

Complaint

IN THE MATTER OF

THE REUBEN H. DONNELLEY CORPORATION

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

Docket C-2060. Complaint, Oct. 8, 1971—Decision, Oct. 8, 1971

Order requiring a major advertising agency headquartered in New York City handling the promotion of contests games and other promotional devices for a soap and detergent company, the Procter & Gamble Co., to cease failing to disclose the exact number and nature of the prizes in its contests, the numerical odds of winning a prize, failing to award all the prizes, and failing to disclose the names of the major winners; in announcing the contests the respondent is required to disclose the number and nature of the prizes, the odds of winning each prize, and the geographic area involved; respondent is also required to maintain adequate records and furnish the Federal Trade Commission upon request the names and addresses of all the winners and other details of the contests. With respect to services for the Reader's Digest Association, Inc., Paragraphs A(2) and B(3) shall not become effective until December 1, 1971.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Procter & Gamble Company, and Reuben H. Donnelley Corporation, corporations, hereinafter referred to as respondents have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent the Procter & Gamble Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 301 East 6th Street, Cincinnati, Ohio.

Respondent Reuben H. Donnelley Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 825 Third Avenue, New York, New York.

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

PAR. 2. Respondent the Procter & Gamble Company is now and for some time past has been engaged in the manufacture, advertising, offering for sale, sale and distribution of food products, toilet goods, household paper products and cleaners, soaps, detergents, and other products to the public.

Respondent Reuben H. Donnelley Corporation is now and for some time past has been engaged in the preparation, participation in and operation of contests games, "sweepstakes" and other sales promotional devices including, but not limited to, the type of sales promotional devices hereinafter set forth.

PAR. 3. In the course and conduct of their business as aforesaid, respondents cause and for some time past have caused their said products and services to be sold, shipped, and distributed from their respective places of business or from the state of manufacture to purchasers thereof located in various States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in said products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their businesses, and for the purpose of inducing the purchase of the products of respondent Procter & Gamble Company, respondents have engaged in the solicitation of prospective customers through the United States mails, in advertisements in magazines having an interstate circulation, and in promotional materials distributed through retail grocery outlets throughout the United States. Many of said solicitations utilized a promotional device commonly known as a "sweepstakes." These "sweepstakes," which respondents have employed since at least 1962, were conducted in a similar manner.

Millions of copies of advertisements or promotional materials were printed and distributed to the public. Each contained a ticket on which a number was printed, or an invitation to the recipient to choose one of a stated range of numbers. Before distribution to the public, some of the numbers were designated as winning numbers and others were designated as losing numbers. Recipients were directed to check their numbers against a list of winning numbers posted in retail grocery outlets or otherwise made available, or to return the ticket or other form bearing their number to respondents or their agents where it would be checked against a list of winning numbers. If the number held or chosen by the recipient matched a number contained on a list of winning numbers, the recipient was entitled to a specified prize. If a recipient of a ticket or form which contained a winning number failed to return the ticket or form to respondents or their agents, the prize to which he would have been entitled if he had done so was not awarded. Similarly, if persons invited to choose winning numbers chose fewer winning numbers than available prizes, all available prizes were not awarded.

Such "sweepstakes" were conducted by respondents on numerous occasions between January 1, 1968, and May 31, 1969, including but not limited to the following promotions:

- (a) Procter & Gamble "Write Your Own Ticket" Sweepstakes
- (b) Procter & Gamble "Cinderella Magic Gift" Sweepstakes
- (c) Procter & Gamble "Summer Funstakes" Sweepstakes
- (d) Procter & Gamble "Join the Jet Set" Sweepstakes

PAR. 5. In the course and conduct of its business, respondent has engaged in the above-described "sweepstakes" and other promotions of a similar nature for the purpose of inducing the purchase of its products. Respondent has made and is now making in its advertising and promotional material statements and representations concerning its products and "sweepstakes."

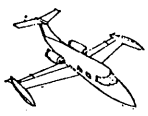


Typical and illustrative of the statements and representations made in said advertising and promotional material, but not all inclusive thereof, are the following:

064-304

"JOIN THE JET SET"

2 BIG SWEEPSTAKES • 2 CHANCES TO WIN

Check the Jet Set number on the reverse side against the winning numbers on the "Join the Jet Set" display at your favorite store.


1. PRIZE #1—You and five friends can jet anywhere in North & South America (including Hawaii) up to 15,000 miles (round trip) with a "Jet Set" for your exclusive use for 9 weeks plus \$5,000 cash—worth of \$20,000 cash.

