of clear abuse of discretion on the part of the Administrative Law Judge. 83 F.T.C. at 1758; 86 F.T.C. at 651. Another ruling in the same matter, reported at 86 F.T.C. 318, may be read as suggesting that a showing of irreparable harm to the appealing party is also requisite to its exercise. See 86 F.T.C. at 319, n. 1.

These tests are not met here. Moreover, the decision we are asked to review is peculiarly of the sort best left to the discretion of the Administrative Law Judge. Far from being an issue of "law or policy"

which we might appropriately resolve on interlocutory appeal, it goes to the heart of the Administrative Law Judge's duty to ensure that the hearing proceeds fairly and expeditiously.

It is therefore ordered, That the application is denied.

Interlocutory Order

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IN THE MATTERS OF

BRISTOL-MYERS COMPANY, ET AL. D. 8917

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

D. 8918

STERLING DRUG INC., ET AL. D. 8919

Dockets 8917, 8918, 8919. Interlocutory Order, Aug. 23, 1977

Order denying motion of complaint counsel for interlocutory review of ruling of Administrative Law Judge which granted respondents access to two reports of interviews with one of respondents' witnesses.

ORDER DENYING APPLICATION FOR INTERLOCUTORY APPEAL

Complaint counsel in these three proceedings apply for interlocutory review of the Administrative Law Judge's ruling granting access, in connection with a joint hearing to take testimony applicable to each case, to two reports, prepared by complaint counsel, of interviews with one of their witnesses. The application follows a ruling dated August 2, 1977, by the Administrative Law Judge determining that the question involved meets the standards for interlocutory review set out in Section 3.23(b) of our Rules of Practice.

This application for review was the subject of an earlier motion, filed July 29, 1977, entitled "Motion For Extension Of Time In Which To File Application For Interlocutory Appeal Under Section 3.23(a)(1)." It was urged that the Administrative Law Judge's order "required the disclosure of Commission records," in the terms of that portion of the Rule; and that characterization seems unassailable on the basis of the facts before us. We denied that motion because the only ground urged for an extension was complaint counsel's desire to seek appeal simultaneously under both subsection (a)(1) and subsection (b). We held that such a procedure:

. . . would make a nullity of the 5-day time limit contained in subsection (a). Similarly situated applicants could always seek subsection (b) certification as well as a subsection (a) appeal, thereby avoiding the time constraint. Because the time limitation serves the important purpose of reinforcing the ALJ's control over the orderly progress of adjudicative hearings, we cannot countenance such a result.

This consideration applies with equal force to the present motion. Complaint counsel could have made application for review of the order in question under Section 3.23(a)(1), within the five-day period prescribed thereunder. They did not. We cannot now countenance the

circumvention of that time limit by granting an application under Section 3.23(b) for review of the same order.

It is therefore ordered, That the motion is denied.

Complaint

90 F.T.C.

IN THE MATTER OF

HEIRLOOM COLLECTION, INC., ET AL.

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

Docket C-2898. Complaint, Aug. 25, 1977 — Decision, Aug. 25, 1977

This consent order, among other things, requires an Indianapolis, Ind. door-to-door seller of china, crystal, cookware, flatware, and linen, to cease violating the Truth in Lending Act by failing to provide to consumers, in connection with the extension of consumer credit, such disclosures as are required by Federal Reserve Board regulations. Further, the order requires the firm to make conspicuous disclosure of customers' refund rights in lay away plan agreements; to retain, without contractual obligations, merchandise until full cash payment is received; and where such purchase is revoked, to make prompt refund of all monies paid toward full cash price.

Appearances

For the Commission: *Richard A. Palewicz.*

For the respondents: *Thomas E. Tobin, Indianapolis, Ind.*

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 the parties named in the caption hereof and more particularly described below and sometimes referred to hereinafter as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Heirloom Collection, 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 2424 East 55th St., Indianapolis, Indiana.

Respondent Future Enterprises, 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 2424 East 55th St., Indianapolis, Indiana.

Respondent Linencrest, 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 2424 East 55th St., Indianapolis, Indiana.

Respondent George L. Douglass is an individual and an officer of respondent corporations. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of said corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been engaged in the offering for sale, sale and distribution of china, crystal, cookware, flatware and linen to the general public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit and are creditors as "consumer credit" and "creditors" 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. 4. Subsequent to July 1, 1969, respondents, Future Enterprises, Inc., and George L. Douglass, in the ordinary course and conduct of their business as aforesaid, in connection with credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute retail installment contracts which contain certain credit information. Said respondents do not provide these customers with any other consumer credit information. By and through the use of these contracts, respondents, Future Enterprises, Inc., and George L. Douglass:

1. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, using the term "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
2. Fail to disclose the number, amount, and due date or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.
3. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and to state the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.
4. Fail to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 5. Subsequent to July 1, 1969, respondents, The Heirloom

Collection, Inc., Linencrest, Inc., and George L. Douglass, in the ordinary course and conduct of their business as aforesaid, have caused and are causing customers to execute layaway contracts for the sale of merchandise. Under said contracts, customers agree to pay for merchandise in more than four installments. Also, under said contracts, said respondents retain the merchandise for most of their customers until the cash price is paid in full. The contracts do not, however, clearly and conspicuously give to customers the right to revoke the purchase at any time prior to full payment of the cash price and delivery of the merchandise, and to request and receive a full and prompt refund of any amounts paid toward the cash price of the merchandise. Said respondents' layaway sales are, therefore, credit sales as "credit sale" is defined in Regulation Z. By and through the use of their layaway contracts, respondents, The Heirloom Collection, Inc., Linencrest, Inc., and George L. Douglass:

1. Fail to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property which is the subject of the credit sale, using the term "cash price," as required by Section 226.8(c)(1) of Regulation Z.
2. Fail to disclose the amount of any downpayment in money using the term "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.
3. Fail to disclose the difference between the "cash price" and the "cash downpayment," using the term "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.
4. Fail to disclose the sum of the "unpaid balance of cash price" and all other charges individually itemized, which are included in the amount financed but which are not part of the finance charge, using the term "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.
5. Fail to disclose the amount of credit extended, using the term "amount financed," as determined and required by Section 226.8(c)(7) of Regulation Z.
6. Fail to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, using the term "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.
7. Fail to disclose the number, amount, and due date or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.
8. Fail to disclose the sum of the payments scheduled to repay the indebtedness, using the term "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

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

10. Fail to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and to state the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

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

DECISION AND ORDER

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

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

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

Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Heirloom Collection, 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 2424 East 55th St., Indianapolis, Indiana.

Respondent Future Enterprises, 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 2424 East 55th St., Indianapolis, Indiana.

Respondent Linencrest, 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 2424 East 55th St., Indianapolis, Indiana.

Respondent George L. Douglass is an officer of each of the corporate respondents. He formulates, directs and controls the policies, acts and practices of said corporations and his address is the same as that of the corporate respondents.

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

ORDER

It is ordered, That respondents The Heirloom Collection, Inc., a corporation, Future Enterprises, Inc., a corporation, and Linencrest, Inc., a corporation, their successors and assigns, and their officers, and George L. Douglass, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device in connection with the extension or arrangement for the extension of "consumer credit" as defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (Pub. Law 98-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property which is the subject of the credit sale, using the term "cash price," as required by Section 226.8(c)(1) of Regulation Z.

2. Failing to disclose the amount of any downpayment in money, using the term "cash downpayment" as required by Section 226.8(c)(2) of Regulation Z.

3. Failing to disclose the difference between the "cash price" and the "cash downpayment," using the term "unpaid balance of cash price," as required by Section 226.8(c)(3) of Regulation Z.

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

5. Failing to disclose the amount of credit extended, using the term "amount financed," as determined and required by Section 226.8(c)(7) of Regulation Z.

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

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

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

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

10. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and to state the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

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

12. Failing in any consumer credit transaction to make all disclosures that are required by Sections 226.4, 226.5, 226.6 and 226.8 of Regulation Z in the manner, form and amount specified therein.

Provided, however, that lay away plans shall not be considered extensions of credit subject to the provisions of Regulation Z if under such lay away plans: one, respondents retain the merchandise for the customer until the cash price is paid in full; two, the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amounts paid toward the cash price of the

merchandise; and, three, the customer receives a clear and conspicuous written disclosure contained in the lay away plan agreement of his right to a full refund.

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the sale of the respondents' goods or services, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

It is further ordered, That respondents maintain at all times in the future, for a period of not less than three (3) years, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relative to the manner and form of their continuing compliance with all the above terms and provisions of this order.

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

IN THE MATTER OF
ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

Docket C-2015. Interlocutory Order, Aug. 30, 1977

Denial of respondents' petition to reopen proceeding for modification of the consent order.

ORDER DENYING RESPONDENTS' PETITIONS TO REOPEN THE
PROCEEDING FOR MODIFICATION OF CONSENT ORDER

Respondents ITT Continental and Bates, ITT's advertising agency, petition the Commission, pursuant to Rules of Practice Section 3.72(b), to reopen the above-styled proceeding for purposes of modifying in certain specified aspects Paragraph I.1 of the order entered on August 17, 1971. 79 F.T.C. 248, 254.

Petitioners assert that modification of the order is needed to permit them to conduct consumer tests so as to substantiate intended advertising claims with respect to a new bread product, "Fresh Horizons." However, nothing in the order precludes such testing. Petitioners further assert that Paragraph I.1 of the order is inconsistent with the First Amendment, as applied in the recent series of Supreme Court "commercial speech" cases. The issue of the order's applicability to a particular advertising claim is not before the Commission, however. A hypothetical construction of the order that suggests it might bar truthful, adequately substantiated claims does not justify modification at this time.

The Commission has determined that petitioners have failed to present adequate evidence that changed conditions of fact or law, or the public interest, requires modification of the order. Rules of Practice, Section 3.72(b)(2).

The aforesaid petition is accordingly denied, without prejudice to respondents' right to refile at an appropriate time.

It is so ordered.

Complaint

90 F.T.C.

IN THE MATTER OF
PREMIER CLOTHING CO., INC., ET AL.

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

Docket C-2899. Complaint, Aug. 31, 1977 — Decision, Aug. 31, 1977

This consent order, among other things, requires a New York City clothing manufacturer and distributor to cease misbranding and misrepresenting the wool and constituent fiber content of its products. The firm is also required to advise affected customers that the clothing they purchased was misbranded.

Appearances

For the Commission: *Martin Gorman.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 Premier Clothing Co., Inc., a corporation, and Sidney Kreigler, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the 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 Premier Clothing Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 120 Fifth Ave., New York, New York.

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

Respondents are engaged in the importation, sale and distribution of clothing products including but not limited to men's and boys' coats.

PAR. 2. Respondents, now and for some time last past, have imported for introduction into commerce, manufactured for introduction into commerce, introduced into commerce, transported, distri-

buted, delivered for shipment, shipped, offered for sale, and sold in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were certain men's and boys' coats stamped, tagged, labeled, or otherwise identified by respondents as "100% cashmere," whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they 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 men's and boys' coats with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of 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 or affecting commerce, under the Federal Trade Commission Act, as amended.

PAR. 6. Respondents are now and for some time last past have been engaged in the manufacture, offering for sale, sale, and distribution of certain products, namely men's and boys' coats. 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 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 or affecting commerce,

as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. Respondents in the course and conduct of their business have made statements on invoices to their customers, misrepresenting the fiber content of certain of their products.

Among such misrepresentations, but not limited thereto, were statements setting forth the fiber content thereof as "100% cashmere" whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 8. The acts and practices set forth in Paragraph Seven have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged in Paragraph Seven were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce, within the intent and meaning of the Federal Trade Commission Act, as amended.

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, as amended, and the Wool Products Labeling Act of 1939; 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 of its Rules, the

Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Premier Clothing Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 120 Fifth Ave., New York, New York.

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

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

ORDER

It is ordered, That respondents Premier Clothing, Co., Inc., a corporation, its successors and assigns, and its officers, and Sidney Kriegler, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the introduction, or importing for introduction, 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.

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

It is further ordered, That respondents Premier Clothing Co., Inc., a corporation, its successors and assigns, and its officers and Sidney Kriegler, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the importing, advertising, offering for sale, sale or distribution of men's and boys' coats in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

It is further ordered, That respondents mail a copy of this order by

registered mail to each of their customers that purchased the wool products which gave rise to this complaint.

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 each change in business or employment status, which includes discontinuance of his present business or employment and each affiliation with a new business or employment, for ten (10) years following the effective date of this order. Such notice shall include respondent's current business address and a description of the business or employment in which he is engaged, as well as a description of his duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligations arising under this order.

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

IN THE MATTER OF
COPCO, INC.

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

Docket C-2900. Complaint, Sept. 7, 1977 — Decision, Sept. 7, 1977

This consent order, among other things, requires a New York City importer and distributor of gourmet cookware, to cease establishing, maintaining, and enforcing price maintenance agreements, and requiring such agreements as a precondition to dealing; soliciting reports of price cutters, and threatening or terminating those dealerships. Respondent is additionally required to cease withholding earned advertising credits, and restricting dealers from selling goods to unauthorized customers or classes of customers. Further, the order mandates that respondent clearly disclose in pricing materials that such prices are merely "suggested," and maintain prescribed files for a period of three years.

Appearances

For the Commission: *William F. Connolly and Raymond J. McNulty.*

For the respondent: *Alan Weinschel, Weil, Gotshal & Manges, New York City.*

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 Copco, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Copco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 11 East 26th St. New York, New York.

PAR. 2. Respondent has been and is now engaged in the manufacture, importation, distribution, and sale of cookware and related products, hereinafter referred to as said products. Said products are subsequently distributed and sold to retail dealers throughout the United States for resale to the general public.

PAR. 3. Respondent distributes and sells its products to retail

dealers (hereinafter referred to as dealers) located in all fifty states and the District of Columbia, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused said products to be shipped from the state in which they are warehoused to purchasers in other states. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Except to the extent that competition has been hampered, hindered, lessened or restrained as set forth in this complaint, respondent has been and is now in competition with other persons, firms, and corporations engaged in the manufacture, importation, sale, and distribution of said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 6. Respondent, in combination, agreement or understanding with certain of its retail dealers, or with the cooperation or acquiescence of other of its dealers, has for the last several years been engaged in a course of action to fix, establish, and maintain, certain resale or retail prices at which said products are resold to the general public. In furtherance of said course of action, respondent has for the last several years been engaged in the following acts and practices, among others:

(a) Establishing agreements, understandings or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain its suggested retail prices;

(b) Regularly furnishing its dealers with price lists and necessary supplements thereto containing certain resale or retail prices for said products;

(c) Informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated;

(d) Requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers;

(e) Soliciting and obtaining from its dealers cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell or sells said products at prices lower than certain resale or retail prices;

(f) Directing, soliciting or encouraging salespersons, sales represen-

tatives, and other employees or agents of respondent to secure and report information identifying any dealer who (1) advertises, offers to sell or sells respondent's products at prices below the retail prices suggested or established by respondent; or (2) sells respondent's products to other dealers;

(g) Contacting those dealers who fail to adhere to and maintain certain resale or retail prices for said products and securing, or attempting to secure, assurances from such dealers that they will adhere to and observe respondent's resale or retail prices;

(h) Threatening to terminate certain dealers who fail or refuse to observe and maintain respondent's suggested prices, or who advertise respondent's products at retail prices below the prices suggested by respondent.

PAR. 7. By means of such acts and practices, including but not limited to the foregoing, respondent, in combination, agreement or understanding with certain of its dealers, has established, maintained, and pursued a course of action to fix and maintain certain resale or retail prices at which said products will be resold.

PAR. 8. The aforementioned acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of said products, and constitute unfair methods of competition and unfair acts and practices in or affecting commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and

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

1. Proposed respondent Copco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 11 East 26th St., New York, New York.

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

DEFINITION

Dealer - For purposes of this complaint and order, "dealer" is defined as any person, partnership, corporation or other business entity who purchases Copco products for resale.

ORDER

I

It is ordered. That respondent Copco, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device in connection with the manufacture, importation, distribution, offering for sale and sale of cookware and other merchandise in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing with any dealer any contract, agreement, understanding or arrangement fixing, establishing, maintaining, controlling or enforcing, directly or indirectly, the price at which any of said products is advertised, sold or offered for sale at retail.

B. Publishing, disseminating, circulating or providing by any other means, any retail price, unless the word "suggested" is clearly and conspicuously stated on each page of any price list, book, tag, advertising or promotional material or other document that contains a retail price. In addition, all written communications by Copco to dealers intended for internal dealer use shall clearly and conspicu-

ously contain the following disclosure, or a disclosure of similar import, on each page of any document that contains a retail price: "Suggested retail prices are suggestions only. Copco dealers are completely free to resell Copco merchandise at prices and to customers of their own choosing."

C. Requiring any dealer or prospective dealer to enter into an oral or written agreement or understanding that such dealer or prospective dealer will maintain any resale or retail price for any of said products as a condition of buying any of said products.

D. Prior to selling to a prospective dealer, requiring assurances, whether by understanding, agreement or otherwise, from such person or persons that they will adhere to and observe suggested resale or retail prices for said products.

E. Requiring, directly or indirectly, any dealer to resell to respondent any unsold stock of said products in the event that business relations between respondent and the dealer are terminated, *provided*, that respondent shall not be prohibited from repurchasing such unsold stock with the consent of the dealer, or where respondent has a "security interest" in said products or where the dealer is unable to meet its financial obligations to the respondent.

F. Requesting or requiring any dealer or prospective dealer, either directly or indirectly, to report any dealer who does not adhere to any resale or retail price for any of said products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer so reported.

G. Refusing or threatening to refuse any sale to any dealer for the reason that said dealer had been reported as not adhering to or observing any resale or retail price for any of said products.

H. Refusing or threatening to refuse any sale to any dealer, either directly or indirectly, or threatening to cancel or terminate, or canceling or terminating any dealer because of any resale or retail price observed, maintained or advertised by the dealer for any of said products.

I. Requiring, from any dealer charged with price cutting or failure to adhere to any resale or retail price, a promise or assurance to adhere to any resale or retail price for any of said products as a condition precedent to any future sales to said dealer.

J. Requiring or inducing by any means, any dealer or prospective dealer to refrain or to agree to refrain from reselling any of said products to any other dealer or distributor.

K. Requesting or requiring any salespersons, sales representatives, and any other employees or agents of respondent, either directly or indirectly, to report any dealer who does not adhere to any

resale or retail price for any of said products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer so reported.

L. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any Copco dealer because said dealer advertises respondent's products at retail prices other than that which respondent deems appropriate or has approved.

M. Establishing, continuing or enforcing by refusal to sell, termination or threat thereof, delay in shipment or threat thereof, or in any other manner, any contract, agreement, understanding or arrangement or method of doing business which has the purpose or effect of restricting or limiting in any manner the customers or classes of customers to whom dealers may sell respondent's products.

N. Convening or participating in any meeting for the purpose of undertaking or engaging in any of the acts or practices prohibited by this order.

II

It is further ordered. That Respondent herein, during the three (3) year period of time following the effective date of this order, shall mail or deliver, and obtain signed receipts therefore, copies of this order to every present dealer and to all future dealers of said products at the time said dealers are opened as accounts.

III

It is further ordered. That respondent herein shall forthwith distribute a copy of this order to each operating division and subsidiary engaged in the manufacture, sale, and distribution of said products and to all officers and directors engaged in the manufacture, sale, and distribution of said products.

IV

It is further ordered. That respondent shall, within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefore, a copy of this order to all Copco sales personnel and Copco sales representatives engaged in the distribution, offering for sale or sale of said products.

V

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

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Decision and Order

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

VI

It is further ordered, That the respondent herein, for a period of three (3) years from the date of this signing, establish and maintain a file of all records referring or relating to respondent's refusal to sell said products to any existing dealer, which file shall contain a record of any written communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice.

VII

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

Interlocutory Order

90 F.T.C.

IN THE MATTER OF
GENERAL MOTORS CORPORATION, ET AL.

Docket 9074. Interlocutory Order, Sept. 9, 1977

Denial of complaint counsel's application for review of various provisions of a protective order issued by the administrative law judge.

ORDER DENYING APPLICATION FOR REVIEW

Complaint counsel apply for review of various provisions of a protective order (as to respondent General Motors) issued by the administrative law judge on March 29, 1977. The law judge has not determined that interlocutory review would be appropriate under the Commission's Rules, Section 3.23(b), but complaint counsel contend that the Commission should nevertheless exercise its inherent authority to review a "clear abuse of discretion or the exceeding of delegated authority."

It appears that the protective order may contravene the general policy the Commission has consistently pursued regarding the protection of confidential business information. However, complaint counsel have offered no cogent reasons why the Commission should depart from the requirements of Section 3.23(b) and entertain this appeal in the absence of certification by the law judge. Complaint counsel state that they could "work under" the ALJ's order and it is apparent that respondent did not comply with the Commission's process on the condition that the protective order be entered. We therefore decline to review the protective order at this time. The question, of course, may be taken up at such time as the Commission is presented the ALJ's initial decision for review or, perhaps, on other occasions when the order is found to interfere with proper use of the documents in question.