2. PRIZE #2—A one week all expense paid trip for two to romantic Hawaii or \$2,000.

3. PRIZE #3—Airplane tickets for two to glamorous Las Vegas or \$600 cash.


10,000—THIRD PRIZES
A collectors' item of a U.S. Silver Dollar.

Spin the dial at your dealer's display to win



A BRICE CASHMERE SWEATER WITH A PETER PAN RIBBED BINK COLLAR NO LIMIT TO THE NUMBER OF WINNERS! All entrants selecting the correct number will win!
See rules on reverse side

P. O. BOX 427, NEVADA, IOWA 88201
ADDRESS CORRECTION REQUESTED



BLK. RT.
U.S. POSTAGE
PAID
NEVADA, IOWA
PERMIT No. 113

VALUABLE PROCTER & GAMBLE COUPONS ENCLOSED

PG45B DETACH COUPON CAREFULLY

TAKE THIS COUPON TO YOUR STORE

SAVE 5¢ on CREST
WHEN YOU BUY 1 TUBE

RIGHT AWAY! SAVE 5¢ ANY SIZE

THIS COUPON GOOD ONLY ON CREST ANY OTHER USE CONSTITUTES FRAUD

FROEGER & GAMBLE
65273F

MAGIC GIFT CARD
CINDERELLA SAYS:

PIN

Hold this portion behind Cinderella's Magic Screen. If your store does not have a Magic Screen, you can look at your gift card through the upper half of a full bottle of Liquid Pearl to determine your gift or mail for a screen as per rule 1.

TAKE THIS COUPON TO YOUR STORE

5

THIS COUPON GOOD ONLY ON TECTA ANY OTHER USE CONSTITUTES FRAUD

FROEGER & GAMBLE
65281F

DETACH COUPON CAREFULLY

You've Won the \$25,000 Grand Award

10 1968 Imperials

100 SAMSCHITE® LUGGAGE SETS

54-inch simulated PEARL NECKLACE
By G. S. Perry, Fifth Avenue

High Fashion CIRCLE PIN with simulated Pearl and Turquoise inserts

Just take your magic gift card to your favorite store...

Place it behind my magic screen to see which gift you have won

Then if you want your gift, just buy Crest Liquid Pearl and Secret...

... And send the labels and your gift card to Cinderella's Magic Gift, P. O. Box 445, Maple Plain, Minnesota 55359 by June 30, 1968

I will! And thank you Cinderella!

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

(a) One grand prize of \$10,000 plus airplane tickets for two anywhere in the world, 10 first prizes of \$1,000 plus airplane tickets for two anywhere in the world, 100 second prizes of airplane tickets for two anywhere in the world, and over 100,000 third prizes of Rand McNally World Atlases were to be awarded to individuals who held winning tickets in respondents' "Write Your Own Ticket" Sweepstakes.

(b) Prizes including one first prize of \$25,000 cash, 10 second prizes of Chrysler Imperial automobiles, and 100 third prizes of 3-piece luggage sets were to be awarded to individuals who held winning tickets in respondents' "Cinderella Magic Gift" Sweepstakes.

(c) One first prize of a Plymouth automobile or \$5,000 cash, 1 second prize of a swimming pool or \$3,000 cash, 100 third prizes of barbecue grills, and 130,898 fourth prizes of transistor radios were to be awarded to individuals who held winning tickets in respondents' "Summer Funstakes" Sweepstakes.

(d) 50,026 prizes worth approximately \$92,000 at retail, and consisting of one grand prize of the use of a six passenger jet plane for 15,000 miles anywhere in North and South America for two (2) weeks plus \$5,000 in cash, or an alternative award of \$20,000 cash, 5 first prizes of a one-week all expense paid trip for two to Hawaii, or alternative awards of \$2,000 cash, 20 second prizes of airline tickets for two persons to Las Vegas, or alternative awards of \$600 cash, and 50,000 third prizes of U.S. Silver Dollars were to be awarded to individuals who held winning tickets in respondents' "Join the Jet Set" Sweepstakes.

(e) Individuals entered or participating in respondents' "sweepstakes" were afforded a reasonable opportunity to win the represented prizes.

(f) All of the represented prizes for individuals who held winning tickets in respondents' "sweepstakes" had been purchased before or during the time the "sweepstakes" were in progress.

(g) Individuals who participate in respondents' "sweepstakes" will receive a gift having significant retail value.