The aforesaid application for review is accordingly denied.¹

It is so ordered.

CONCURRING STATEMENT OF COMMISSIONERS COLLIER AND
CLANTON

We concur in the Commission's disposition of this appeal for the procedural reasons set forth in the order. We reach this conclusion even though we believe it is clear that the protective order is a clear abuse of the ALJ's discretion. Among other things, the order purports to require prenotification of respondent General Motors before

¹ The Commission has determined to treat complaint counsel's application as timely filed.

release of information and to restrict access to documents without regard for the Freedom of Information Act (and at least to that extent is completely outside the law judge's authority), and requires unprecedented restrictions on the access of the Commission's employees and return of documents, without any explanation or findings on the record that such extraordinary treatment is necessary. In this case, however, and for reasons stated in the Commission's order, there is no showing that the ALJ's protective order works any irreparable prejudice on the rights of the parties or the public.

Interlocutory Order

90 F.T.C.

IN THE MATTER OF
ATLANTIC RICHFIELD COMPANY

Docket 9089. Interlocutory Order, Sept. 9, 1977

Denial of respondent's motion to dismiss complaint on ground that continued prosecution of action is not in the public interest.

ORDER DENYING RESPONDENT'S MOTION TO DISMISS
COMPLAINT

The administrative law judge has certified to the Commission respondent's motion to dismiss the complaint on the ground that, because of changed circumstances, continued prosecution of this action is not in the public interest.

The Commission adheres to its view that this proceeding is in the public interest. The only changed circumstance cited in respondent's motion is the sale one month prior to consummation of the merger of its ownership interest in the Clay West Project, a producer of uranium oxide, to its joint venture partners. According to respondent, as a result of this sale, Atlantic Richfield and The Anaconda Company no longer competed with one another and complaint counsel will therefore be unable to prove the merger resulted in the elimination of actual competition. We do not decide the various legal and factual issues raised by respondent's mootness claim. However, the claim that the merger eliminated actual competition in the uranium oxide market is one of only three theories advanced in the complaint. Assuming, without deciding, that the actual competition theory has been mooted, we believe further proceedings with respect to the other two theories would still be warranted. As for respondent's argument that the two potential competition theories are "extremely weak," we believe that these theories can be assessed only on the basis of a full evidentiary record.

Respondent's motion to dismiss the complaint is accordingly denied.

It is so ordered.

IN THE MATTER OF

STERLING DRUG INC., ET AL.

Docket 8919. Interlocutory Order, Sept. 13, 1977

Denial of respondent Sterling Drug Inc. motion to dismiss portions of complaint concerning the product Cope, and affirmance of ALJ's ruling denying respondent's motion for partial summary decision.

ORDER

Respondent Sterling Drug Inc., ("respondent") (1) applies for interlocutory review of the administrative law judge's denial of its motion for summary decision with respect to the portions of the complaint concerning the product Cope; and (2) moves for dismissal of these portions of the complaint on the ground that further proceedings would not be in the public interest. The administrative law judge, by order dated June 7, 1977, authorized respondent to apply for interlocutory review of his denial of the summary decision motion¹ and certified to the Commission the motion to dismiss.²

Respondent argues that Cope is a minor product with a "miniscule" share of the analgesic market, that advertising of the product terminated more than five years ago and that there is "no possibility" the alleged violations will be repeated and, hence, "no basis for any relief, no matter what the outcome of a trial."³ Respondent relies on an affidavit prepared by Mr. James Alberts, a company official, asserting that Cope advertising has been terminated and that "Sterling has no plans to advertise Cope in the foreseeable future and there is no reasonable expectation or possibility of any such advertising because of the same objective economic factors that led to termination more than five years ago."⁴ Sterling also cites a recent announcement that the Food and Drug Administration has commenced an action that may lead to removal from the market of all daytime sedatives, including Cope, that are sold over-the-counter without prescriptions.⁵

Respondent contends that the summary decision motion should

¹ Rules of Practice, Section 3.23(b).

² Rules of Practice, Section 3.22(a).

³ Motion of Sterling Drug Inc. to Dismiss Issues Related to the Product Cope on Public Interest Grounds; and Application for Interlocutory Appeal from the Denial of Respondent's Motion for Summary Decision 1,2.

⁴ The affidavit accompanies respondent's motion for summary decision.

⁵ Supplemental Memorandum. . . , June 24, 1977. We hereby grant respondent leave to file this memorandum and complaint counsel leave to file their reply.

An FDA advisory panel had found insufficient evidence to support a label claim that one of Cope's primary ingredients is safe and effective for daytime tension relief and allowed three years for the submission of adequate substantiation for tension relief claims. Respondent has also cited this action as supporting dismissal of the complaint.

have been granted because its discontinuance of advertising of Cope rendered the portions of the complaint concerning the product moot as a matter of law. The motion to dismiss asserts that further proceedings with regard to this product are, in any event, not in the public interest.

We affirm the ALJ's denial of respondent's summary decision motion. The law judge reasonably found that the affidavit offered by respondent did not contain an unqualified assurance that advertising for Cope would not be resumed under appropriate market conditions.⁶ As for the recently announced FDA proceeding, the FDA indicated its intention to begin a "lengthy" process expected to result in the removal from the market of daytime sedatives such as Cope. The eventual outcome and its timing are, of course, uncertain.

Even if there was no possibility that respondent would resume its advertising of Cope,⁷ "we would not be prevented on the ground of mootness from prohibiting closely related violations in the future." *Rubbermaid, Inc.*, 87 F.T.C. 676, 707 (1976), *appeal pending*, No. 76-1830 (6th Cir.). Violations found with regard to the product Cope might well justify order prohibitions against reasonably related practices respecting other Sterling products.⁸

We conclude for the same reasons that the public interest would not be served by the granting of respondent's motion to dismiss.

Respondent's motion to dismiss is accordingly denied and the administrative law judge's ruling denying respondent's motion for partial summary decision is affirmed.

It is so ordered.

⁶ We do not mean to suggest that we would necessarily be bound by an unqualified assurance. See *Fedders Corp.*, 85 F.T.C. 38 (1975), *aff'd.*, 529 F.2d 1398 (1976), *cert. denied*, 429 U.S. 818, 45 U.S.L.W. 3249 (Oct. 4, 1976).

⁷ We do not reach complaint counsel's arguments about the relevance of claims that continue to be disseminated on Cope labels.

⁸ See *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

Whether evidence concerning Cope might support order provisions that proof concerning other Sterling products might not support would depend on the nature and relative strengths of the evidence concerning the various products.

IN THE MATTER OF
GULF OIL CORPORATION

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

Docket 9044. Complaint, July 15, 1975 — Decision, Sept. 13, 1977

This consent order, among other things, requires a Pittsburgh, Pa. seller of petroleum and other products to cease failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Federal Reserve Board regulations.

Appearances

For the Commission: *Howard F. Daniels, C. Lee Peeler and Hong S. Dea.*

For the respondent: *Frank W. Morgan, Pittsburgh, Pa., John E. Bailey and Catherine C. McCulley, Houston, Texas.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gulf Oil Corporation, 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 Gulf Oil Corporation 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 435 7th Ave., Pittsburgh, Pennsylvania.

PAR. 2. Respondent is now, and for some time in the past has been, engaged in the advertising, offering for sale, and sale of petroleum products and other merchandise to the public.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly engages in credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to October 28, 1974, respondent has caused to be

disseminated through the mails, advertisements, as "advertisement" is defined in Section 226.2(b) of Regulation Z, to aid, promote or assist directly or indirectly consumer credit sales of merchandise of various types. These consumer credit sales were repayable in more than four installments without the imposition of a separately stated finance charge. Certain of these advertisements have:

1. failed to state clearly and conspicuously, as required by Section 146 of the Truth in Lending Act, the disclosure that "The cost of credit is included in the price quoted for the goods and services;" and
2. by making representations such as "no charge for credit" and "no finance charge," supplied additional information which contradicts, obscures or detracts attention from the information required to be disclosed by Section 146, in violation of Section 226.6(c) of Regulation Z.

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

DECISION AND ORDER

The 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 issued, together with a proposed form of order; and

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

The Commission having withdrawn the matter from adjudication for the purpose of considering the consent order; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter pursuant to 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 Gulf Corporation 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 435 7th Ave., Pittsburgh, Pennsylvania.

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 Gulf Oil Corporation, a corporation, its successors and assigns, and its representatives, agents and employees, directly or through any corporate or other device, in connection with any advertisement to aid, promote or assist directly or indirectly, any arrangement or 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, (15 U.S.C. 1601-65 (1970)), *as amended*, (15 U.S.C. 1601-65a, (Supp. IV 1974)), do forthwith cease and desist from:

1. Failing in any advertisement to aid, promote, or assist directly or indirectly an extension of consumer credit repayable by agreement in more than four installments, unless a specific finance charge is or may be imposed, to state clearly and conspicuously: "THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES," as required by Section 226.10(f) of Regulation Z.

2. Using in any advertisement to aid, promote or assist directly or indirectly an extension of consumer credit repayable by agreement in more than four installments, unless a specific finance charge is or may be imposed, any of the following statements:

YOU PAY NO FINANCE CHARGE

THERE ARE NO FINANCE CHARGES

NO CHARGE FOR CREDIT

or using other statements of similar import and meaning PROVIDED, that respondent may use the statement:

there is no additional cost of credit or finance charge

No additional finance charge

No additional cost of credit

No separate finance charge

or other statements of similar import and meaning, when such statements are used in conjunction with the disclosure required by Section 226.10(f) of Regulation Z.

3. Supplying with the disclosures required by Section 226.10(f) of Regulation Z any additional information which is stated, utilized or placed so as to mislead or confuse the customer or contradict, obscure or detract attention from the disclosure required by Section 226.10(f) of the Regulation Z, in violation of Section 226.6(c) of Regulation Z.

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

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions in the United States involved in the advertisement or extension of consumer credit.

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

IN THE MATTER OF
ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

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

Docket 8860. Final Order, Oct. 19, 1973—Modified Order, Sept. 16, 1977

This modified order to cease and desist replaces an order dated October 19, 1973, 38 FR 31827, 83 F.T.C. 865, modified at 1105, 39 FR 1260, by adding a defense clause for the Ted Bates & Company, Inc., deleting Paragraphs I and III, and modifying Paragraph IV, to accord with the decision and judgment rendered by the Court of Appeals for the Second Circuit on March 1, 1976, 532 F.2d 207 (1976).

Appearances

For the Commission: *H. Robert Field.*

For the respondents: *Gordon A. Thomas* and *Alan C. Davis*, Rye, New York and *Covington & Burling*, Washington, D.C. for ITT Continental Baking Company, Inc.; *Donald J. Mulvihill*, *Cahill, Gordon, Sonnett, Reindell & Ohl*, Washington, D.C. and *Elhanan C. Stone*, New York City for Ted Bates & Company.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Second Circuit on November 5, 1973, petitions to review an order to cease and desist issued herein on October 19, 1973; and the Court having rendered its decision and judgment on March 1, 1976, affirming and enforcing the Commission's order with the deletion of Paragraphs I and III, the modification of Paragraph IV, and the addition of a defense clause for respondent Ted Bates & Company, Inc.; and the time in which to file a petition for certiorari having expired without the parties having filed such a petition;

Now, therefore, It is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court to read as follows:

ORDER

I

It is ordered, That respondent, ITT Continental Baking Company, Inc., a corporation, and respondent, Ted Bates & Company, Inc., a corporation, their successors, assigns 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 any food product, do forthwith cease and desist from:

1. Disseminating, or causing the dissemination of, any advertisement by means of the United States mail or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication, that any such product will contribute to the rapid or proper growth of children by providing dramatic or substantial benefits for such growth or development unless such product, by itself, will, in fact, make a significant contribution to such rapid or proper growth.

2. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the misrepresentations prohibited in Paragraph 1 above.

II

It is further ordered. That respondent Ted Bates & Company, Inc., shall have a defense for false advertising representations under this order where it neither knew nor had reason to know that the representations were false.

III

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

IV

It is further ordered. That each respondent notify the Commission, at least thirty (30) days in advance, of any proposed change in such corporate respondents such as dissolution, assignment or sale resulting in 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.

V

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

IN THE MATTER OF
MARCOR, INC., ET AL.

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND EQUAL CREDIT
OPPORTUNITY ACTS

Docket 9092. Complaint, Nov. 23, 1976 — Dismissal Order, Sept. 20, 1977

This order dismisses, without prejudice, a complaint issued against a Chicago, Ill. corporation and its department store chain, for alleged violations of Federal Reserve Board regulation and the Federal Trade Commission Act, in connection with the extension of consumer credit. The complaint has been dismissed because newly-finalized amendments to Federal Reserve Board regulation necessitate further investigation as to firm's compliance with the amendments, and proceeding on the basis of the present complaint would be against the public interest.

Appearances

For the Commission: *Lewis H. Goldfarb.*

For the respondents: *Patrick Head and Karl J. Bemserfer,*
Chicago, Ill. *Joseph L. Gibson and Spencer H. Heine,* Washington,
D.C.

COMPLAINT

Pursuant to the provisions of the Equal Credit Opportunity Act, as amended, and its implementing regulation, Regulation B, and the Federal Trade Commission Act, the Federal Trade Commission, has reason to believe that Marcor Inc., a corporation, and Montgomery Ward and Company Inc., a corporation, ("respondents,") have violated the provisions of said Acts and regulation. It appears to the Commission that a proceeding by it in respect thereof would be in the public interest. The Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Marcor, Inc. ("Marcor") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business and office located at 619 West Chicago Ave., Chicago, Illinois.

Marcor wholly owns respondent Montgomery Ward and Company Inc. and formulates, controls and directs its policies, acts and practices, including the acts and practices set forth in Paragraphs Two through Six.

Respondent Montgomery Ward and Company, Incorporated, ("Montgomery Ward") a wholly-owned subsidiary of Marcor, is a

corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business and office located at 619 West Chicago Ave., Chicago, Illinois. All references to "respondent" in Paragraphs Two through Five below will refer to Montgomery Ward.

PAR. 2. Respondent regularly extends credit to persons through the issuance of credit cards and through the use of retail installment contracts which enables those persons to purchase property or services from respondent and to defer payment therefor.

PAR. 3. Respondent regularly accepts applications for credit to determine which "applicants," as that term is defined in Regulation B, qualify for an extension of credit. When an application for credit is received by respondent, it is reviewed to determine whether, on the basis of the information provided therein, the applicant meets respondent's standards of creditworthiness also known as its "credit risk evaluation system."

PAR. 4. A substantial number of the applicants referred to in Paragraph Three fail to satisfy respondent's standards of creditworthiness and are informed by respondent that credit has been denied. A substantial number of these applicants subsequently request respondent to provide them with the reasons for the denial of credit as required by Section 202.5(m)(2) of Regulation B.

PAR. 5. In response to its applicants' requests for the reasons for denial, respondent furnishes a standard response (Attachment A) stating that it uses a "credit risk evaluation system" which assigns points to various items appearing on the credit application. The respondent further states that the applicant's total point score failed to meet respondent's minimum required point level and, for this reason, the applicant's request for credit was rejected. This response to its applicants' request for the reasons for denial constitutes a failure to provide applicants with the reasons for denial in violation of Section 202.5(m)(2) of Regulation B.

PAR. 6. Pursuant to Section 702(g) of the Equal Credit Opportunity Act, respondents' aforesaid failure to comply with Regulation B constitutes a violation of that Act, and pursuant to Section 704(c) thereof respondents have violated Section 5(a)(1) of the Federal Trade Commission Act.

ATTACHMENT A

[MONTGOMERY WARD LETTERHEAD]

This is in response to your request for a more detailed explanation of the reason for denial of your credit application request.

In considering credit applications, Montgomery Ward employs a "Credit Risk

Evaluation System" based upon our experience with thousands of applicants like yourself, over a period of years.

In this system, points are assigned to various items appearing on the credit application and added together to produce a total point score for the application. In your case, this score was below our minimum required level.

This is an economic decision, in no way should you construe it as a reflection on your personal integrity.

Sincerely yours,

/s/ J. Ebbert

Credit Manager

AD-4
34654

ORDER DISMISSING COMPLAINT

The Commission withdrew this matter from adjudication upon joint motion of the parties on April 19, 1977 for the purpose of considering a negotiated settlement. On June 28, 1977 the Commission rejected the proposed settlement and, having directed the staff to attempt further negotiations, was thereupon informed that such negotiations had proved unsuccessful.

Since the Commission originally issued its complaint in this matter on November 23, 1976, the Federal Reserve Board has finalized amendments to Regulation B (12 C.F.R. 202, *et seq.*) which bear directly on issues raised in the complaint. Having taken official notice of these changes in Regulation B and having been advised by staff that further investigation would be necessary to determine respondent's compliance with the regulation, as amended, the Commission has concluded that it is no longer in the public interest to conduct further proceedings on the basis of the complaint as presently drafted.

Accordingly, *it is ordered, sua sponte*, pursuant to Rule 3.25(f)(3), that the complaint in the above-captioned matter be dismissed without prejudice to any further action the Commission may deem appropriate, including direct enforcement of the provisions of Regulation B in Federal district court pursuant to section 704(c) of the Equal Credit Opportunity Act, as amended (15 U.S.C. 1691c(c)), and section 5(m)(1)(A) of the Federal Trade Commission Act, as amended (15 U.S.C. 45(m)(1)(A)).

In light of the Commission's action, respondent's motion to dismiss the complaint, filed on July 28, 1977, is denied as moot.

Complaint

90 F.T.C.

IN THE MATTER OF
SECURITY INDUSTRIAL LOAN ASSOCIATION
ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket 9006. Complaint, Jan. 28, 1975 — Final Order, Sept. 21, 1977

This order, among other things, requires a Richmond, Va. finance company to cease failing to provide consumers, in connection with the extension of credit, relevant information and disclosures required by Federal Reserve Board regulations.

Appearances

For the Commission: *Bernard Rowitz* and *Alan L. Cohen*.

For the respondent: *Albert G. Seidman*, Port St. Lucie, Fla.

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 Security Industrial Loan Association, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Security Industrial Loan Association is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its principal office and place of business located at 312 East Main St., Richmond, Virginia.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the lending of money to the general public directly and through brokers and finders.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends 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.

[2] PAR. 4. Subsequent to July 1, 1969, in the ordinary course of

business as aforesaid, respondent provides its customers with consumer credit cost disclosure statements.

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

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

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

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

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

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

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

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

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

INITIAL DECISION BY LEWIS F. PARKER, ADMINISTRATIVE LAW
JUDGE

MARCH 5, 1977

I. PRELIMINARY STATEMENT

The Commission's complaint in this proceeding issued on January 28, 1975, and charged respondent Security Industrial Loan Association (hereafter "SILA") with violating the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* and Regulation Z, 12 C.F.R. 226, which was promulgated by the Board of Governors of the Federal Reserve System pursuant to authority granted by the Act.

The complaint alleges that SILA lends money to the general public directly and through brokers and finders and regularly extends consumer credit as that term is defined in Regulation Z and that through the use of [2] consumer credit cost disclosure statements it has violated the Truth in Lending Act and the Federal Trade Commission Act by:

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

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

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

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

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

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

7. Failing to identify the broker as a creditor, as "creditor" is defined in Section 226.2(m) [3] of Regulation Z, as required by Section 226.6(d) of Regulation Z.

SILA filed its answer on April 23, 1975 denying all material allegations of the complaint. Prehearing conferences were held on May 13 and August 14, 1975, and evidentiary hearings were conducted on November 3, 4 and 5, 1975. Complaint counsel and counsel for SILA submitted proposed findings of fact and conclusions of law on or about January 14, 1976 and replies on or about February 4, 1976.

The following findings of fact, conclusions of law and order are based upon my evaluation of the whole record and the proposed findings and conclusions of law and replies filed by both parties. Proposed findings not adopted either verbatim or in substance are rejected either because they are irrelevant or because they are not supported by the record.

¹ Although Regulation Z was amended effective October 28, 1975, this was after the complaint issued. Therefore, all references are to those regulations which were amended and issued on September 30, 1974.

II. FINDINGS OF FACT

1. SILA is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 312 East Main St., Richmond, Virginia (Ans. Par. I).²

2. SILA was incorporated pursuant to the provisions of the Industrial Loan Associations Act of the Commonwealth of Virginia and conducts its business subject thereto and under the inspection and supervision of the State Banking Commission (Tr. 26, 61; RX 2). It is engaged in first [4] and second mortgage financing of residential properties and makes loans to homeowners, primarily for debt consolidation (Tr. 26). Finance charges are imposed in these transactions (CXs 1-39). The volume of loans made by SILA was between \$10,000,000 and \$11,000,000 in 1973 and approximately \$7,000,000 in 1974. SILA does business throughout Virginia, but conducts none outside of the Commonwealth (Tr. 27).

3. Respondent regularly extends "consumer credit" as that term is defined in Regulation Z, the implementing regulation of the Truth in Lending Act (Ans. Par. III).

4. Homeowners wanting loans from SILA apply either directly in person, by telephone or by letter, or are referred to it by small loan companies or savings and loan associations. Homeowners can also obtain loans from SILA through the services of mortgage brokers who submit applications on behalf of their clients (Tr. 28).

5. Mortgage brokers are not licensed or regulated by the Commonwealth of Virginia (Tr. 188-89) and the fee which they charge their clients is not established by statute. Although it often ranges between 9 and 10 percent of the loan proceeds (Tr. 95), there is no uniform fee which brokers charge; this is subject to negotiation between broker and borrower (Tr. 85, 96, 189; CXs 167, 172). In some instances, the fees are renegotiated at the time the loan is closed so that the broker will receive less than originally agreed upon (Tr. 89, 107, 154).

6. In a typical transaction involving a broker, SILA receives from the broker an application executed by his client. The broker also forwards a package including a credit report from the local credit bureau, a first mortgage verification form if there is such a mortgage,

² Abbreviations used in this decision are:

Tr. - Transcript of testimony
CX - Commission Exhibit
RX - Respondent's Exhibit
Ans. - Respondent's Answer to the Complaint
CPF - Complaint counsel's proposed findings
RPF - Respondent's proposed findings

title information, a copy of the fire insurance policy on the property, an independent appraisal of the property and a covering letter listing all of the enclosures (Tr. 30, 75, 185).

7. The covering letters placed in evidence are forms suggested by SILA (Tr. 42) and were used by at least two brokers in submitting loan applications to it (J. L. Levinson, CXs 85-90, 92-96, Tr. 77; Roy Hansen, CX 91). SILA has also issued rate books to brokers so that they can compute the charges it imposes on loans (Tr. 42, 184-85). [5]

8. If a SILA loan officer approves a loan, SILA informs the broker, when one is involved, of the terms and conditions of the loan and the name of the attorney who will close the loan. The closing attorneys are selected by SILA's general counsel (Tr. 31-32, 122-23, 251). If the closing is to take place in Richmond, the general counsel handles it (Tr. 119-20, 218). If the closing is to take place outside of Richmond, the general counsel forwards the loan papers to a selected local closing attorney under cover of a "forwarding sheet" which gives him instructions of a general nature and, depending on the individual loan, special instructions, including directions to pay some of the borrower's bills out of the loan proceeds (Tr. 34; CXs 40-50). Included in the loan papers which are sent to the closing attorneys are copies of SILA's Truth in Lending disclosure statements (Tr. 32).

9. One broker, Mr. Levinson, testified that it was his policy to send to SILA his broker's fee agreement which indicates the fee he will charge his client if a loan is approved and closed (Tr. 83; see *e.g.*, CX 87). However, it is not clear whether Mr. Levinson's policy was uniformly carried out by his office staff (Tr. 86-91). Although SILA's general counsel remembered seeing some broker's agreements in closed files in his office, he recalled no instance in which they were furnished to out-of-town closing attorneys (Tr. 119-20, 131-32). No other brokers give copies of their fee agreements to SILA (Tr. 45-46, 48, 52-53, 113, 132, 190-91, 209, 228).

10. The closing attorneys, whether they are SILA's general counsel or local counsel, are usually sent a copy of the broker's fee agreement by the broker since it is general practice to pay that fee out of the proceeds of the loan (Tr. 86, 103, 149-50, 156, 187, 206, 221). The closing attorneys also receive copies of Truth in Lending disclosure statements from some brokers (Tr. 193-94, 206). Other brokers do not furnish disclosure statements to the closing attorney (Tr. 79, 104).

11. The closing attorney conducts a title search on the property which will secure the loan and then communicates with the borrower to arrange a convenient time for settlement (Tr. 137, 168, 205-06). [6]

12. At settlement, the closing attorney explains SILA's disclosure

statement, delivers a copy to the borrower and has him sign one to be returned to SILA. He also gives the borrower notice of his right to rescind and a form of election not to rescind which is to be returned by the borrower in three days. The attorney then explains the terms of the loan and has the borrower execute the deed of trust. The attorney asks the borrower to endorse SILA's check and after it is endorsed, deposits it in an escrow account either before or after the rescission period expires (Tr. 104-08, 168, 206-07, 210).

13. Some time after the expiration of the rescission period, if the borrower has not elected to rescind, the closing attorney disburses the loan (Tr. 105, 150, 207) in accordance with SILA's instructions (Tr. 104, 109, 113, 167, 169, 210, 242) which generally require the attorney to make certain payments to the borrower's creditors (as consented to by the borrower) and to pay the balance to the borrower (Tr. 113-14, 169, 210, 242).

14. In some cases, closing attorneys will draw checks from the balance of the proceeds at the borrower's request to pay outstanding debts, including the loan broker's fee (Tr. 114, 169, 211, 242-43).

15. After the closing, the attorney transmits to SILA the executed note, recorded deed of trust, the signed disclosure statement, rescission notice and election not to rescind, and a title policy, if required (Tr. 105-06, 207, 224). Three closing attorneys testified that they did not send respondent any statement showing how the proceeds of the loan were disbursed (Tr. 181, 207-08, 224); the fourth said that he sent such statements to SILA (Tr. 106). These statements show payments of their fee to brokers out of the loan proceeds (CXs 51-84).

16. Before the Truth in Lending Act was implemented, SILA directed loan brokers not to send their fee agreements to it (Tr. 70-71). SILA's general counsel told its closing attorneys that it would not authorize them to pay any broker's fee (RXs 3, 4) but did not discourage them from following the borrower's instructions: [7]

This does not mean that our office as well as other attorneys who close for Security will not cooperate if, at closing, there are delivered written directions signed by the borrower to withhold a given sum from the loan proceeds (RX 3).

If a client or a broker tenders a duly executed disbursement authority, this obligation should be honored as any other that a client may request be paid from the proceeds of the loan (RX 4).

17. SILA's disclosure statements do not list the broker (where one is involved) as a creditor, do not list the broker's fee as a prepaid finance charge, do not include the fee as a component of the finance

charge and do not include the fee as a component in computing the annual percentage rate (hereafter APR) (Tr. 6, 10; CXs 1-39; RX 1).

18. If the broker's fee had been included in computing SILA's APR, the APR would have been greater than that actually disclosed in SILA's statements (CX 217).

19. R.S. Jessie, acting Commissioner of Banking for Virginia, testified that under the statute relating to industrial loan associations, if SILA added the broker's fee in computing the APR, it would indicate to his examiners a prima facie violation because the APR would exceed the rate of interest allowed industrial loan associations (Tr. 291-301; CX 217). However, if it were clear that SILA was including the broker's fee as part of the APR for purposes of informing the borrower and was not actually imposing the fee as a condition for the loan, Mr. Jessie said no action would be taken even though technically SILA's disclosure statements revealed an APR higher than that allowed by statute (Tr. 308).

20. SILA's disclosure statements which were used between July 1, 1969 and March 13, 1974 did not have the terms "finance charge" and "annual percentage rate" printed thereon more conspicuously than all other terminology (CXs 1-39). [8]

21. Since March 14, 1974, SILA's disclosures statements have had the terms "finance charge" and "annual percentage rate" printed thereon more conspicuously than all other terminology (RX 1).

22. From July 1, 1969 through March 13, 1974, respondent's disclosure statements contained the following language:

Borrower shall have the right to anticipate payment of this debt at any time and shall receive a rebate for any unearned interest, which rebate shall be computed in accordance with the Standard Rule of 78 and shall be reduced by an anticipation premium equal to that portion of the contract interest allocable under such Rule to the next six payments (CXs 1-39).

This language repeats that of the Virginia statute governing the conduct of and rates that may be charged by industrial loan associations (RX 2).

23. Since March 14, 1974, respondent's disclosure statements have contained the following language:

Prepayment:

Borrower shall have the right to anticipate (prepay) this loan at any time and shall receive a rebate of the unearned interest portion of the FINANCE CHARGE computed in accordance with the Standard Rule of 78 less an anticipation (prepayment) premium equal to that portion of the contract interest allocable under such Rule to the next six payments (RX 1; Tr. 55).

24. No customers of SILA testified in this proceeding and there is

therefore no evidence that the language quoted in findings 23 and 24 is or was unclear to borrowers and that borrowers are or were unaware of their right to prepay loans obtained from SILA. [9]

III. CONCLUSIONS OF LAW

A. FAILURE TO INCLUDE THE BROKER'S FEE IN THE DETERMINATION OF THE FINANCE CHARGE

Brokers who obtain loans for their clients from SILA are arrangers for the extension of consumer credit³ and are therefore creditors under Regulation Z, as is SILA which extends consumer credit.⁴

SILA does not include the broker's fee in the determination of its finance charge (Finding 17), and the complaint alleges that it has violated Section 226.4(a)(3) of Regulation Z which includes loan fees, points, finder's fees, or similar charges in the definition of finance charges.

However, this section does not require disclosure of any information; it simply defines those charges which are "finance charges" and which must be disclosed pursuant to other sections. The enumerated charges are "finance charges" only if they are

... payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. . . . (Section 226.4(a).)

[10] Since brokers are creditors and impose their fees on their customers incident to the extension of credit by SILA, it can be argued that these fees are finance charges under Section 226.4(a)(3), but this section, contrary to the complaint allegation, does not require the other creditor, SILA, to disclose the broker's fee as part of the finance charge in its Truth in Lending statements. However, since Section 226.4(a)(3) defines the broker's fee as a finance charge, complaint counsel argue that another part of Regulation Z, Section 226.6(d), imposes an obligation upon the lender to disclose the fee in his Truth in Lending statements.

This section states:

If there is more than one creditor in a transaction, each creditor shall be clearly identified and shall be responsible for making *only* those disclosures required by

³ Section 226.2(f):

" 'Arrange for the extension of credit' means to provide or offer to provide consumer credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit receives or will receive a fee, compensation, or other consideration for such service. . . ."

⁴ Section 226.2(m):

" 'Creditor' means a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit. . . ."

this Part which are within his knowledge *and* the purview of his relationship with the customer (emphasis added).

In Letter No. 699, *CCH Consumers Credit Guide*, ¶30,996 (1973), the staff of the Federal Reserve Board stated that a loan broker's fee should be disclosed by the lender if he knows the amount of the fee.

In my decision in *Virginia Mortgage Exchange*, F.T.C. Dkt. 9007 (Initial Decision, August 18, 1975 [87 F.T.C. 182]), I refused to give any weight to this staff interpretation because, in my opinion, it failed to recognize the distinction between the "knowledge" and "purview" requirements but treated them as synonymous. *Id.* at p. 8.

I held in that proceeding that although the name of the lender was known by the broker, such knowledge was not within the purview of the relationship between the broker and his customer because it was not a legally significant aspect of that relationship. I decided, therefore, that the lender's name need not be revealed by the broker to the borrower. I also found that the broker need not reveal to the borrower the lender's method of computing the unearned portion of the finance charge in the event of prepayment of the loan. I reasoned that while the broker knew the lender's method of computing the unearned portion of the finance charge, that knowledge was not an essential aspect of the [11] relationship between the broker and his customer and was not within the purview of that relationship.

The Commission recently reversed by decision, *Virginia Mortgage Exchange*, F.T.C. Dkt. 9007 (Feb. 10, 1976) and entered an order which, *inter alia*, requires the broker to reveal to his customer the name of the creditor and to disclose the creditor's method of computing the unearned portion of the finance charge in the event of prepayment. The Commission disagreed with my interpretation of the word "purview" and held that:

In our view, all terms of a given loan fall within the "purview" or "scope" of the relationship between a customer and the broker who arranges that loan (p. 4) [87 F.T.C. at 198].

The Commission held that its construction of Section 226.6(d) is the one which is most consistent with the Truth in Lending Act since the purpose of the Act is "to ensure full disclosure of credit terms in situations involving brokered loans as well as those negotiated by a borrower directly with a lender" (p. 7) [87 F.T.C. at 200].

SILA is aware at some point before it offers to extend credit that its potential customer hired a broker to find a willing lender (Finding 4) but since there is no fixed brokerage fee, it does not know how much the broker will charge for his services (Findings 5, 9). Even if the broker disclosed his fee to the lender prior to closing, SILA's

disclosure of the fee might be inaccurate since the fee may be adjusted at closing (Finding 5).

These practical difficulties may be ignored, according to complaint counsel, because the closing attorney is SILA's agent, and everything which he knows about the transaction, including the broker's fee which is often paid out of the loan proceeds (Finding 10), can be imputed to his principal—in other words, that SILA has constructive if not actual knowledge of the amount of the broker's fee (CPF, pp. 5-6). However, they cite no authority for the proposition that everything which is revealed to the closing attorneys can be imputed to SILA. The general rule is to the contrary. A principal is

chargeable with, and bound by, the knowledge of or notice to his agent received while the agent is acting as such within the scope of [12] his authority and in reference to a matter over which his authority extends. 3 *Am. Jur. 2d Agency* §273 (1962). See also §276.

Before the Truth in Lending Act was implemented, SILA informed its attorneys that it would not authorize them to pay broker's fees (Finding 16) and since that time, payment of broker's fees out of the proceeds of the loan has been at the direction of the borrower, not SILA (Finding 14). Thus, if the broker's fee is paid by the closing attorney, that action is not within the scope of his express authority from SILA and his knowledge of the exact amount of the fee is not chargeable to SILA according to the law of agency.

Nevertheless, I am bound by the Commission's decision in *Virginia Mortgage Exchange, supra*, and I find that the amount of the broker's fee, since it can be easily discovered by SILA's closing attorneys, should be disclosed in its Truth in Lending statements. The overriding purpose of the Truth in Lending Act is full disclosure and in carrying out that purpose, the word "knowledge" should be given as expansive a construction as possible consistent with fairness. There is nothing unfair in requiring SILA to direct the closing attorneys to include the broker's fee in SILA's disclosure statements.

Furthermore, according to the Commission decision in *Virginia Mortgage Exchange, supra*, knowledge of the broker's fee can be viewed as being within the purview of the relationship between SILA and its customers because "[a]ny interpretation of Section 226.6(d) must take into account the manifest purpose of the law to ensure full disclosure of credit terms in situations involving brokered loans. . . ." (p. 7 [87 F.T.C. at 200].)

While this interpretation may be somewhat inconsistent with the ordinary meaning of the words "knowledge" and "purview," it seems to me that if, as the Commission held in *Virginia Mortgage Exchange*,

supra, it is necessary under Regulation Z for the broker to disclose the name of the lender even though the borrower already knows his name, it is even more essential for the borrower to have the broker's fee revealed to him on the lender's disclosure statement because the fee is, according to Regulation Z, a component of the total finance charge. [13]

B. FAILURE TO DISCLOSE THE BROKER'S FEE AS A PREPAID
FINANCE CHARGE

Section 226.8(e)(1) of Regulation Z requires the disclosure of

Any finance charge paid separately, in cash or otherwise, directly or indirectly to the creditor or with the creditor's knowledge to another person, or withheld by the creditor from the proceeds of the credit extended.

According to Section 226.8(d)(2), the charges must be disclosed as a "prepaid finance charge."

Complaint counsel argue that since the broker's fee is a finance charge, these sections require SILA to disclose such charge on its Truth in Lending statements (CPF, p. 12). Section 226.8(a) requires that disclosures such as those referred to in Sections 226.8(e)(1) and 226.8(d)(2) be made "in accordance with §226.6 and to the extent applicable. . . ."

My discussion of the "knowledge" and "purview" requirements of Section 226.6(d) in part A, *supra*, is applicable here. Since the broker's fee is within the knowledge of SILA and the purview of its relationship with its customers, the fee must be disclosed on its Truth in Lending statements as a prepaid finance charge.

C. FAILURE TO ITEMIZE THE COMPONENTS OF THE FINANCE
CHARGE

Section 226.8(d)(3) requires the disclosure of

. . . the total amount of finance charge, with description of each amount included, using the term "finance charge."

Since SILA does not include the broker's fee in computing its finance charge (Finding 17), complaint counsel argue that it has failed correctly to disclose the total amount of the finance charge as required by this section (CPF, p. 12). However, Section 226.8(a), the general rule which requires the disclosures enumerated in the specific following sections such as 226.8(d)(3), only requires them [14] to the extent they are called for by Section 226.6. As in parts A and B above, the issue, thus, is what information must be disclosed pursuant to Section 226.6(d). For the same reasons which I gave in

parts A and B, *supra*, I find that SILA must list the broker's fee in its disclosure statements when itemizing the components of its finance charge.

D. FAILURE TO DISCLOSE ACCURATELY THE ANNUAL
PERCENTAGE RATE

SILA does not include the broker's fee as a component in computing its APR and the APR which is disclosed to its customers is therefore less than if the broker's fee were included (Findings 17-18).

Section 226.8(b)(2) of Regulation Z requires, with exceptions not applicable here, the disclosure of the creditor's finance charge expressed as an annual percentage rate using that term. Sections 226.5(b)(1) and (2) require disclosure of the APR with an accuracy at least to the nearest quarter of one percent and if SILA must include the broker's fee as a component of the finance charge, the difference between the true APR and that actually disclosed by SILA would exceed the tolerance level established by Sections 226.5(b)(1) and (2) (CX 217).

Since the multiple creditor provision of Regulation Z (Section 226.6(d)) controls the disclosures required by Section 226.8(b)(2), SILA has failed to disclose accurately the APR because the broker's fee is within its knowledge and the purview of its relationship with its customers.

E. FAILURE TO IDENTIFY THE BROKER AS A CREDITOR

According to Section 226.2(m) of Regulation Z, the brokers involved in the transactions herein are "creditors." Although SILA does not disclose them as creditors on its Truth in Lending statements (Finding 17), it knows when brokers are involved in a given transaction and knows their names (Findings 4, 6), and it could, with no inconvenience, disclose this information to its borrower-customers if Regulation Z required such disclosure. [15]

Section 226.6(d) states that if there is more than one creditor in a transaction, "each creditor shall be clearly identified" but only if the "disclosures required by this Part" are "within his knowledge and the purview of his relationship with the customer."

The knowledge requirement of this section is met, and applying the reasoning of the Commission's decision in *Virginia Mortgage Exchange*, the name of the broker is within the purview of the relationship between lender and borrower. Therefore, SILA should have revealed the broker's name as a creditor in its disclosure statements.

F. FAILURE TO PRINT THE TERMS "FINANCE CHARGE" AND
"ANNUAL PERCENTAGE RATE" MORE CONSPICUOUSLY THAN
OTHER TERMINOLOGY

SILA's disclosure statements which were in use between July 1, 1969 and March 13, 1974 did not have the terms "finance charge" and "annual percentage rate" printed thereon more conspicuously than all other terminology (Finding 20). Therefore, SILA has not complied with Section 226.6(a) of Regulation Z:

Except with respect to the requirements of §226.10, where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this Part. . . .

SILA agrees that the disclosure statements it employed until March 14, 1974 had other terms printed in the same size type as "finance charge" and "annual percentage rate" but argues that these deficiencies were minor in nature and highly technical (RPF, p. 10).

The language of much of Regulation Z is highly technical because it deals with a complex subject but the requirements of Section 226.6(a) are clear, precise and cannot be misinterpreted. While SILA's failure to comply with this section may have been inadvertent and, in that sense, was "technical," this is not a consideration which excuses it from liability. See *Certified Building Products, Inc.*, F.T.C. Dkt. 8875 (Oct. 5, 1973), *aff'd.*, *Thiret v. FTC*, 512 F.2d 176 (10th Cir. 1975). [16]

The ALJ's curious distinction between technical and substantive violations of this law can find neither support nor refuge in the statutory framework and purpose of the act and implementing regulations.

G. FAILURE TO DISCLOSE CLEARLY THE METHOD OF COMPUTING
THE UNEARNED PORTION OF THE FINANCE CHARGE IN THE
EVENT OF PREPAYMENT

Section 226.6(a) of Regulation Z sets forth the general rule that the disclosures required by other sections

shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections.

SILA permits its customers to anticipate, or prepay, their loan at any time and receive a rebate for any unearned interest. However, there is a prepayment penalty which reduces this rebate. This rebate is:

computed in accordance with the Standard Rule of 78 and shall be reduced by an

anticipation premium equal to that portion of the contract interest allocable under such Rule to the next six payments.

The quoted language was used in SILA's disclosure statements prior to March 14, 1974 (Finding 22). Although there is no evidence of how consumers might have interpreted this language (Finding 24), I can infer what it meant to the average consumer when it was used in SILA's disclosure statements. *E.g.*, *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 386 (1965); *J. B. Williams Co. v. FTC*, 381 F.2d 884, 890 (6th Cir. 1967), *cert. denied*, 352 U.S. 956 (1967).

While the quoted language might have revealed to the borrower that he could prepay his debt, this would have been much clearer if instead of using the phrase "anticipate [17] payment," SILA had stated: "Borrower shall have the right to prepay this loan. . . ."⁵

Furthermore, it is probable that even if the average consumer was aware that he could prepay the loan, SILA's prior disclosure statements did not reveal to him that his rebate would be reduced by a penalty. The words "reduced by an anticipation premium" did not clearly disclose this fact. Therefore, I find that SILA's prior statements did not disclose clearly the method of computing the unearned portion of the finance charge in the event of prepayment and did not comply with Section 226.6(a) of Regulation Z.

The language which was used by SILA did repeat the language of the Virginia statute governing Industrial Loan Associations⁶ and SILA urges that it cannot be held liable for a violation of Regulation Z because of Section 226.8(b)(7) and a formal interpretation of that section by the Federal Reserve Board (RPF, p. 12).

SILA's argument is that Section 226.6(a) is general in its terms and is superseded by sections which are specifically applicable to particular disclosures. Such a section is 226.8(b)(7) which requires "[i]dentification of the method of computing any unearned portion of the finance charge in the event of prepayment in full of the [18] obligation." In its interpretation of this section (12 C.F.R. 226.818), the Board held that the methods of computing rebates are so complex that if they were repeated in a disclosure statement, they might detract from other disclosures. Therefore, the Board ruled that the requirement of Section 226.8(b)(7) is satisfied "simply by reference by name to the 'Rule of 78's' or other method."

Since its disclosure statement referred to an "other method"

⁵ And the disclosure statements now used by SILA state:

Borrower shall have the right to anticipate (prepay) this loan. . . ." (Finding 23.)

⁶ Any natural person borrowing from an industrial loan association shall have the right to anticipate payment of his debt at any time and shall receive a rebate for any unearned interest, which rebate shall be computed in accordance with the Standard Rule of 78 and shall be reduced by an anticipation premium equal to that portion of the contract interest allocable under such rule to the next six payments" (RX 2, §6.1-234).

authorized by a state statute and repeated its language, SILA argues that it has complied with Section 226.8(b)(7). That would seem to be correct; however, the complaint alleges a violation of Section 226.6(a) and I see nothing inconsistent in holding that respondent has not complied with this section even though it may have met the requirements of Section 226.8(b)(7).

This issue is not without difficulty for it is probable that respondent adopted the statutory language in the belief that it was complying with its obligation with respect to disclosure of prepayments rights. But respondent's good faith is not a defense if the language which it has adopted is unclear and potentially deceptive, as I believe it is. *FTC v. Algoma Lumber Co.*, 291 U.S. 67 (1934); *Koch v. FTC*, 206 F.2d 311 (6th Cir. 1953).

As I view the relationship between Sections 226.6(a) and 226.8(b)(7), satisfaction of the latter's requirements (as interpreted by the Board) does not mean that one has fully complied with the general rule that disclosures shall be clear and conspicuous. It is apparent that Section 226.8(b)(7) and the Board's interpretation are based on a predicate which does not exist here—that is, that the borrower is aware that his rebate is subject to reduction by a penalty. The Board recognizes that an actuarial explanation of the method of computing the rebate is so complex that it need not be revealed, but the Board has not authorized the use of language which conceals the fact that a penalty will be assessed if the loan is prepaid, since this disclosure involves no complex explanation and does not detract from other disclosures. Since the penalty is an integral part of the method which SILA uses in computing the unearned portion of its finance charge in the event of prepayment, SILA's failure clearly to disclose its existence violate Section 226.6(a) of Regulation Z. [19]

H. DISCONTINUANCE

As of March 14, 1974, SILA changed its disclosure statements in two respects. The terms "finance charge" and "annual percentage rate" are now more conspicuous than all other terminology (Finding 21) and the fact that there is a penalty in the event of prepayment of the loan is disclosed, although there may still be some confusion caused by retention of the words "anticipation" and "premium" (Finding 23).

SILA's discontinuance of two of the practices challenged in the complaint occurred before its issuance but after respondent was aware of the Commission's investigation of the adequacy of its disclosure statements. Discontinuance under these circumstances gives no assurance that the practices will not be resumed and an

appropriate cease and desist order should enter. See *e.g.*, *Zale Corp.*, 78 F.T.C. 1233, 1240 (1971); *Spencer Gifts, Inc. v. FTC*, 302 F.2d 267 (3d Cir. 1962); *Coro, Inc. v. FTC*, 338 F.2d 149, 153 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965).

I. ORDER

SILA has violated several sections of Regulation Z and this calls for, at the minimum, an order prohibiting repetition of these or similar violations. However, complaint counsel propose an order which would not be so limited but would, in addition, require SILA to cease and desist from:

Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.8, 226.9 and 226.10 of Regulation Z. (CPF, p. 26.)

All of the requirements of Regulation Z are in furtherance of the central purpose of the Truth in Lending Act, which is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit" (Truth in Lending Act, 15 U.S.C. 1601). Where there is such a close relationship between [20] various sections of a statute or its implementing regulations, it has been held that the Commission may prohibit not only those practices which were found to be illegal but also future violation of related statutory or regulatory mandates. *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 391-93 (1959).

On the other hand, while the Commission's discretion to outlaw related future violations is broad, its power is not unlimited where the violations are not flagrant or where they occur in an uncertain area of the law. *Grand Union Co. v. FTC*, 300 F.2d 92, 100 (2d Cir. 1962). See also *Swanee Paper Corp. v. FTC*, 291 F.2d 833 (2d Cir. 1961), *cert. denied*, 368 U.S. 987 (1962).

Nevertheless, the Commission issued a broad order under similar circumstances in *Virginia Mortgage Exchange, supra*, and no less is called for here. Since respondent has used disclosure statements in all loan transactions covered by Regulation Z, I see no need for an order provision requiring it to post signs on its premises which disclose to consumers their right to receive such statements.

J. SUMMARY

1. The Commission has jurisdiction over the subject matter of this proceeding and over the respondent.

2. Respondent has failed to include the broker's fee in the determination of the finance charge in its disclosure statements as required by Section 226.4(a)(3) of Regulation Z and has therefore violated the Truth in Lending Act and the Federal Trade Commission Act (15 U.S.C. 1602(q) and 1607(c)).

3. Respondent has failed to disclose the broker's fee as a prepaid finance charge in its disclosure statements as required by Sections 226.8(e)(1) and 226.8(d)(2) of Regulation Z and has therefore violated the Truth in Lending Act and the Federal Trade Commission Act (15 U.S.C. 1602(q) and 1607(c)).

4. Respondent has failed to itemize the components of the finance charge in its disclosure statements as required by Section 226.8(d)(3) of Regulation Z and has therefore [21] violated the Truth in Lending Act and the Federal Trade Commission Act (15 U.S.C. 1602(q) and 1607(c)).

5. Respondent has failed to disclose accurately the APR in its disclosure statements computed in accordance with Section 226.5(b), as required by Section 226.8(b)(2) of Regulation Z and has therefore violated the Truth in Lending Act and the Federal Trade Commission Act (15 U.S.C. 1602(q) and 1607(e)).

6. Respondent has failed to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology in its disclosure statements as required by Section 226.6(a) of Regulation Z and has therefore violated the Truth in Lending Act and the Federal Trade Commission Act (15 U.S.C. 1602(q) and 1607(c)).

7. Respondent has failed to disclose clearly in its disclosure statements the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation as required by Section 226.6(a) of Regulation Z and has therefore violated the Truth in Lending Act and the Federal Trade Commission Act (15 U.S.C. 1602(q) and 1607(c)).

8. Respondent has failed to identify the broker as a creditor in its disclosure statements as required by Section 226.6(d) of Regulation Z and has therefore violated the Truth in Lending Act and the Federal Trade Commission Act (15 U.S.C. 1602(q) and 1607(c)).

Therefore, the following order should be, and is, entered:

ORDER

It is ordered, That respondent Security Industrial Loan Association, a corporation, its successors and assigns and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in

connection with any [22] extension of consumer credit or advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

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

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

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

4. Failing to disclose accurately the annual percentage rate computed in accordance with Section 226.5(b) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z. [23]

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

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

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

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

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

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed [24] change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of any 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 deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the extension of consumer credit, and that respondent

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

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

OPINION OF THE COMMISSION

BY DOLE, *Commissioner*

The chief issue in this case is whether a lender has violated the Truth in Lending Act by failing to include the broker's fee in the determination of the finance charge disclosed to the borrower in consumer credit transactions.

The complaint was issued on January 28, 1975, charging respondent Security Industrial Loan Association¹ with violations of the Truth in Lending Act², Regulation Z³ promulgated thereunder, and the Federal Trade Commission Act⁴ by failing to provide certain information in consumer credit cost disclosure statements given to customers. The complaint alleged that SILA committed these violations by failing: to include the broker's fee in the determination [2] of the finance charge; to disclose the broker's fee as a prepaid finance charge; to itemize the components of the finance charge; to disclose accurately the annual percentage rate; to print the terms "finance charge" and "annual percentage rate" more conspicuously than other terminology; to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation; and to identify the broker as a creditor.

At the conclusion of the hearing, Administrative Law Judge Lewis F. Parker sustained each of the charges of the complaint. He ordered SILA to cease and desist from engaging in the violations charged.

This case is before us on respondent's appeal from the Initial Decision.

BACKGROUND

The facts of this matter, as set forth in the Initial Decision,⁵ are not

¹ Hereinafter "SILA."

² 15 U.S.C. 1601, *et. seq.*

³ 12 C.F.R. 226, *et. seq.*

⁴ 15 U.S.C. 41, *et. seq.*

⁵ The following abbreviations are used in this opinion: I.D. — Initial Decision (Finding No.); I.D. p. — Initial Decision (Page No.); CX — Commission Exhibit; RX — Respondent's Exhibit; RB — Respondent's Appeal Brief; CAB — Complaint Counsel's Answering Brief; RRB — Respondent's Reply Brief; Tr. — Transcript of Testimony; TROA — Transcript of Oral Argument before Commission; ALJ — Administrative Law Judge.

in substantial dispute.⁶ They will be summarized below.

SILA is a corporation engaged in first and second mortgage financing of residential properties, making loans to homeowners within Virginia primarily for debt consolidation. Finance charges are imposed on these transactions.⁷

Homeowners desiring loans from SILA either apply directly, are referred to SILA by small loan companies or savings and loan associations, or utilize the services of mortgage brokers who submit applications on their behalf. The fees charged by brokers are not established by statute; they often range between 9 and 10 percent of the loan proceeds,⁸ but are not uniform [3] and are subject to negotiation between broker and borrower.⁹ In some instances, the broker's fee is renegotiated just prior to the closing of the loan,¹⁰ but this occurs infrequently.¹¹

In a typical transaction involving a broker, SILA receives from the broker a loan application executed by the client, along with a package of materials relevant to the application and a covering letter listing the enclosures. SILA furnishes to brokers forms for the covering letters and rate books which can be used to compute the brokerage fee.¹²

When SILA approves a loan, it informs the broker, if one is involved, of the terms and conditions of the loan and the name of the attorney who will close the loan. SILA's general counsel acts as the closing attorney if the closing is to be held in Richmond, where both SILA and its general counsel are located. If the closing is to be held outside of Richmond, the general counsel selects a local closing attorney and forwards the loan papers to him. These are sent under cover of a "forwarding sheet" providing general instructions to the closing attorney and, on occasion, special instructions, such as directions to pay specified bills of the borrower out of the loan proceeds.¹³ Copies of SILA's Truth in Lending disclosure statements are included in the loan papers sent to the closing attorneys.¹⁴

Prior to implementation of the Truth in Lending Act, SILA directed loan brokers not to send their fee agreements to it. In letters to its closing attorneys, SILA advised that it would not authorize them to pay any broker's fee, but that written directions signed by

⁶ RB 2.

⁷ I.D. 1-2.

⁸ Tr. 91-92, 95-96, 189; CX 51-83.

⁹ I.D. 4-5.

¹⁰ Tr. 89, 107, 154.

¹¹ Tr. 93, 115, 154.

¹² I.D. 6-7.

¹³ I.D. 8.

¹⁴ Tr. 32, 219.

the borrower to withhold a given sum from the loan proceeds should be honored.¹⁵ The record [4] reflects that brokers do not provide copies of their fee agreements directly to SILA.¹⁶ However, copies of the broker's fee agreements are usually sent to the closing attorneys, whether SILA's general counsel or local counsel, since it is general practice for the closing attorney to pay that fee out of the proceeds of the loan.¹⁷ Some brokers also provided copies of their Truth in Lending disclosure statements to closing attorneys, whereas others did not.¹⁸

After receiving the loan papers, the closing attorney conducts a title search on the property securing the loan and arranges a convenient time for settlement with the borrower. At settlement, the closing attorney explains SILA's disclosure statement, the loan documents, and the terms of the loan. He gives the borrower a copy of SILA's disclosure statement, notice of the right to rescind, and a form of election not to rescind which is to be returned by the borrower after the three-day rescission period. The attorney has the borrower execute the deed of trust and endorse SILA's check. The attorney deposits the endorsed check in an escrow account pending expiration of the rescission period.¹⁹ If the broker has furnished his disclosure statement to the closing attorney, it is given to the borrower by the attorney.²⁰

Upon expiration of the rescission period and receipt of a signed statement from the borrower that he has elected not to rescind, the closing attorney disburses the loan proceeds from the escrow account in accordance with SILA's instructions. These generally require the attorney to make specified payments to the borrower's creditors, with the borrower's consent, and to pay the balance to the borrower. If the closing attorney has been furnished with the broker's agreement and the borrower has verified it, he will draw a check on the escrow account to the order of the broker for the amount specified.²¹

[5] After the closing, the attorney transmits to SILA the executed note, recorded deed of trust, the signed disclosure statement, rescission notice and election not to rescind, and a title policy if required. Of the four closing attorneys who testified at the hearing, three stated that they did not send to SILA any statement showing how the proceeds of the loan were disbursed. The fourth stated that

¹⁵ I.D. 16; RX 3, 4.

¹⁶ I.D. 9.

¹⁷ I.D. 10.

¹⁸ Tr. 193-194, 206; 104.

¹⁹ I.D. 11-12.

²⁰ Tr. 79, 185, 194, 197, 206.

²¹ I.D. 13-14; Tr. 114, 169, 211, 242-243.

he did send such statements to SILA; these statements show payments to brokers of the fee.²²

SILA's disclosure statements do not list the broker as a creditor, do not list the broker's fee as a prepaid finance charge, do not include the fee as a component of the finance charge, and do not include the fee as a component in computing the annual percentage rate.²³

I. Failure to Disclose Broker's Fee and to Identify Broker

Respondent SILA does not dispute the finding²⁴ that it has failed to incorporate the broker's fee and to identify the broker in its disclosure statements, but argues that it is not obligated to do so by the Truth in Lending Act and Regulation Z.

The purpose of the Truth in Lending Act is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uniformed use of credit."²⁵ Regulation Z, promulgated by the Board of Governors of the Federal Reserve System pursuant to the Act, requires as a general rule that any creditor extending credit other than open end make the disclosures required by the regulation for any transaction consummated on or [6] after July 1, 1969; generally, the disclosures must be made before the transaction is consummated.²⁶

SILA regularly extends consumer credit in the ordinary course of business, and is therefore a creditor under Regulation Z.²⁷ Brokers who obtain loans for their clients from SILA are arrangers for the extension of consumer credit who receive a fee for their service; accordingly, they are also creditors under Regulation Z.²⁸ The broker's fee is a [7] finance charge within the meaning of Section 226.4(a)(3) of Regulation Z.²⁹

²² I.D. 15.

²³ I.D. 17.

²⁴ *Id.*

²⁵ Truth in Lending Act, §102.

²⁶ Section 226.9(a):

General rule. Any creditor when extending credit other than open end credit shall, in accordance with §226.6 and to the extent applicable, make the disclosures required by this section with respect to any transaction consummated on or after July 1, 1969. Except as otherwise provided in this section, such disclosures shall be made before the transaction is consummated.

²⁷ Section 226.2(m):

Creditor means a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit. . . .

²⁸ Section 226.2(f):

"Arrange for the extension of credit" means to provide or offer to provide consumer credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit receives or will receive a fee, compensation, or other consideration for such service. . . .

Regulation Z was amended effective October 28, 1975. Several provisions at issue in this proceeding were redesignated, such as Section 226.2(f), which is now Section 226.2(h). Since the amendment was effective after the complaint issued, all references are to Regulation Z as it existed when the complaint issued.

²⁹ Section 226.4(a)(3):

(Continued)

Since both SILA and the broker are creditors in brokered transactions, the provisions of Section 226.6(d) of Regulation Z dealing with multiple creditors apply and are at the heart of this matter. Section 226.6(d) provides:

If there is more than one creditor in a transaction, each creditor shall be clearly identified and shall be responsible for making only those disclosures required by this part which are within his knowledge and the purview of his relationship with the customer. If two or more creditors make a joint disclosure, each creditor shall be clearly identified. . . .

Under Section 226.6(d), if both SILA and the broker join in making a single disclosure, the broker's fee must be reflected as a finance charge on the disclosure statement. Where, as here, separate disclosures are made, the broker's fee must be incorporated into the lender's disclosure statement only if it is within SILA's knowledge and the purview of its relationship to the customer.

Respondent argues that no satisfactory showing was made that it had knowledge of the broker's fee in any transaction when it prepared its disclosure statement, when it was forwarded for review to its general counsel, when all loan documents were forwarded by the general counsel to the closing attorney, when the disclosure statement was delivered to the borrower, or when the loan transaction was consummated.³⁰ [8] We agree with respondent that the record does not establish that brokers have provided copies of their fee agreements directly to SILA before consummation of the loan transaction.³¹

However, it was established that SILA's closing attorneys, whether the general counsel or local counsel, are usually sent a copy of the broker's fee agreement by the broker, since as a matter of general practice the closing attorney pays that fee out of the loan proceeds. Every closing attorney testifying at the hearing stated that he normally received the broker's fee agreement almost simultaneously with receipt of notice of the loan from SILA.³² The fact that the broker's fee agreements were sent to the closing attorneys prior to

[T]he amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges: . . . Loan fee, points, finder's fee, or similar charge.

³⁰ RB 9-10.

³¹ I.D. 9. One broker testified that it was his policy to send his fee agreements to SILA, Tr. 83, but he did not know whether this policy was in fact carried out by his employees. Tr. 86-91. A former general counsel of SILA recalled seeing some brokers' agreements in closed files in his office, but could recall no instance in which such agreements were received from SILA. Tr. 131-132. These agreements could have been received from brokers or closing attorneys, before or after the loan transaction was consummated.

³² Tr. 103 (Cutler); 148-149, 154, 156 (Lawrence); 206 (Brooks); 221, 226 (Dobbins).

the closing of the loan was corroborated by the testimony of the brokers.³³ There was also testimony indicating that the broker's disclosure statement, setting forth the brokerage fee, was often given to the borrower by the closing attorney.³⁴

It is clear that the closing attorneys normally had knowledge of the amount of the broker's fee prior to closing the loan. Complaint counsel assert that since the closing attorney is SILA's agent, is given the responsibility to close the loan, and receives knowledge of the broker's fee as part of the closing transaction, this knowledge is imputable to SILA.³⁵ The general rule is that the knowledge of an agent acquired [9] while acting within the scope of his authority and in reference to a matter over which his authority extends must be imputed to the principal. *Armstrong v. Ashley*, 204 U.S. 272, 283 (1907); see generally 3 Am. Jur. 2d Agency §273 (1962); 4 ALR 3d 224 (1965). The ALJ rejected complaint counsel's argument that SILA is chargeable with the closing attorney's knowledge of the amount of the fee. He ruled that because SILA informed its closing attorneys (before the Truth in Lending Act was implemented) that it would not authorize them to pay brokers' fees and subsequently payment of those fees has been made at the direction of the borrower, not SILA, payment of the fee by the closing attorney is not within the scope of his express authority from SILA and his knowledge of the exact amount of the fee is not chargeable to SILA.³⁶

In our opinion, the ALJ took an unduly narrow view of the agency relationship between SILA and its closing attorney. We find that receipt by the closing attorney of the broker's fee agreement was within the scope of his employment to close the loan. Conduct is within the scope of employment if it is "of the same general nature as that authorized, or incidental to the conduct authorized." Restatement (Second) of Agency §229 (1957). An agent's knowledge is to be imputed to a principal in a particular transaction if "the agent at some time had some duties to perform on behalf of the principal with respect to the transaction, although the agent need not have acquired his knowledge in connection with those duties." *Dawn Donut Company v. Hart's Food Stores, Inc.*, 267 F.2d 358, 363 (2d Cir. 1959). Despite SILA's letters to its closing attorneys advising that it would not authorize them to pay any broker's fee, the closing attorneys have, as a general practice, paid that fee out of the proceeds in

³³ Tr. 84-86 (Levinson), 187 (Hansen).

³⁴ Tr. 79, 194, 197, 206.

³⁵ CAB 6-7.

³⁶ I.D. p. 12. Although he determined that the closing attorneys' knowledge of the broker's fee is not imputable to SILA, the ALJ held that "the amount of the broker's fee, since it can be easily discovered by SILA's attorneys, should be disclosed in its Truth in Lending statements." I.D. p. 12. With respect to this holding, see n. 38 *infra*.

accordance with SILA's further statement in the letters that the borrower's directions to withhold a given sum from the loan proceeds should be honored. Even though the closing attorney may have been acting for the borrower in disbursing the broker's fee to the broker, this disbursement was of the same general nature as the disbursement authorized by SILA to creditors of the borrower, was incidental to the conduct authorized, and was part of the transaction of closing the loan. In paying the broker's fee, the closing attorney was acting as a dual agent, [10] and his knowledge was to be imputed to SILA despite the fact that he may have been acting for the borrower at the same time.³⁷ Therefore, we hold that the knowledge requirement of Section 226.6(d) of Regulation Z was met.³⁸

Having concluded that the brokerage fee was within SILA's knowledge, we must next determine whether it was within the purview of SILA's relationship with the customer. Respondent contends that since the lender is not privy to the negotiations between the broker and his client, and the brokerage agreement is executed prior to any communications between the borrower [11] and the lender, the fee is outside the purview of SILA's relationship with the customer.³⁹

³⁷ "In actions by a third party against one of two principals who had been represented by an attorney in a dual capacity, it has frequently been held that the knowledge of the attorney would be imputed to the defendant-principal, notwithstanding the fact that the attorney may have been acting for the other principal at the same time." 4 ALR 3d 224, 245 (1965).

³⁸ Complaint counsel made the alternative argument that, under the circumstances, SILA's knowledge that a broker is involved and that a fee is being charged in a particular transaction is enough to satisfy the knowledge requirement of Section 226.6(d), and that it is then SILA's duty to find out what the amount of the broker's fee is. TROA 35-37. Complaint counsel based this argument upon SILA's continuing, established relationship with loan brokers, (CX 214, Respondent's Answer to Request for Admissions Par. 24), its issuance to them of loan application forms and rate books, and its knowledge that brokers receive a fee for their services. CAB 8-10. The fact that SILA knows that a particular broker is involved, by receipt of the loan application from the broker, does obviously require SILA to disclose the identity of the broker in its disclosure statement in accordance with Section 226.6(d) if the purview requirement is met, as discussed below. Given our holding regarding the agency relationship between SILA and the closing attorneys, we need not reach the question of whether SILA's knowledge that a broker's fee is involved in a particular loan is enough to meet the knowledge requirement of Section 226.6(d) as to the amount of the fee. We do note, however, that where the lender knows that a broker's fee is being charged in a loan transaction, and the amount of the fee tends to fall within a narrow range, as here (9-10 percent of the loan proceeds), a strong argument could be made that the broker's fee is within the lender's knowledge for purposes of Section 226.6(d), and that the lender must make a reasonable effort to ascertain the precise amount, pursuant to Section 226.6(f). See n. 55 *infra*. There may well be other circumstances where the relationship between lender and broker imposes the same duty on the lender. It appears that SILA and its attorneys are easily able to find out the amount of the broker's fee. Tr. 49, I.D. p. 12. See Landers, Determining the Finance Charge Under the Truth in Lending Act, 1977 A.B.F. Res. J. 45, 64-65 (1977).

³⁹ RB 12-14.

We cannot accept this argument. The purview requirement was addressed by us in *Virginia Mortgage Exchange*, 87 F.T.C. 182 (1976), where the issue was whether a broker must disclose the name of the lender and the formula for computing the unearned finance charge in the event of prepayment of a loan. In ruling that the broker must make these disclosures, we stated: "In our view, all terms of a given loan fall within the 'purview' or 'scope' of the relationship between a customer and the broker who arranges the loan." 87 F.T.C. at 198. We observed that this construction of Section 226.6(d) best comports with the manifest purpose of the Truth in Lending Act, which is to ensure full disclosure of credit terms in situations involving brokered loans as well as those negotiated by a borrower directly with a lender.

Likewise, we believe that all terms of a given loan and all charges incidental to it fall within the purview of the lender's relationship with the customer. The broker's fee represents a substantial cost to the borrower in obtaining a loan, and should be disclosed by the lender in its disclosure of the cost of credit when the knowledge requirement is met, as it is here. This is not a situation where there are two separate lenders, such as one providing a first mortgage and the other a second mortgage; it was that kind of situation for which the purview requirement was designed, relieving one lender from disclosing the second lender's terms where the latter's extension of credit is not within the purview of the relationship of the first lender with his customer.⁴⁰[12]

We believe that SILA's failure to include the broker's fee in its disclosure statements has frustrated the Truth in Lending Act's basic purpose of enabling consumers to comparison shop for credit among the credit terms available from different sources and thereby avoid the uniformed use of credit through full disclosure. This is graphically illustrated by Commission Exhibit 217. The exhibit reflects what the annual percentage rate would be on eighteen of SILA's disclosure statements if the broker's fee had been included in the finance charge

⁴⁰ *Virginia Mortgage Exchange*, 87 F.T.C. at 201 n. 4.

Our construction of Section 226.6(d) is consistent with the pertinent Federal Reserve Board opinion letter. That letter states:

[W]ith respect to the lender's disclosure statement, the loan brokerage fee would need to be disclosed only if it is within the lender's knowledge and the purview of his relationship with the customer, as prescribed by §226.6(d). The lender obviously cannot disclose the fee if he is not aware of it. On the other hand, should the loan brokerage fee be paid directly by the lender to the loan broker (for example, if the fee is withheld from the loan's proceeds and is paid to the broker), the fee would be within the lender's knowledge and it should be disclosed on the lender's disclosure statement. Federal Reserve Board Letter No. 699, CCH Consumers Credit Guide ¶30,996 (Special July 19, 1973).

As in the example cited by the opinion letter, in the instant matter the broker's fee is withheld from the loan's proceeds and is paid to the broker by the lender's closing attorney. Federal Reserve Board letters are to be accorded great deference. *Virginia Mortgage Exchange*, 87 F.T.C. at 200; *Philbeck v. Timmers Chevrolet, Inc.*, 499 F.2d 971, 976-977 (5th Cir. 1974).

and annual percentage rate. In one example discussed by complaint counsel,⁴¹ SILA disclosed to Mr. and Mrs. Boone that the annual percentage rate of their loan was 12.50 percent. The Boones were apprised by the broker that his fee would be \$500.00. If they decided to shop for credit, contacted a lender directly, and were informed that he would provide credit at a 15 percent annual percentage rate for a loan involving no broker, would they be able to meaningfully use those figures? Only if they were unusually dedicated and fastidious comparison shoppers would they be likely to ascertain that the annual percentage rate for the SILA loan, with the broker's fee included, was 19 percent. [13]

We hold that respondent's failure to include the broker's fee in the determination of the finance charge in its disclosure statements violated Sections 226.4(a) and 226.6(d) of Regulation Z since the fee was a component of the total finance charge and was within SILA's knowledge and the purview of its relationship with the customer. Respondent therefore violated the Truth in Lending Act and, pursuant to Section 108(c) of that Act, 15 U.S.C. 1607(c)(1970), engaged in an unfair or deceptive act or practice under Section 5 of the Federal Trade Commission Act.⁴²

Since the broker's fee is within the knowledge of SILA and the purview of its relationship with its customers and respondent has failed to disclose it, respondent has violated the Truth in Lending Act and Federal Trade Commission Act by failing to disclose the broker's fee in its disclosure statements as a prepaid finance charge, pursuant to Sections 226.8(e)(1) and 226.8(d)(2) of Regulation Z;⁴³ failing to itemize the components of the finance charge in its disclosure statements as required by Section 226.8(d)(3) of Regulation Z;⁴⁴ failing to disclose [14] accurately the annual percentage rate in its

⁴¹ CAB 14.

⁴² Our holding here could have the result of consumers being furnished with similar statements by both broker and lender. Cf. *Virginia Mortgage Exchange*, 87 F.T.C. at 201. We continue to believe that the option presented by Section 226.6(d) of all creditors in a transaction providing a single joint disclosure statement, listing the names of each creditor and all necessary credit terms, has great benefits with respect to clarity and economy. If multiple creditors do not choose to make a joint disclosure, furnishing similar separate disclosures is far preferable to furnishing separate disclosures with random omissions.

⁴³ Section 226.8(e)(1) requires the disclosure of

Any finance charge paid separately, in cash or otherwise, directly or indirectly to the creditor or with the creditor's knowledge to another person, or withheld by the creditor from the proceeds of the credit extended. According to Section 226.8(d)(2), the charges must be disclosed as a "prepaid finance charge."

⁴⁴ Section 226.8(d)(3) requires the disclosure of

... the total amount of the finance charge, with description of each amount included, using the term "finance charge."

disclosure statements computed in accordance with Section 226.5(b) of Regulation Z, as required by Section 226.8(b)(2);⁴⁵ and by failing to identify the broker as a creditor in its disclosure statements, as required by Section 226.6(d) of Regulation Z.⁴⁶

Several concerns raised by respondent with respect to incorporation of the broker's fee in its disclosure statement should be addressed here. The state statute relating to industrial loan associations under which SILA operates⁴⁷ sets forth a maximum rate of interest allowed to be charged by industrial loan associations. Respondent is concerned that if it were to include the broker's fee in computing the annual percentage rate, this would produce on the disclosure statement an annual percentage rate indicating a prima facie violation of the state statute.⁴⁸ Since SILA's disclosure statements which incorporate the broker's fee must itemize the components of the finance charge in accordance with Section 226.8(d)(3) of Regulation Z, it will be clear from the [15] face of the statements that the broker's fee is a component of the finance charge and entered into the calculation of the annual percentage rate.⁴⁹

Respondent is also concerned that, by incorporating a broker's fee over which it has no control in its disclosure statement, it may be responsible for furnishing a false statement if the broker's fee reported to it is inaccurate.⁵⁰ One source of this concern is that the broker's fees are sometimes renegotiated just prior to closing the loan; this occasionally occurs when the loan granted by SILA is lower than that applied for, resulting in the broker receiving a lower fee than originally agreed upon with the borrower.⁵¹ However, the record indicates that this occurs only in a small minority of instances,⁵² and

⁴⁵ Section 226.8(b)(2) requires disclosure of ". . . the finance charge expressed as an annual percentage rate, using the term 'annual percentage rate,' " with exceptions not applicable here.

Section 226.5(b) requires disclosure of the annual percentage rate with an accuracy at least to the nearest quarter of 1 percent.

⁴⁶ Section 226.6(d) provides that when the knowledge and purview requirements are met, "if there is more than one creditor in a transaction, each creditor shall be clearly identified." The broker's name is known to SILA, both directly upon receipt from the broker of a loan application executed by the client, and as imputed from the closing attorney. For the reasons discussed above with respect to the broker's fee, the name of the broker is within the purview of the relationship between lender and borrower.

⁴⁷ Industrial Loan Associations Act of the Commonwealth of Virginia. I.D. 2; RX 2.

⁴⁸ TROA 20-22.

⁴⁹ At the hearing, the acting Commissioner for Banking for Virginia testified that if SILA added the broker's fee in computing the annual percentage rate, it would indicate to his examiners a prima facie violation of the state statute. I.D. 19; Tr. 291-301; CX 217. However, if it were clear that SILA was including the broker's fee in determining the annual percentage rate for purposes of informing the borrower and was not actually imposing the fee as a condition for the loan, he stated that no action would be taken. Tr. 306.

⁵⁰ TROA 28-29. At the oral argument, respondent's counsel stated that it was because of this concern that SILA advised brokers, prior to implementation of the Truth in Lending Act, not to send their fee agreements to it. TROA 28.

⁵¹ Tr. 89, 107, 154; TROA 28.

⁵² Tr. 93, 115, 154.

when it does occur the closing attorney has knowledge of the adjusted amount prior to the closing of the loan.⁵³ This is generally necessary for the closing attorney to make the distribution of the loan proceeds. Respondent is further concerned that since the broker's fee is outside SILA's control, it has no way of validating the accuracy of the information as to the total fee charged by the broker.⁵⁴ Because the closing attorney generally receives a copy of the broker's fee agreement, has knowledge of the final brokerage fee before closing the loan, and makes the disbursement to the broker [16] based upon that information, we think it unlikely that the amount known to him would be inaccurate. If, however, the brokerage fee reported to SILA or the closing attorney is inaccurate, SILA would not be responsible for any false disclosure in the absence of knowledge of such inaccuracy (e.g., a computational error made by a broker that is not obvious on the face of the brokerage agreement). Lack of knowledge of the correct fee would be as complete a defense under Section 226.6(d) as lack of knowledge that any fee was charged. Similarly, SILA would not be liable if the inaccuracy were due to an adjustment of the fee by the broker after closing without the lender's knowledge, pursuant to Section 226.6(g) of Regulation Z.

Furthermore, where the precise amount of the total broker's fee is not known in a particular instance, or SILA is aware that the final fee may differ from the reported fee, SILA would not be liable under Section 226.6(f) of Regulation Z for any inaccurate disclosure as long as it made a reasonable effort to ascertain the amount and used an estimated amount which is (1) clearly identified as such, (2) reasonable, (3) based upon the best information available, and (4) not used for the purpose of circumventing the disclosure requirements of Regulation Z.⁵⁵

II. Failure to Disclose Clearly the Method of Computing the Unearned Portion of the Finance Charge in the Event of Prepayment

SILA allows its customers to prepay their loan at any time and receive a rebate for any unearned interest. This rebate is reduced by a prepayment penalty. From July 1, 1969, through March 13, 1974, SILA's disclosure statements contained the following language regarding prepayment:

Borrower shall have the right to anticipate payment of this debt

⁵³ Tr. 154, 226.

⁵⁴ TROA 28-29.

⁵⁵ 12 C.F.R. 226.6(f).

at any time and shall receive a rebate for any unearned interest, which rebate shall be computed in accordance with the Standard Rule of 78 and shall be reduced by an anticipation premium [17] equal to that portion of the contract interest allocable under such Rule to the next six payments.⁵⁶

The complaint charged that SILA has failed to disclose clearly the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z. That section sets forth the general rule regarding disclosure requirements and is applicable to all other sections of Regulation Z. It provides:

Section 226.6(a) Disclosures; general rule. The disclosures required to be given by this part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections.

Respondent contends that it has not violated Section 226.6(a) because it has repeated the language of the Virginia statute governing industrial loan associations.⁵⁷ It claims that it has thereby complied with another section of Regulation Z, Section 226.8(b)(7), which requires "[i]dentification of the method of computing any unearned portion of the finance charge in the event of prepayment in full of the obligation." In interpreting this section, the Federal Reserve Board has stated that the methods of computing rebates under many state statutes are so complex that if they were repeated on a disclosure statement, they might detract from other important disclosures. Consequently, the Board ruled that the rebate identification requirement is satisfied by reference to the applicable statutory method.⁵⁸ It is respondent's view that [18] Section 226.8 (b)(7), as interpreted by the Board, is specifically applicable to a particular disclosure and supersedes the more general disclosure requirement of Section 226.6(a).

We agree with the ALJ that SILA has violated Section 226.6(a) by failing to disclose clearly that the borrower can prepay his debt and that the rebate he receives is reduced by a penalty. As the ALJ determined, the fact that SILA allows prepayment would have been

⁵⁶ I.D. 22; CX 1-39.

⁵⁷ RX 2; RB 14.

⁵⁸ Section 226.818(c):

Many State statutes provide for rebates of unearned finance charges under methods known as the "Rule of 78's" or "sum of the digits" or other methods. In view of the fact that such statutory provisions involve complex mathematical descriptions which generally cannot be condensed into simple accurate statements, and which if repeated at length on disclosure forms could detract from other important disclosures, the requirement of rebate "identification" is satisfied simply by reference by name to the "Rule of 78's" or other method, as applicable.

much clearer to the average consumer if instead of stating that the borrower can "anticipate payment," SILA had used language along the following lines: "Borrower shall have the right to prepay this loan. . . ." SILA's disclosure that the rebate would be "reduced by an anticipation premium" did not clearly reveal that the rebate was subject to a penalty.⁵⁹ The ALJ found that the meaning [19] of the language employed by respondent was unclear to consumers. Although there was no consumer testimony at the hearing, we conclude, based on our own review of respondent's forms, that the ALJ properly assessed the inadequacy of the language used by respondent. It is well established that the Commission may determine that the meaning of language is deceptive or unclear on the basis of its expertise. *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 386 (1965); *J. B. Williams Co. v. FTC*, 381 F.2d 884, 890 (6th Cir. 1967).

We reject SILA's argument that the general requirement of Section 226.6(a) of Regulation Z, mandating that all disclosures be made clearly, is somehow superseded by Section 226.8(b)(7) and the Board's Interpretation 226.818. This provision, as interpreted by the Board, merely deals with *identification* of the statutory method of computing the rebate of unearned finance charges. It in no way excuses compliance with the general rule that requisite disclosures, such as that the borrower's rebate for prepaying the debt is reduced by a penalty, be made clearly and conspicuously. As the ALJ aptly stated,

It is apparent that Section 226.8(b)(7) and the Board's interpretation are based on a predicate which does not exist here—that is, that the borrower is aware that his rebate is subject to reduction by a penalty. The Board recognizes that an actuarial explanation of the method of computing the rebate is so complex that it need not be revealed, but the Board has not authorized the use of language which conceals the fact that a penalty will be assessed if the loan is prepaid, since this disclosure involves no complex explanation and does not detract from other disclosures. Since the penalty is an integral part of the method which SILA uses in computing the unearned portion of its finance charge in the event of prepayment, SILA's failure clearly to disclose its existence violates Section 226.6(a) of Regulation Z.⁶⁰

⁵⁹ SILA has made these disclosures somewhat clearer since March 14, 1974, when it began using the following language in its disclosure statements:

Prepayment: Borrower shall have the right to anticipate (prepay) this loan at any time and shall receive a rebate of the unearned interest portion of the finance charge computed in accordance with the Standard Rule of 78 less an anticipation (prepayment) premium equal to that portion of the contract interest allocable under such Rule to the next six payments.

I.D. 23; RX 1; Tr. 55.

The ALJ stated that there still may be some confusion caused by retention of the words "anticipation" and "premium." I.D. p. 19. Although the disclosure would be clearer without the word "anticipation," the inclusion of the central notion of prepayment aids consumer understanding of this language. However, use of the word "premium" still renders the language employed by SILA unclear to consumers; a premium connotes, in common parlance, a "reward." Oxford English Dictionary 1281 (1971); Webster's Seventh New Collegiate Dictionary 617 (1969). The language would be made clearer if "penalty" were substituted for "premium."

⁶⁰ I.D. p. 18.

[20] We also reject respondent's further argument that the requirement of Section 226.6(a) that disclosures be made "clearly" and "conspicuously" only refers to the physical characteristics of the disclosure rather than its ability to communicate.⁶¹ The general rule of Section 226.6(a) is intended to advance the fundamental purpose of the Truth in Lending Act — to promote the informed use of credit and to assure meaningful disclosure of credit terms.⁶² To construe the general disclosure requirement of the Act's implementing regulation as only applicable to the graphic presentation of the requisite disclosures, rather than to their language and meaning, would seriously erode the regulation's effectiveness in carrying out the purpose of the Act.

We hold that by failing to disclose in clear, unambiguous language that borrowers may prepay their debt and that the rebate they will receive will be reduced by a penalty, SILA has violated Section 226.6(a) of Regulation Z, as charged.

III. Failure to Print The Terms "Finance Charge" and "Annual Percentage Rate" More Conspicuously Than Other Terminology

SILA's disclosure statements which were in use between July 1, 1969 and March 13, 1974 did not have the terms "finance charge" and "annual percentage rate" printed thereon more conspicuously than all other terminology.⁶³ Therefore, SILA has not complied with Section 226.6(a) of Regulation Z:

Except with respect to the requirements of §226.10, where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this Part. . . .

Even though SILA's violation of Section 226.6(a) here may have been technical or "minor,"⁶⁴ this does not excuse it from liability. See *Certified Building Products, Inc.*, 83 F.T.C. 1004, 1041 (1973), *aff'd sub nom. Thiret v. FTC*, 514 F.2d 176 (10th Cir. 1975). [21]

IV. Discontinuance

The ALJ found that since March 14, 1974, SILA has made two changes to its disclosure statements: the terms "finance charge" and

⁶¹ RB15.

⁶² Truth in Lending Act, §102. See *Mourning v. Family Publication Service*, 411 U.S. 356, 377-378 (1973).

⁶³ I.D. 20; CX 1-39.

⁶⁴ RB16.

“annual percentage rate” are now more conspicuous than other terminology,⁶⁵ and the fact that a penalty is imposed in the event of prepayment of the debt is now disclosed.⁶⁶

We agree with ALJ that since discontinuance of these practices challenged in the complaint occurred after respondent was aware of the Commission’s investigation, there is no assurance that these practices will not be resumed and an appropriate cease and desist order should enter.⁶⁷

ORDER

The order issued by the ALJ prohibits SILA from engaging in the violations found to have occurred, with respect to the failure to make certain disclosures required by Section 226.6 of Regulation Z and the failure to make certain disclosures in the manner required by the regulation. The Commission has determined to adopt this order. The first provision of the order requires SILA to include the broker’s fee in the determination of the finance charge. This provision is supported by our finding that SILA’s closing attorneys normally had knowledge of the amount of the broker’s fee prior to closing the loan, and our conclusion that the brokerage fee was within SILA’s knowledge and the purview of its relationship with the customer. Order provisions 2, 3, and 4 prohibit violations stemming from SILA’s failure to incorporate the broker’s fee in the finance charge. If in the future SILA is of the opinion that it no longer has knowledge of the broker’s fee through its closing attorneys, it may petition the Commission to reopen the proceeding for the purpose of altering, modifying, or setting aside these provisions due to changed conditions of fact pursuant to Section 3.72 of the Commission’s Rules of Practice. However, as we discussed in note 38 *supra*, even if SILA can demonstrate that it no longer has constructive knowledge through its closing attorneys of the broker’s fee, the circumstances of its relationships with brokers may still provide it with knowledge of their fees within the meaning of Section 226.6(d) of Regulation Z. [22]

Order provision 7 prohibits SILA from failing to identify the broker as a creditor. This provision is supported by our finding that in brokered transactions SILA has knowledge of the broker’s identity by virtue of receipt of the loan application from the broker and our conclusion that, as to the broker’s identity, the knowledge and purview requirements of Section 226.6(d) of Regulation Z are present.

⁶⁵ I.D. 21.

⁶⁶ I.D. 23.

⁶⁷ See, e.g., *Fedders v. FTC*, 529 F.2d 1398 (2d Cir.), cert. denied, 45 U.S.L.W. 3244 (October 5, 1976); *Certified Building Products, supra*.

As with the order provisions discussed above, of course, SILA may petition the Commission to reopen on the basis of changed conditions relating to this provision.

Order provision 5 remedies a specific violation and needs no elaboration. Order provision 7 requires SILA to make a clear disclosure of the methods of computing any unearned portion of the finance charge in the event of prepayment of the obligation. The foundation for this provision is our holding that SILA has failed to disclose in clear, unambiguous language that borrowers may prepay their debt and that the rebate they will receive will be reduced by a penalty. As discussed in note 59 *supra*, continued use of the word "premium" which renders the prepayment disclosure language used by SILA unclear to consumers would violate provision 7 of the order, in the Commission's opinion.

Finally, the order requires SILA to cease and desist from:

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

This order provision is appropriate, for the disclosures required by the Truth in Lending Act and Regulation Z bear a close relationship and the Commission may prohibit not only those practices which were found to be illegal but also future violations of related statutory or regulatory mandates. *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 391-393 (1959). As we stated in *Virginia Mortgage Exchange*, 87 F.T.C. at 202, in issuing a broad order under similar circumstances, it is [23] well established that the Commission "is not limited to prohibiting 'the illegal practice in the precise form' existing in the past. *FTC v. Ruberoid*, 343 U.S. 470, 473 (1952). This agency, like others, may fashion its relief to restrain 'other like or related unlawful acts.' *NLRB v. Express Pub. Co.*, 312 U.S. 426, 436 (1941)"; *FTC v. Mandel Brothers Inc.*, 359 U.S. at 392; *see also Jacob Siegel Co. v. FTC*, 327 U.S. 608, 611 (1946); *Fedders Corp. v. FTC*, 529 F.2d 1398 (2d Cir.), *cert. denied*, 45 U.S.L.W. 3244 (October 5, 1976).

The findings and conclusions of the administrative law judge are adopted as the findings and conclusions of the Commission, except to the extent that they are inconsistent with this opinion. An appropriate order is appended.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent from the initial decision; and

Final Order

90 F.T.C.

The Commission having considered the oral arguments of counsel, their briefs, and the whole record; and

The Commission, for reasons stated in the accompanying opinion, having denied in full the appeal of respondent's counsel; accordingly

It is ordered, That, except to the extent that it is inconsistent with the Commission's opinion, the initial decision of the administrative law judge be, and it hereby is, adopted together with the opinion accompanying this order as the Commission's final findings of fact and conclusions of law in this matter;

It is further ordered, That the following cease and desist order be, and it hereby is, entered: [2]

ORDER

It is ordered, That respondent Security Industrial Loan Association, a corporation, its successors and assigns and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (Pub. Law 90-321; 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

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

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

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

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

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

6. Failing to disclose clearly the methods of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.6(a) of Regulation Z. [3]

7. Failing to identify the broker as a creditor, as "creditor" is

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

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

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

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of any 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 deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the extension of consumer credit, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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

Complaint

90 F.T.C.

IN THE MATTER OF

S. S. KRESGE COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2901. Complaint, Sept. 22, 1977 — Decision, Sept. 22, 1977*

This consent order, among other things, requires a Troy, Mich. general merchandise retailer, to cease authorizing or instituting credit collection suits in counties other than where a defendant resides or signed the relevant contract. Further, where such suits have already been initiated, the firm is required to terminate them, vacate any rendered judgments, and give notice to concerned parties that such action has been taken.

*Appearances*For the Commission: *Eddie W. Correia.*For the respondent: *J. Wallace Adair, Howrey & Simon, Washing-
ton, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that certain acts and practices used by attorneys engaged by collection agencies with whom respondent S. S. Kresge placed retail credit accounts for collection violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint:

PARAGRAPH 1. S. S. Kresge Company is a Michigan corporation with its principal office located at 3100 West Big Beaver, Troy, Michigan.

PAR. 2. Respondent is a general merchandise retailer, engaged in the advertising, offering for sale, sale and distribution of clothing, household goods, appliances, tools and various other articles of merchandise.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes the sale, ships and distributes its merchandise to purchasers located in various States of the United States. Therefore, respondent maintains a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its business, respondent extended credit to holders of its credit card (herein referred to as retail credit accounts) for the purpose of facilitating consumers' purchases of respondent's merchandise.

PAR. 5. In the course of attempting to collect allegedly delinquent

retail credit accounts, respondent placed some such accounts with collection agencies or other parties for collection. If informal collection efforts were unsuccessful, the collection agency or other party in some instances initiated legal proceedings in the name of respondent. In some such proceedings, attorneys retained by collection agencies commenced suit in a court located in a county other than the county where the purchaser defendant resided or signed the underlying obligation. Although respondent may not have had knowledge of nor authorized this practice, it had not specifically required such parties to initiate the legal proceedings in counties where the defendant resided or signed the contract sued upon. Courts located in the counties where the defendants resided or signed the contracts sued upon were available for these suits. The distance, cost and inconvenience of defending such suits placed a burden on defendants and, thus, effectively deprived some defendants of the opportunity to appear, answer and defend.

PAR. 6. The above acts and practices were all to the prejudice and injury of the public and constituted unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Cleveland 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 the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the 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, now in further conformity with the

procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent S. S. Kresge Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 3100 West Big Beaver, in the City of Troy, State of Michigan.

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

ORDER

I

It is ordered, That proposed respondent, S. S. Kresge Company, a corporation, and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of retail credit accounts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from authorizing the institution of or instituting retail credit collection suits other than in the county where the defendant resides at the commencement of the action, or in the county where the defendant signed the retail credit contract sued upon. Institution of suit in the county appearing from proposed respondent's business records to be defendant's last known address shall be compliance, unless proposed respondent otherwise knows of a more current address. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions *quasi in rem* or involving real property or fixtures attached to real property, that suit be instituted in a particular county. The term "county" includes any equivalent political subdivision known by some other term.

II

It is further ordered, That as to any retail credit collection suit instituted in the name of proposed respondent by collection agencies or other parties subsequent to the date of this order, outside the county where the defendant resides or signed the contract sued upon and which is not required by rule of law to be instituted in some other county, such suit shall be terminated and any default judgment entered thereunder vacated forthwith after proposed respondent

learns of such suit or judgment. In all such cases, clear notice shall be provided to the defendants to these actions, to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. 603) which proposed respondent knows or has reason to know recorded the suit or judgment in its files, and to any other person or organization upon request of the defendant.

III

It is further ordered, That proposed respondent shall forthwith deliver a copy of this order to each of its subsidiaries and operating divisions dealing with consumer credit and to each agency with whom proposed respondent currently places its retail credit accounts for collection, and to any other agency prior to referral of proposed respondent's retail credit accounts for collection. Proposed respondent shall obtain and preserve for two (2) years after it terminates its business relationship with any agency with regard to the collection of retail credit accounts, a signed and dated statement from each agency acknowledging receipt of the order and willingness to comply with it.

IV

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

It is further ordered, That proposed respondent shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon it, file with the Commission a report in writing, signed by proposed respondent setting forth in detail the manner and form of its compliance with this order.

Complaint

90 F.T.C.

IN THE MATTER OF

FLAGG INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2903. Complaint, Sept. 27, 1977 — Decision, Sept. 27, 1977*

This consent order, among other things, requires a Los Angeles, Calif. land sales company to cease misrepresenting the size and extent of their business and assets; the resale opportunities, potential profits and soundness of land investments; and the advent of industry and the availability of employment. Respondents are prohibited from using deceptive sales plans, and required to make affirmative disclosures, including risks involved in land purchase, and the buyers' rights to cancellation and refunds. Further, the provisions of the order require respondents to provide the three primary subdivisions, Cordes Lakes, Verde Village, and Valle Vista, with the improvements, amenities and facilities described in the HUD Property Reports, and for a period of five years, to properly distribute \$20,000 into three separate trust funds, for use by the three respective property owners' associations.

*Appearances*For the Commission: *Howard Manning, Jr.*For the respondents: *W. Reece Bader, Orrick, Herrington, Rowley & Sutcliffe*, San Francisco, 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 Flagg Industries, Inc., a corporation, and Queen Creek Land and Cattle Company, a 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 Flagg Industries, Inc. (hereinafter sometimes referred to as "Flagg") 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 10960 Wilshire Boulevard, Los Angeles, California.

PAR. 2. Respondent Queen Creek Land and Cattle Company (hereinafter sometimes referred to as "Queen Creek") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of

business located at 3500 North Central Ave., Financial Center, Phoenix, Arizona.

PAR. 3. Respondent Queen Creek Land and Cattle Company is and for some time past has been a wholly-owned subsidiary of respondent Flagg Industries, Inc. Respondent Flagg dominates or controls the acts and practices of its subsidiary corporation, Queen Creek, and is responsible for the acts and practices of its subsidiary as alleged herein.

PAR. 4. Respondent Queen Creek is now and for some time past has been engaged in the business of acquiring undeveloped land in Arizona, subdividing said land into lots, and advertising, offering for sale, and selling said lots to the public in the State of Arizona and in other states. The subdivisions in which lots have been and are being offered for sale by respondent are known as Valle Vista, Verde Village, and Cordes Lakes, each consisting of substantial acreage. Respondent's sales force is divided into regions consisting of the Western Region, which includes the States of Washington, California, Oregon, and Arizona; the Midwest Region, which includes the States of Illinois, Indiana, and other Midwestern States; and the Northwest Region, which includes the States of Colorado, Wyoming, Montana, the Dakotas and Nebraska. For each of the above-listed regions, respondent employs a regional sales manager whose primary function is to make sales to the residents of the respective states through salesmen residing in those states. Respondent employs direct solicitation as well as dinner meetings at which a sales presentation is made by the salesmen using slides, elaborately prepared brochures and other advertising material, and high pressure sales tactics.

PAR. 5. Respondent Queen Creek sells or has sold lots to purchasers by use of standard form contracts, entitled "Purchase and Sale Agreement" (hereinafter sometimes referred to as a "contract") whereby the purchaser obligates himself to pay monthly installments over a period ranging from 5 to 7 years' duration. In return for the purchaser's promise to pay and subsequent payment, respondent holds a purchase money note and executes a warranty deed in favor of the purchasers.

PAR. 6. In the course and conduct of its business as aforesaid, respondent Queen Creek has for some time past caused its advertisements, promotional material, contracts and various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from its various places of business to agents, representatives, employees, customers, and prospective customers in various other States of the United States. Respondent's volume of business is substantial and its acts and practices, as hereinafter set

forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. In the further course and conduct of the aforesaid business, respondent Queen Creek has made various statements and representations, directly or by implication, concerning the size, diversity, and assets of respondent Flagg, the backing of respondent's land sales business by such assets, and the good reputation and integrity of Flagg.

PAR. 8. In truth and in fact, respondent Flagg's assets, prestige and diversity of holdings, beyond the guarantee of certain loans or making some cash payments, were not committed to its subsidiary's completion of the subdivisions through expenditures for promised improvements and amenities. Therefore, the acts and practices alleged in Paragraph Seven are deceptive and unfair.

PAR. 9. In the further course and conduct of its aforesaid business, respondent Queen Creek has made various statements and representations concerning the supply and demand for land; the liquidity or marketability of land; land prices and values; land as an investment; personal financial security; the stock market; banks and insurance; population growth and movement; the size and diversity of respondent's assets; and various options or financial protections afforded purchasers of respondent's land, including but not limited to purchasers' rights to cancel the contract within six months, should they visit the property. By and through such statements and representations and others not set forth herein, respondent has represented directly or by implication that lots which respondent is offering for sale are an excellent investment for the price at which respondent is offering them for sale, that significant monetary gain can be achieved by purchasing such lots, and that there is little or no financial risk involved in the purchase of said lots at said prices.

PAR. 10. In truth and in fact, in a significant number of instances, lots which respondent has offered and is offering for sale, at the prices at which respondent has offered and is offering them for sale, have been and are poor investments involving a substantial amount of risk to purchasers. Therefore, the acts and practices alleged in Paragraph Nine are deceptive and unfair.

PAR. 11. In the further course and conduct of its aforesaid business, respondent Queen Creek has offered for sale lots in its subdivisions without disclosing to prospective purchasers that the lots being offered are, at the price respondent is offering them, a risky investment in that, *inter alia*, the future value of lots being offered is uncertain and the purchasers probably will be unable to sell their lots, or their interests in them under the contract, at or above the

purchase price. Respondent has therefore failed to disclose material facts which, if known to prospective purchasers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. The failure to disclose such information is a deceptive and unfair act or practice.

PAR. 12. In the further course and conduct of its aforesaid business, respondent Queen Creek, through statements in advertisements, booklets, pamphlets, letters, slides, and oral presentations has represented directly, or by implication, that the resale of a lot purchased from respondent is not difficult.

PAR. 13. In truth and in fact, there is virtually no resale market for lots purchased at respondent's subdivisions. Therefore, the representations, acts, or practices alleged in Paragraph Twelve are deceptive and unfair.

PAR. 14. In the further course and conduct of the aforesaid business, respondent Queen Creek, through oral statements and periodic increases in prices of lots, has represented, directly or by implication, that the market value of the lots at its subdivisions is rising.

PAR. 15. In truth and in fact, the market value of the land has not been rising. Therefore, the acts and practices alleged in Paragraph Fourteen herein are deceptive and unfair.

PAR. 16. In the further course and conduct of its aforesaid business, respondent Queen Creek has made various oral and written statements and representations to prospective purchasers, including purchasers under contract with respondent, by which respondent has represented and is representing, directly or by implication, that the value of lots has increased significantly, or will increase in value, and that purchase of said lots is a way of achieving financial security.

PAR. 17. In truth and in fact, the value of lots has not increased significantly since the purchase from respondent. Therefore, the acts and practices alleged in Paragraph Sixteen herein are deceptive and unfair.

PAR. 18. In the further course and conduct of its aforesaid business, respondent Queen Creek has, with respect to its various subdivisions, made representations through advertising, promotional materials and oral statements that the growth of land values at its subdivisions has corresponded and still corresponds to the growth of land values in certain other geographical areas. Through the use of such advertisements and oral statements, respondent has represented and is representing, directly or by implication, that lot values at its subdivisions increase at a rate comparable to those of certain other geographical areas. In truth and in fact, lot values at respondent's

subdivisions do not bear any significant relation to land values in these other geographical areas and do not increase at a rate similar thereto. Therefore the acts and practices described herein are deceptive and unfair.

PAR. 19. In the further course and conduct of its aforesaid business, respondent Queen Creek has represented directly or by implication, that land being offered for sale in its subdivisions would soon be unavailable, and therefore that prospective purchasers must purchase lots immediately or risk being unable to do so.

PAR. 20. In truth and in fact, respondent Queen Creek's land holdings at the subdivisions were and are so substantial that prospective purchasers could wait a substantial period of time and still be able to obtain land in respondent's subdivision. Therefore, the acts and practices alleged in Paragraph Nineteen herein are deceptive and unfair.

PAR. 21. In the further course and conduct of its aforesaid business, respondent Queen Creek has made oral statements concerning the location of the lots offered for sale. By and through such statements, respondent has represented and is representing, directly or by implication, that prospective purchasers must purchase immediately to ensure that they can obtain what respondent's employees refer to as "desirable locations."

PAR. 22. In truth and in fact, purchasers could wait a substantial amount of time and still have a substantial choice of lots with locations as "desirable" as those offered at the time the representations alleged in Paragraph Twenty-One are made. Therefore, the acts and practices alleged in Paragraph Twenty-One herein are deceptive and unfair.

PAR. 23. In the further course and conduct of its aforesaid business, respondent Queen Creek, with regard to the Valle Vista subdivision, has used advertisements, pamphlets, oral statements, and slides to give prospective purchasers the impression that Valle Vista will provide all the comforts of suburban living because it is near the city of Kingman, Arizona, that employment opportunities exist in the area, that industry is expected to relocate in the area, and that Valle Vista will prosper by virtue of the fact that it abuts U.S. Highway 66.

PAR. 24. In truth and in fact, Valle Vista does not offer the comforts of suburban living as that term is commonly used, the Kingman area does not offer sufficient employment opportunities to absorb an influx of significant numbers, industry is not expected to relocate, and prosperity could not reasonably be expected to follow because Valle Vista abuts U.S. Highway 66. Therefore, the acts and practices

set forth in Paragraph Twenty-Three herein are deceptive and unfair.

PAR. 25. In the further course and conduct of its aforesaid business, respondent Queen Creek has made various oral statements in sales presentations concerning the import or significance of signing the agreement to purchase respondent's land. By and through such statements, respondent has represented directly or by implication that by signing a contract the purchaser is not entering into a binding obligation to purchase land, thus obscuring the legal or practical significance of signing a contract.

PAR. 26. In truth and in fact, respondent Queen Creek treated the agreement to purchase as a binding legal obligation upon its execution. Therefore, the acts and practices alleged in Paragraph Twenty-Five are deceptive and unfair.

PAR. 27. In the further course and conduct of its aforesaid business, respondent Queen Creek has made reference to stocks, annuities, and other forms of investment. By and through these references respondent has represented that the purchase of its land is a stable and secure investment.

PAR. 28. In truth and in fact the purchase of respondent's land is not a secure and stable investment, and the mere mention of the forms of investment described in Paragraph Twenty-Seven above during the course of a presentation, the purpose of which is to sell land, is an unfair and deceptive act or practice.

PAR. 29. In the further course and conduct of its aforesaid business, respondent Queen Creek has utilized contract provisions which are not understandable to many consumers or cannot be evaluated by many consumers. Respondent has made the contract available to prospective purchasers, solicited and obtained signatures to the contract from purchasers in circumstances where the purchasers did not have the opportunity to seek assistance of counsel or other professional advice to aid in understanding said provisions. Respondent has discouraged purchasers from obtaining assistance of counsel or other professional advice in order to understand said provisions. The soliciting or obtaining of an agreement to purchase respondent's land, involving a substantial financial commitment by the purchaser, when the purchaser has not had an opportunity to seek assistance of counsel or other professional advice, and the discouragement of purchasers who wish to seek assistance of counsel before entering into such an agreement, constitute unfair acts or practices.

PAR. 30. In the further course and conduct of its aforesaid business, respondent has utilized artificial and deceptive photographic techniques, including the use of wide-angle lenses, in the production of

brochures and pamphlets in promoting the sale of land in its subdivisions. Typical of brochures produced in this manner was one which distorted the size of lakes at the Cordes Lakes subdivision. The use of such artificial and deceptive photographic techniques is an unfair and deceptive practice.

PAR. 31. Respondent Queen Creek's land sale contracts contain a declaration by the purchaser that the purchaser understands that no agent or representative of the seller shall have any authority whatsoever to make any representation on behalf of the seller aside from what is stated in the written contract. Use by respondent of the aforesaid declaration is an unfair and deceptive act or practice because respondent and its employees make representations, through advertisements and publications of general circulation, in promotional materials, and in sales presentations by means of oral statements, slides and movies, which differ in material respects from, or which obscure, the rights and obligations of the purchaser and of the respondent.

PAR. 32. Respondent Queen Creek's land sale contracts and promissory notes contain a clause which provides that if the purchaser defaults on installment payments or otherwise fails to perform any obligation under the contract, the seller shall be entitled to retain sums previously paid thereunder by the purchaser in excess of the seller's actual damages. Use by respondent of the aforesaid forfeiture provision is an unfair act or practice.

PAR. 33. In the further course and conduct of its aforesaid business, respondent Queen Creek made it known to purchasers and prospective purchasers that they had a right to cancel the contract for sale of land, if upon visiting the site within six months of purchase they were dissatisfied with the lot. Respondent maintained sales personnel at the subdivision sites ostensibly to serve as guides for the visiting owners and as on site salesmen. However, respondent's salesmen actually used these visits by owners to sell more land to the owners and to discourage owners from exercising their cancellation privilege. The use by respondent of the site visits to vitiate the effect of the 6-month refund provision and to promote the sale of additional lots constitutes an unfair act or practice.

PAR. 34. Respondent Queen Creek through its agents and representatives has represented to prospective purchasers that construction financing of single and multi-family dwellings, and engineering design and construction services for dwellings in respondent's subdivisions would be easily obtained.

PAR. 35. In truth and in fact, purchasers have experienced problems in obtaining home construction financing, and respondent

Queen Creek has no single or multi-family dwelling design or construction capability. Therefore, the representations alleged in Paragraph Thirty-Four constitute unfair and deceptive acts or practices.

PAR. 36. In the further course and conduct of its aforesaid business, respondent Queen Creek has, through oral statements and other means, represented that certain facilities or improvements, including an 18-hole golf course, large lakes for boating and fishing, fully paved roads and underground utilities, are presently available, or will be available in the near future at Valle Vista, Cordes Lakes and Verde Village, respectively.

PAR. 37. In truth and in fact, the facilities or improvements referred to in Paragraph Thirty-Six are not now and will not soon be made available, or said facilities were inadequately engineered and constructed at the subdivisions so as to be practically unavailable. Therefore, the acts and practices alleged in Paragraph Thirty-Six herein are deceptive and unfair.

PAR. 38. In the further course and conduct of its aforesaid business, respondent Queen Creek has induced members of the public through deceptive and unfair acts and practices to pay to respondent substantial sums of money towards the purchase of lots in respondent's developments. Respondent has received and is receiving the said sums, and has failed to construct the claimed improvements and amenities in a timely and adequate manner. Respondent's continued failure to construct the represented improvements and amenities without refunding money to purchasers, as alleged in this paragraph, constitutes an unfair act or practice.

PAR. 39. In the further course and conduct of its aforesaid business, respondent Queen Creek has made various written and oral statements to the public concerning the purpose of contacting members of the public and inviting them to dinner parties or other gatherings, or the purpose of offering goods and services free or at low cost. By and through such statements respondent has represented, directly or by implication, that the purpose in inviting members of the public to dinner parties or other gatherings, or in offering goods or services free or at low cost, was to inform people of the land situation in general, or to accomplish some purpose other than attempting to get invitees to sign contracts for the purchase of undeveloped land.

PAR. 40. In truth and in fact, respondent Queen Creek's purpose in contacting members of the public or holding dinner parties or other gatherings, or in offering goods or services free or at low cost, was to induce the signing of contracts for the purchase of respondent's land.

Therefore, the acts and practices alleged in Paragraph Thirty-Nine are deceptive and unfair.

PAR. 41. In the course and conduct of its aforesaid business, respondent Queen Creek has presented purchasers with a contract, a property report required to be provided to the purchaser by federal or state law, and in some instances additional lengthy or detailed documents. These documents contain information and provisions which could affect the decision of certain consumers on whether to sign a contract for the purchase of respondent's land. Respondent frequently has made the aforesaid documents available only at dinner parties or other gatherings sponsored by respondent in circumstances where it is likely that many purchasers will not read or fully comprehend the meaning and impact of such documents. In many instances respondent has withheld reports required to be provided to the purchaser by state or federal law until after an agreement is signed, which practice is in violation of federal or state laws. Withholding such crucial information and selling land under such circumstances, involving a substantial financial commitment by the purchaser, is a deceptive and unfair act or practice.

PAR. 42. In the further course and conduct of its aforesaid business, respondent Queen Creek has made oral statements and representations to members of the public concerning the present and future development of its subdivisions. By and through such statements and representations, respondent has represented, directly and by implication, that its subdivisions will, in the near future, be developed at least to the extent that all or most lots will be useable as homesites, with potable water, electricity and telephone service available without extraordinary charges for hook-up to said utilities, and that acceptable subdivision roads and drainage systems and structures would be constructed.

PAR. 43. In truth and in fact, respondent's subdivisions are not and will not in the near future be developed to the extent that all or most lots will be useable as homesites, with potable water, electricity, and telephone service available without extraordinary charges for hook-up to said utilities, and acceptable roads and drainage systems and structures. Therefore, the acts and practices alleged in Paragraph Forty-Two herein are deceptive and unfair.

PAR. 44. In the further course and conduct of its aforesaid business, respondent Queen Creek has represented, directly or by implication, that the particular lot a purchaser buys will, in the near future, or at some specifically stated time, be useable as a homesite, with potable water, electricity, and telephone service available without extraordinary charges for hook-up to said utilities.

PAR. 45. In truth and in fact, many purchasers bought lots which were not useable as homesites, because potable water, electricity and telephone service were not made available without extraordinary charges, or were not available within the near future or such specifically stated time. Therefore, the representations alleged in Paragraph Forty-Four constitute deceptive and unfair acts or practices.

PAR. 46. In the further course and conduct of its aforesaid business, respondent Queen Creek has endorsed promissory notes executed by purchasers to other financial institutions, continued to collect payments from purchasers, and, when mortgages had been satisfied, were unable to deliver to purchasers a satisfaction of mortgage and thus clear title. The use by respondent of the aforesaid procedure constitutes an unfair act or practice.

PAR. 47. The use by respondent of the aforementioned unfair and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were, and are, true, and to cause the purchase of substantial numbers of respondent's lots because of said mistaken and erroneous belief.

PAR. 48. The above acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting 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 Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Flagg Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 10960 Wilshire Boulevard, in the City of Los Angeles, State of California.

Respondent Queen Creek Land and Cattle Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business at 3500 North Central Ave. in the City of Phoenix, State of Arizona.

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, Flagg Industries, Inc., a corporation, and Queen Creek Land and Cattle Company, a corporation, their successors and assigns, 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, or sale of land or other real property in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, the financial strength, size, and diversity or extent of assets of respondents.

2. Representing, either orally or in writing, directly or by implication:

a. That the vacant lots which respondents are offering for sale constitute a good or excellent investment, that significant monetary gain can be achieved, or that there is little or no financial risk involved in the purchase of respondents' lots.

b. That the resale of a vacant lot purchased from respondents is not difficult.

c. That the value of land at respondents' subdivisions is rising or will rise in the future.

d. That the prices of respondents' lots periodically rise or that prices are increasing, have increased, or will increase, without clearly and conspicuously disclosing at the same time, and by the same medium by which the price increases are communicated, that the price increases do not in any way relate to the value of land, and that the value of land to purchasers does not appreciate proportionately with the price rises.

e. That the purchase of a lot in one of respondents' subdivisions is a way to achieve financial security, to deal with inflation, or to become wealthy.

f. That the value of, or demand for, any land, including lots being offered for sale or previously sold by respondents, has increased, or will or may increase, or that purchasers have made, or will or may in the future make, a profit by reason of having purchased respondents' land.

g. That the growth in land values or potential growth in land values at respondents' subdivisions corresponds to or will correspond to the growth in land values of any other locality, or in any way comparing land values or potential growth in land values at respondents' subdivisions to land values or potential growth in land values in any other locality. The word "locality" includes, but is not limited to, cities, towns, counties, townships, boroughs, states and regions.

h. That land in respondents' subdivisions will soon be unavailable or otherwise scarce, or that land in any particular subdivision of respondents will soon be unavailable.

i. That prospective purchasers must purchase a lot immediately to ensure that a particular location will be available.

j. That respondents' subdivisions offer the comforts of suburban living, or that respondents' subdivisions are other than isolated, sparsely populated areas.

k. That jobs for purchasers who decide to move to any of respondents' subdivisions will be obtainable, without specifying exactly which jobs are currently available for people with the prospective purchasers' qualifications and salary requirements.

l. That new industry is moving to any of respondents' subdivisions, unless the industry is actually moving onto the subdivision itself, and unless respondents describe exactly what industry or industries is or are moving to the subdivision or subdivisions, when

such moves are to take place, and the number and types of jobs which will be made available.

m. That new industry is moving near respondents' subdivisions, unless the industry is actually moving and unless respondents describe exactly which subdivision or subdivisions, the mileage from the subdivision or subdivisions, to the site of the industry or industries, when such moves are to take place, and the number and types of jobs which will be made available.

n. That any of respondents' subdivisions will prosper in any way by virtue of its location.

o. That persons being solicited to purchase respondents' property are not entering into a legally binding obligation, merely making a refundable deposit, reserving the property, not making a final decision regarding purchase of property, or in any manner whatsoever obscuring the legal or practical significance of signing a land sale contract, promissory note or any other instrument.

Provided, however, that respondents may make those representations in the sale of land for which there is a documented reasonable basis to believe that such representations are true. Said documentation shall be made available to Commission staff upon request to review during reasonable business hours.

3. Making any statements or representations which in any manner refer to or concern investments in stocks, annuities or any other form of investment.

4. In any way discouraging prospective purchasers from obtaining the assistance of counsel or other professionals in order to understand the provisions of respondents' land sales contracts, promissory notes, or other documents, or make other determinations as to the advisability of purchasing respondents' land.

5. Using any motion pictures, still pictures, or other depictions in any type of sales presentation or promotional material unless such motion pictures, still pictures, or depictions are in fact genuine and accurate representations of the material or location presented therein.

6. From the date this order becomes final, including in any contract for the sale of land, or in any other document shown or provided to purchasers or prospective purchasers of land, whether or not signed by such purchasers or prospective purchasers, language to the effect that verbal representations have not been made in connection with the sale, or that no express or implied representations have been made in connection with the sale or offering for sale of land.

7. From the date this order becomes final, including in any

contract for the sale of land, or in any document shown or provided to purchasers or prospective purchasers of land, whether or not signed by such purchasers or prospective purchasers, language to the effect that upon failure of the purchaser to pay an installment due under the contract or otherwise to perform any obligation under the contract, the seller shall be entitled to retain sums previously paid thereunder by the purchaser in excess of the seller's actual damages.

8. Using site visits afforded purchasers in connection with a right of cancellation to vitiate in any way that right or attempt to sell additional land.

9. Misrepresenting or obscuring the right of a purchaser under any provision of respondents' contract or of this order, or under any applicable statute or regulation, to cancel a transaction or receive a refund.

10. Misrepresenting that financing for the construction of dwellings on subdivision lots is available or that respondents offer design or construction services.

11. Misrepresenting orally or in writing the present or future extent of development in any of respondents' subdivisions.

12. a. Representing that respondents will provide, or that respondents' subdivisions will have available, any facility or improvement, other than the utilities treated separately in paragraph 2 of Section III of this order, unless respondents' contracts or promissory notes at the time of the representation contain (i) a legal obligation on the part of respondents to provide or make available said facilities and improvements at a date certain, not later than 10 years from the date of purchase, set out clearly and conspicuously in the document, and (ii) a statement as to the cost to the purchaser, if any, for such facilities or improvements.

b. Failing to express the aforesaid contractual obligations set out in subparagraph a. above in the contract or promissory note with the purchaser in the following manner:

(i) A complete description of each improvement or facility to be provided or made available;

(ii) A provision that in the event any of the improvements or facilities specified in the instrument are not completed within six months of the time provided in the contract, respondents will immediately, upon the expiration of said six-month period, provide the purchaser by certified mail, return receipt requested, with notice of such unavailability of or failure to complete the aforesaid improvements or facilities, and of the purchaser's right to exercise within 30 days of receipt of said notice his option to exchange his lot

or to cancel and receive a full refund as set out in subparagraph (iii) below;

(iii) An option to the purchaser stated substantially as follows:

In the event that any of the improvements or facilities specified by the seller in this instrument are not available to the lot which is the subject of this instrument, or are not completed within six months of the time provided in this instrument, the purchaser may elect, at his option, to (1) receive, at no additional expense to the purchaser, an exchange acceptable to the purchaser of other property of at least equal price, equivalent size, and with those improvements contracted for, or (2) cancel this instrument and receive from the seller a full refund of all monies paid hereunder plus the legal rate of interest, compounded annually. To exercise this option, the purchaser must give notice to the seller by registered or certified mail within 30 days after receipt of notice from the seller of such unavailability of or failure to complete the aforesaid improvements or facilities.

(iv) Where Acts of God delay the construction of improvements, a reasonable extension of the six-month time period in the instrument does not violate this order and the purchaser's option does not operate until said reasonable time has elapsed. *Provided, however,* respondents shall notify purchaser of said Act of God in accordance with the above.

Subsections a. and b. above shall apply to all contracts, promissory notes, or other binding documents executed after the date this order becomes final.

c. Failing to make the exchange or refund requested by a purchaser under the terms of this paragraph of the order within seventy-five (75) days of receipt of notification from the purchaser.

d. Soliciting or obtaining the purchaser's assent to a waiver or limitation or otherwise imposing any condition upon the right of a purchaser to an exchange or a refund as set out in this paragraph.

II

It is further ordered. That respondents, their successors and assigns, 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, or sale of land or other real property in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith:

1. Include, clearly and conspicuously, in any written or oral invitation or other communication concerning any event or activity, dinner parties or other gatherings, awards of free or low cost gifts, sightseeing tours, or any other goods or services, which invitation or

other communication is in any manner related to the sale of land, the following statement: "The purpose of [the event or activity] is to persuade you to sign a contract for the purchase of undeveloped land in [name of state in which land is located] at a cost of approximately [average contract price in the subdivision during previous year rounded off to nearest \$500 or, in the case of a new subdivision, average offering price rounded off to nearest \$500]."

If said invitation or communication is in writing, such disclosure shall be in writing and shall be made clearly and conspicuously in the invitation or communication; if the invitation or communication is oral such disclosure shall be made orally during the telephone invitation or communication, and in writing by mail to be received by the prospective purchaser at least three days prior to the event or activity; *provided, however*, that in the case of consumers already within the state within which the subdivision is located, such disclosure may be made one day prior to a tour, or site visit, so long as (a) all written materials given to such consumers make such a disclosure in print as large as the largest print in such materials, and (b) all agents of respondents who promote the tour and all employees of respondents who in any way attempt to influence consumers' decisions orally inform consumers of the purpose of the tour or site visit.

2. a. Include, clearly and conspicuously, in all sales presentations, promotion materials, and advertising, other than TV or radio advertisements, in the same size type as that which is predominantly used in such material, the following statement:

YOU SHOULD CONSIDER THE PURCHASE OF OUR LAND TO BE RISKY. THE FUTURE OF THIS LAND IS UNCERTAIN—DO NOT COUNT ON AN INCREASE IN ITS VALUE. IT HAS NOT GENERALLY BEEN POSSIBLE FOR PURCHASERS OF LAND FROM [SELLING RESPONDENT] TO RESELL THE LAND AT A PROFIT. PURCHASERS GENERALLY HAVE BEEN UNABLE TO RESELL THE LAND AT ALL. IT IS SUGGESTED THAT YOU DISCUSS ANY POSSIBLE PURCHASE WITH A LAWYER, BANKER OR OTHER QUALIFIED PROFESSIONAL.

b. Include, clearly and conspicuously, in all TV and radio advertisements, the following statement:

YOU SHOULD CONSIDER THE PURCHASE OF ANY OF OUR LAND RISKY.

3. Set forth on the first page of any contract for the sale of land in 24-point type, "CONTRACT FOR THE PURCHASE OF LAND." with no other writing except that required by the following paragraph and paragraph 2. of Section III of this order.

4. Print the following in 12-point boldface type as the only writing

Decision and Order

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in addition to that required by paragraph 3. of Section II and paragraph 2. of Section III of this order, on the first page of all contracts for the sale of land:

THIS IS A CONTRACT BY WHICH YOU AGREE TO PURCHASE LAND. YOU SHOULD NOT CONSIDER THIS PURCHASE AS AN INVESTMENT. THE FUTURE VALUE OF THIS LAND IS UNCERTAIN—DO NOT COUNT ON AN INCREASE IN ITS VALUE. IN FACT, THERE IS GENERALLY NO RESALE MARKET FOR THIS LAND; PREVIOUS PURCHASERS HAVE, FOR THE MOST PART, FOUND IT IMPOSSIBLE TO SELL THE LAND AT ALL, MUCH LESS AT A PROFIT.

IT IS THEREFORE SUGGESTED THAT YOU CONSIDER YOUR NEEDS CAREFULLY, AND HAVE BOTH THIS CONTRACT AND THE PROPERTY REPORT REVIEWED BY A LAWYER, BANKER OR OTHER QUALIFIED PROFESSIONAL.

WHILE YOU HAVE 10 DAYS IN WHICH TO RECONSIDER YOUR DECISION AND CANCEL THIS CONTRACT WITH FULL REFUND, WE RECOMMEND THAT YOU NOT SIGN UNTIL EXERCISING THE CARE SUGGESTED IN THE PREVIOUS PARAGRAPH.

Signature

Date

No contract or other legally binding instrument for the sale of respondents' land shall be valid unless this statement is signed and dated by the purchaser after he has had a reasonable amount of time to read the whole page.

5. a. Furnish each purchaser, at the time the purchaser signs a contract or other document for the sale of land, with a copy of the contract or other document and two copies of the following form. The title of the form shall be "NOTICE OF RIGHT OF CANCELLATION" printed in 12-point type and the form shall contain in 10-point boldface type the following information and statements.

Date of Transaction

Contract Number

NOTICE OF CANCELLATION

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE SHOWN ON THE CONTRACT.

IF YOU CANCEL, ANY PAYMENT MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL

BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF THE CANCELLATION NOTICE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO *[name of selling respondent]* AT *[address of respondent's place of business]* NOT LATER THAN MIDNIGHT OF *[Date]*

I (WE) HEREBY CANCEL THIS TRANSACTION. (EACH PURCHASER MUST SIGN THIS NOTICE.)

[Date]

[Signature of purchaser]

b. Complete both copies before furnishing this "Notice of Right of Cancellation" to the purchaser, by entering the name of the selling respondent, the address of the respondent's place of business, the date of the transaction, the contract number, and the date, not earlier than the tenth business day following the date of transaction, by which the purchaser may give notice of cancellation. The term "selling respondent" as required by this order shall mean Queen Creek Land and Cattle Company, its successors or assigns or any other dba used in selling land.

c. Where a timely notice of cancellation is received and said notice is not properly signed, and respondents do not intend to honor the notice, respondents shall immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error, and stating clearly and conspicuously that a notice signed by the purchaser must be mailed to respondents by midnight of the seventh business day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

d. Where the signature of a prospective purchaser is solicited during the course of a sales presentation, inform each person orally, at the time he signs the contract, or other legally binding instrument, of his right to cancel as stated above.

6. Include, clearly and conspicuously, in each contract or other document for the sale of land the following statement in 12-point boldface type.

PURCHASER HAS THE RIGHT TO CANCEL THE CONTRACT WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

SHOULD PURCHASER CHOOSE TO CANCEL PURSUANT TO THIS PROVISION, ANY PAYMENTS MADE BY PURCHASER UNDER THIS CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY PURCHASER WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF THE CANCELLATION NOTICE.

TO CANCEL THE TRANSACTION, PURCHASER MUST MAIL OR DELIVER A SIGNED COPY OF THE NOTICE OF RIGHT OF CANCELLATION FURNISHED BY SELLER, A TELEGRAM, OR ANY OTHER WRITTEN NOTICE TO [selling respondent] AT [selling respondent's place of business] NOT LATER THAN MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

7. Honor any signed and timely notice of cancellation by a purchaser, and within 10 business days after the receipt of such notice (a) refund all payments made under the instrument, and (b) cancel and return any negotiable instrument executed by the purchaser in connection with the contract.

8. Send to prospective purchasers (1) copies of all reports required by either federal or state law and (2) copies of all materials required by this order, along with any invitation or other communication inviting the prospective purchaser to attend a land sales dinner.

9. If the land is to be sold other than at a land sales dinner, furnish (1) copies of all reports required by federal or state law to be furnished to a purchaser of respondents' land at or before the signing of a legally binding instrument and (2) copies of all materials required to be furnished by this order, with the first written materials or during the first contact which the prospective purchaser has with respondents or any of their agents or employees.

10. Inform orally and in writing all prospective purchasers of vacant land that home financing may not be available, and that a bank located near the subdivision should be consulted prior to the purchase of land if the purchaser intends to build or purchase a house on that land.

11. Whenever respondents offer a refund contingent upon the purchaser taking a company-guided inspection tour or making a registered inspection of the property in which the purchaser's lot is located:

a. Provide the purchaser three business days after taking tour or making said inspection within which to request a refund;

b. Include in any contract, or other legally binding instrument, in immediate proximity to the provision setting forth the availability of a refund upon completion of a company-guided inspection tour or registered inspection of the property, the following statement:

YOU, THE PURCHASER(S), HAVE AN ADDITIONAL RIGHT TO CANCEL THE TRANSACTION IF YOU TAKE THE COMPANY-GUIDED TOUR OR MAKE A REGISTERED INSPECTION OF THE PROPERTY AND NOTIFY THE COMPANY OF YOUR INTENTION TO EXERCISE THE RIGHT TO CANCEL PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF SUCH TOUR OR INSPECTION.

c. Orally inform the purchaser at the time the instrument is signed and at the time the tour is taken or the inspection is registered of this cancellation right.

d. Furnish each purchaser at the completion of the tour or inspection a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall contain in boldface type of a minimum size of 10 points the following statements:

NOTICE OF CANCELLATION

*[Date of company-guided
inspection tour of property]*

[Contract number]

YOU MAY CANCEL YOUR CONTRACT OR PROMISSORY NOTE WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE:

TO CANCEL YOUR CONTRACT OR PROMISSORY NOTE, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO: *[Name of selling respondent]*, *[address of selling respondent's place of business]*, NOT LATER THAN MIDNIGHT OF _____.

I (WE) HEREBY CANCEL THE CONTRACT. (EACH PURCHASER MUST SIGN THIS NOTICE.)

(Date)

(Purchaser's signature)

(Purchaser's signature)

e. Before furnishing the purchaser copies of the "Notice of Cancellation" set forth in subparagraph d. above, complete both copies by entering the name of the selling respondent and the address of its place of business, the date of the company-guided inspection tour or the registered inspection of the property, and the date, not earlier than the third business day following the date of the last contact in connection with said tour or inspection by which the purchaser may give notice of cancellation.

f. If respondents condition the right of cancellation referred to

above upon a tour or registered inspection, respondents shall insure that a representative is on the site during reasonable daylight hours to register inspections.

g. Where a timely notice of cancellation is received from a purchaser purportedly in accordance with the requirements of this paragraph of the order, but where said notice is not properly signed, and respondents do not intend to honor the notice, respondents shall immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, and a new cancellation form; said notice shall inform the purchaser of his error and state clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

III

It is further ordered. That respondents, their successors and assigns, 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, or sale of land or other real property in or affecting commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising for sale, offering for sale, contracting to sell, or selling any interest in:

1. Any land represented in any manner as being useable now or in the future as a homesite, unless either:
 - a. At the time of sale all of the conditions set forth below are met, or
 - b. The selling respondent's contract with the purchaser contains a legal obligation on the part of respondents to meet the conditions set forth below within five years of the date of the sale.

The conditions to be met by respondents are as follows:

- (1) The purchaser must have available an adequate sewage system by means of:
 - (a) A septic tank, or
 - (b) A central sewage system, the hook-up to which will cost the purchaser only a reasonable and customary branch-line extension fee;

provided, that respondents must include in the contract whether a septic tank will be necessary or whether a central sewage system will be available, and the approximate amount which a septic tank would cost to install or a central sewage system would cost to hook up to,

including an estimate of the amount said fee will increase over the next five years.

(2) The purchaser must be able to obtain potable water by hooking up to a central water system solely by payment of a reasonable and customary branch-line extension fee; *provided*, that respondents must include in the contract the approximate amount of said extension fee, including an estimate of the amount said fee will increase over the next five years.

(3) The purchaser must be able to obtain standard electricity and telephone service from a local utility authorized to do business in the state in which the land is located, which service will cost the lotholder only nominal hook-up and installation fees and customary and usual rates; *provided*, that respondents must include in the contract the approximate amount of said hook-up and installation fee, including an estimate of the amount said fee will increase over the next five years.

If respondents fail for any reason to meet the conditions required by this paragraph, they shall refund to each purchaser to whom the obligations are not fulfilled all monies paid by such purchaser to respondents under the terms of the land sales contract, plus the legal rate of interest, compounded annually.

2. Any lot not covered in paragraph 1. above of this order provision, unless there shall appear as described in paragraph II 4., as additional paragraphs required by paragraph II 4., such of the following statements as are applicable:

a. For contracts for the sale of lots as to which neither respondents nor any other party is legally obligated to make a central sewer system available, add the following, including the third sentence only where applicable:

A CENTRAL SEWER SYSTEM WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. INSTALLATION OF A SEPTIC TANK WOULD BE AT YOUR EXPENSE. HOWEVER, THE USE OF A SEPTIC TANK ON YOUR LOT IS CONTINGENT ON APPROVAL BY GOVERNMENTAL AUTHORITIES.

b. (i) For contracts for the sale of lots to which neither respondents nor any other party is legally obligated to make available a central potable water system, and where water is not available on an aid-in-construction basis, add the following, including the third sentence only where applicable:

A CENTRAL SYSTEM FOR POTABLE WATER WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. INSTALLATION OF A WELL WOULD BE OF CONSIDERABLE EXPENSE TO YOU.

MOREOVER, IT MAY NOT BE POSSIBLE TO OBTAIN POTABLE WATER FROM A WELL IN SOME AREAS.

(ii) For contracts for the sale of lots to which neither respondents nor any other party is legally obligated to make a central water system available, and where water is available on an aid-in-construction basis, add the following, including the fourth sentence only where applicable:

A CENTRAL WATER SYSTEM WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. IT MAY BE IMPOSSIBLE OR IMPRACTICAL TO OBTAIN WATER FROM A CENTRAL SYSTEM DUE TO THE HIGH COST OF MAKING THIS SERVICE AVAILABLE TO THIS AREA. INSTALLATION OF A WELL WOULD BE OF CONSIDERABLE EXPENSE TO YOU. MOREOVER, IT MAY NOT BE POSSIBLE TO OBTAIN POTABLE WATER FROM A WELL IN SOME AREAS.

(iii) For contracts for the sale of lots to which neither respondents nor any other party is legally obligated to make a central system for potable water available, where water is available on an aid-in-construction basis, and there are legal restrictions on drilling for water, add the following, including the third sentence only where applicable:

A CENTRAL WATER SYSTEM WILL NOT BE AVAILABLE WHEN YOU HAVE COMPLETED YOUR CONTRACT PAYMENTS. IT MAY BE IMPOSSIBLE OR IMPRACTICAL TO OBTAIN WATER DUE TO THE HIGH COST OF MAKING THIS SERVICE AVAILABLE TO THIS AREA. INSTALLATION OF A WELL IS PROHIBITED IN SOME AREAS.

c. For contracts for the sale of lots to which electricity and telephone service will only be available to the purchaser on an aid-in-construction basis, add the following:

IT MAY BE IMPOSSIBLE OR IMPRACTICAL TO OBTAIN ELECTRICITY AND TELEPHONE SERVICE DUE TO THE HIGH COST OF MAKING THESE SERVICES AVAILABLE TO THIS AREA.

d. For contracts for the sale of lots to which respondents or any other party is legally obligated only to provide unpaved roads with no maintenance obligations, add the following in lieu of all of the above:

THIS COMPLETELY UNDEVELOPED LAND IS BEING SOLD "AS IS." ELECTRICITY, WATER, SEWER AND TELEPHONE SERVICE ARE NOT PLANNED FOR THIS SUBDIVISION AND MAY BE IMPOSSIBLE FOR YOU TO OBTAIN AT A REASONABLE COST. YOUR LOT WILL BE ACCESSIBLE, IF AT ALL, ONLY BY UNPAVED ROADS WHICH WILL NOT BE MAINTAINED. THE USE OF SUCH ROADS MAY BE IMPOSSIBLE WITHOUT MAINTENANCE. YOUR LOT HAS VIRTUALLY NO USE AT PRESENT OR IN THE FORESEEABLE FUTURE.

e. For contracts for the sale of lots to or on which neither respondents nor any other party is legally obligated to provide any improvements, add the following in lieu of all of the above:

THIS COMPLETELY UNDEVELOPED LAND IS BEING SOLD "AS IS." ELECTRICITY, WATER, SEWER, AND TELEPHONE SERVICE ARE NOT PLANNED FOR THIS SUBDIVISION AND MAY BE IMPOSSIBLE FOR YOU TO OBTAIN AT A REASONABLE COST. NO ROADS ARE PLANNED AND YOUR LOT IS PROBABLY INACCESSIBLE BY CONVENTIONAL TRANSPORTATION. YOUR LOT HAS VIRTUALLY NO USE AT PRESENT OR IN THE FORESEEABLE FUTURE.

f. For contracts for the sale of lots in any of respondents' properties in which purchasers are required to join an improvement association which is obligated to spend accumulated funds for improvements to and services for lots such as, but not limited to, central water and sewer systems, telephone and electrical services, road maintenance and paving, add the following:

YOU ARE OBLIGATED BY THIS CONTRACT TO JOIN AND MAKE REGULAR PAYMENTS ESTIMATED TO BE [estimated *annual* cost] TO [name of association]. THE [name of association] IS LEGALLY OBLIGATED TO [name of selling respondent], BUT NOT TO YOU, TO USE SUCH FUNDS TO PROVIDE UTILITIES AND OTHER IMPROVEMENTS TO AND SERVICES FOR YOUR LOT. HOWEVER, YOU MUST MEET CERTAIN ADDITIONAL PAYMENTS, AS SET FORTH IN THE CONTRACT, BEFORE YOU REQUEST THESE UTILITIES, IMPROVEMENTS, AND SERVICES.

g. For purposes of providing additional information to purchasers, respondents may advise purchasers of which governmental approvals have been granted in the past for private wells and septic tanks. This subsection, g., shall be in addition to disclosures required by Sections 2(a) and (b), and not in lieu thereof.

If respondents fail for any reason to make the disclosures required by this paragraph, they shall refund to each purchaser to whom the disclosures were not made all monies paid by such purchaser under the terms of the land sales contract when requested to do so by such purchaser.

IV

It is further ordered, That respondents, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale of land in their three subdivisions, shall provide all improvements, amenities, and facilities described in the HUD Property Reports in effect on the date of sale

and the additional improvements described below. Said requirements shall include both new construction and repair of existing improvements which are in a state of disrepair or were improperly constructed.

Improvements and amenities to be constructed at the respective subdivisions shall include, but not be limited to, the following:

1. Cordes Lakes

a. All subdivision roads, culverts and other drainage structures shall be constructed to minimum Yavapia County specifications, as those specifications required at the time construction began.

b. A low water crossing and an alternative access road for emergency use by residents of Units 5 and 6 to reach the main highway during flood stages of Big Bug Creek. The location of this access road shall be mutually agreed upon by respondents and the property owners' association.

c. All water lines shall be placed underground.

d. Drain, de-weed, and re-fill Crystal Lake. Crystal and Bass Lakes shall be filled and maintained at the highest level attained since their construction. Where modification of the water supply system is required to maintain this level, said modifications shall be accomplished.

e. All improvements and amenities set out in the Property Report, Notice and Disclaimer by Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, OILSR No. 0-0162-02-27(A) dated September 10, 1973, shall be completed using accepted construction standards for Yavapia County.

f. All construction shall be completed at Cordes Lake not later than April 30, 1977. All amenities constructed or still under construction by respondents shall not be conveyed to the property owners' association until these facilities are brought to a reasonable standard agreed to by respondents and the property owners' association. All improvements to be accepted for maintenance by the county shall be completed and accepted not later than April 30, 1977.

g. Title to all lots which have been designated as property to be dedicated for public use shall remain in respondents until such time as title is accepted by the appropriate Yavapia County or other public entity.

2. Verde Village

a. All roads in the subdivision shall be brought to Yavapia County standards for asphalt paved roads, as those standards existed when the roads were initially constructed.

b. All drainage channels, ditches, culverts and other structures

and facilities shall conform to Yavapia County standards and shall be consistent with accepted engineering and construction standards for the topography of the subdivision.

c. All lots on which the owner indicates to respondents that he intends to build shall be rough graded so as to require only normal filling and grading for construction of a residential structure. This requirement terminates when the improvements are accepted by the Yavapia County Engineer.

d. The existing water distribution system shall be checked, modified and upgraded where necessary to assure reasonably uniform line pressure and discharge rates to all occupied units and those units in which lots have been offered for sale. All water lines shall be placed underground.

e. Grade and restore recreation areas, and lots along Verde River. The owners of lots adjacent to the Verde River which have been damaged by respondents' employees or agents and which have not been restored within 60 days after this order becomes final shall be offered a full refund plus the legal rate of interest, or the right of exchange, at the owner's option.

f. Respondents shall contact, within 60 days of acceptance of this order by the Commission, the owner of each occupied lot in the subdivision to determine if said owner had to bear the cost of extending water, telephone, or electrical service to his property line. Where owners had to bear the cost, respondents shall reimburse that owner for those costs in a lump sum within ten days of notification and furnishing of proof by the lot owner.

g. All improvements and amenities set out in the Property Report, Notice and Disclaimer by Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, OILSR No. 0-1024-02-144(G) Amendment No. 1 dated September 10, 1973, shall be completed and accepted by Yavapia County Engineer not later than June 30, 1979.

h. All construction shall be completed at Verde Village not later than June 30, 1979. All amenities constructed or still under construction by respondents shall not be conveyed to the property owners' association until these facilities are brought to a reasonable standard agreed to by respondents and the property owners' association. All improvements to be accepted for maintenance by the county shall be completed and accepted not later than June 30, 1979.

i. Title to all lots which have been designated as property to be dedicated for public use shall remain in respondents until such time as title is accepted by the appropriate Yavapia County or other public entity.

3. Valle Vista

a. All subdivision roads shall be constructed to match existing roads in Unit One and shall meet Mojave County specifications for paved roads, as those specifications are interpreted by the Mojave County Engineer.

b. All culverts, drainage channels and ditches shall be constructed to Mojave County Specifications, or other required governmental flood control standards.

c. All lots on which the owner has indicated to respondents his intent to build shall be rough graded so as to require only normal filling and grading for construction of a residential structure. This requirement shall terminate on December 31, 1978.

d. Where future lots are approved for sale by the appropriate State of Arizona agency, respondents shall assure that Truxton Canyon Water Company, Inc., or another state approved water company can provide sufficient potable water to satisfy the expected demand.

e. All subdivision water lines shall be underground and shall supply potable water within standards established by the Arizona Health department and Water Commission for Total Dissolved Solids (TDS), fluorides and other impurities.

f. Respondents shall complete the 18-hole golf course, tennis court, swimming pool, shuffle board, park and other amenities as set out in the Property Report—Notice and Disclaimer by Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, dated December 17, 1974, not later than December 31, 1978.

g. Respondents shall maintain the roads, culverts and other drainage facilities, lakes, golf course, community center, swimming pool, and any other common facilities until such time as these facilities have been accepted by the County of Mojave or the subdivision property owners' association; *provided, however*, that under no circumstances shall respondents convey to the property owners' association any facility prior to those facilities meeting standards mutually agreed upon by respondents and the property owners' association. All roads, culverts and other drainage facilities, and other improvements shall be completed and accepted for maintenance by the Mojave County Engineer not later than December 31, 1978.

4. Funds advanced by respondents to the trust fund established under paragraph V of this order shall under no circumstances be used for maintenance of any common facility included in the

Property Reports referred to in this paragraph prior to acceptance by the association.

5. Failure to complete construction and secure acceptance by the appropriate county engineer within the time limits set out above at each of the subdivisions constitutes a continuing violation of this order.

v

It is further ordered, That respondents, their agents, representatives and employees shall:

1. Place in three separate trusts, for the benefit of each respective subdivision, Twenty Thousand Dollars (\$20,000) per year for five years, to be divided among the three property owners' associations as follows:

a. Cordes Lakes: Eight Thousand Dollars (\$8,000) per year

b. Verde Village: Eight Thousand Dollars (\$8,000) per year

c. Valle Vista: Four Thousand Dollars (\$4,000) per year

Expenditures by the associations shall be limited to physical improvements and maintenance of common facilities for the general benefit of each subdivision as a whole. The trustee of these funds shall be chosen by the respective property owners' association.

2. Within sixty (60) days after this order is final, withdraw from membership in the Cordes Lake and Verde Village property owners' associations. With respect to the Valle Vista property owners' association, respondents, their agents, representatives and employees shall, within sixty (60) days after this order is final, take or cause to be taken, such action as may be necessary, including but not limited to amendments to existing articles and/or by-laws of the association, which will embody the following conditions:

a. Respondents, their agents, representatives and employees shall not control, directly or indirectly, the determination as to the use of funds placed in trust under this order, other than advising the association as to what uses said funds might be put;

b. No present, past or future agent, representative or employee of respondents may serve as a director of the association;

c. Respondents, their agents, representatives and/or employees shall cause to be elected as directors of the association such owners

within the subdivision who are not, nor have ever been, employees, agents, or representatives of respondents, and do not have, nor have had, any relationship with respondents, their agents, representatives and employees which might tend in any way to influence and/or control, directly or indirectly the actions of such elected director, or the independent judgment of such elected directors in carrying out their fiduciary responsibilities, nor shall respondents, their agents, representatives and employees use the articles, by-laws or general corporation law to influence and/or control, directly or indirectly, the actions of such elected directors; and

d. Respondents, their agents, representatives and employees shall withdraw from membership in the association as soon as is practicable and reasonable under the circumstances, and in no event later than one year after the date on which this order becomes final.

VI

It is further ordered. That respondents, their successors and assigns, for purposes of future litigation arising out of their land sale activities, shall forbear from relying upon or asserting as a defense, the clause in the contract or other binding instrument containing language to the effect that no express or implied representations have been made in connection with the sale or offering for sale of respondents' land, other than those set forth in the contract or other instrument. Further, respondents, their successors and assigns, shall cease and desist from enforcing those provisions in their contracts or other binding instruments which operate to cause the purchaser to forfeit sums paid in installments upon default of any one installment payment. This section shall apply to contracts or other binding instruments presently in force and those to be used in future land sales transactions.

VII

It is further ordered. That respondents, their successors and assigns, agents, representatives and employees shall cease and desist from endorsing, discounting, assigning or in any other manner negotiating contracts, promissory notes, or other evidences of indebtedness by purchasers of lots in their subdivisions in such a manner or to such parties as to jeopardize or cloud the title or render the title unmarketable to the purchaser upon satisfaction of the mortgage.

VIII

It is further ordered, That respondents, their successors and assigns, and agents, representatives and employees shall:

1. Deliver a copy of this decision and order to each of their present or future salesmen and other employees, independent brokers, and all others who sell or promote the sale of lots in respondents' subdivisions.

2. Provide each person so described in the preceding paragraph with a form, returnable to the respondents clearly stating his intention to be bound by and to conform his business practices to the requirements of this order.

3. Inform all such present and future salesmen and other employees, independent brokers, and all others who sell or promote the sale of lots in respondents' subdivisions that respondents shall not use any person, or the services of any person, to sell or promote the sale of real estate unless such person agrees to and does file notice with the respondents that he will be bound by the provisions contained in this order. If any such person does not agree to so file notice with the respondents and be bound by the provisions of the order, the respondents shall not use such person, or the services of such person, to sell or promote the sale of real estate.

4. Institute a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order.

5. Discontinue dealing with the persons revealed by the aforesaid program of surveillance or by any other means who continue on their own the unfair or deceptive acts or practices prohibited by this order.

It is further ordered, That in the event that respondents transfer all or a substantial part of their business or assets to any other corporation, individual, partnership or other entity, including a transfer of all or part of the ownership interest of any or all of respondents' wholly-owned land sale subsidiary, respondents shall require said transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided,* that if respondents wish to present to the Commission any reasons why said order should not apply in its present form to said transferee, they shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said business transfer. Failure to require that such transferee be bound under this order as set out in this paragraph shall be considered a continuing violation of this order.

It is further ordered, That respondents notify the Commission at

least thirty (30) days prior to any proposed change in the corporate 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 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.