PAR. 7. In truth and in fact:

(a) One grand prize of \$10,000 plus airplane tickets for two anywhere in the world, 10 first prizes of \$1,000 plus airplane tickets for two anywhere in the world, 100 second prizes of airplane tickets for two anywhere in the world, and over 100,000 third prizes of Rand McNally World Atlases were not awarded to individuals who participated in the "sweepstakes." No awards were made of the grand prize or the first prizes. Approximately 6 airplane tickets for two anywhere in the world and 249 Rand McNally World Atlases were in fact awarded.

(b) Prizes including one first prize of \$25,000 cash, 10 second prizes of Chrysler Imperial automobiles, and 100 third prizes of 3-piece luggage sets were not awarded to individuals who participated in the "sweepstakes." No awards were made of the first or second prizes. Approximately seven 3-piece luggage sets were in fact awarded.

(c) One first prize of a Plymouth automobile or \$5,000 cash, 1 second prize of a swimming pool or \$3,000 cash, 100 third prizes of barbecue grills, and 130,898 fourth prizes of transistor radios were not awarded to individuals who participated in the "sweepstakes." No awards were

made of the first or second prizes. Approximately 20 barbecue grills and 211 transistor radios were in fact awarded.

(d) 50,026 prizes worth approximately \$92,000 at retail were not awarded to individuals who participated in the "sweepstakes." No awards were made of the grand prize or of the first or second class prizes. Approximately 559 third prizes worth approximately \$559 were in fact awarded.

(e) Individuals entered or participating in respondents' "sweepstakes" were not afforded a reasonable opportunity to win the represented prizes. For example, in the "Join the Jet Set" sweepstakes, referred to in Paragraphs 6(d) and 7(d) herein, respondents distributed approximately 30,000,000 coupons to the public. Winning numbers were printed on 50,026 of the coupons. All other coupons contained a non-winning number. Of the 50,026 coupons, one was a grand prize-winning coupon, five were first prize-winning coupons, 20 were second prize-winning coupons, and 50,000 were third prize-winning coupons. As a result of such a distribution of winning coupons, individuals entered or participated in respondents' "Join the Jet Set" sweepstakes had one chance in approximately 30 million to win a grand prize, one chance in approximately six million to win a first prize, one chance in approximately 1.5 million to win a second prize, and one chance in approximately 600 to win a third prize.

(f) Most of the enumerated prizes were not purchased by respondents either before or during the time said "sweepstakes" were in progress. Most of the prizes were purchased only after the termination of the "sweepstakes."

(g) Individuals who participate in respondents' "sweepstakes" do not receive a gift having significant retail value. Said individuals often receive a costume jewelry pin or similar trinket.

PAR. 8. In the course and conduct of their businesses and at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of their respective products and services.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has the capacity and tendency to mislead members of the purchasing public into the mistaken belief that said statements and representations were and are true, and has induced members of the public to participate in respondents' sweepstakes and into the purchase of substantial quantities of respondent the Procter & Gamble Company's products by virtue of said mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent the Reuben H. Donnelley Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 825 Third Avenue, 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.

ORDER

It is ordered, That Reuben H. Donnelley Corporation, a corporation, and its officers, agents, representatives and employees, directly

or through any corporate or other device, in connection with the preparation, advertising, sale, distribution or use of any "sweepstakes," contest, game or any similar promotional device involving chance in commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. (1) Failing to disclose clearly and conspicuously the exact number of prizes which will be awarded, the exact nature of the prizes, and the approximate retail value of each prize offered.

(2) Failing to disclose clearly and conspicuously the approximate numerical odds of winning each prize which will be awarded; *Provided*, That if such approximate numerical odds are not reasonably capable of calculation, the respondent will disclose clearly and conspicuously the approximate number of recipients to whom the offer is directed if such facts may reasonably be determined.

(3) Failing to award and distribute all prizes of the type and value represented.

(4) Representing directly or by implication that prizes other than cash prizes have been purchased unless they have in fact been purchased at the time that the representation is made.

(5) Failing to furnish upon request to any individual a complete list of the names and states of residence of winners of major prizes, identifying the prize won by each.

(6) Misrepresenting in any manner by any means any element, feature, or aspect of any "sweepstakes," contest, game or any similar promotional device involving chance.

B. Engaging in the preparation, promotion, sale, distribution, or use of any "sweepstakes", contest, game, or similar promotional device involving chance, unless the following are disclosed clearly and conspicuously in the advertising and promotional material concerning said devices which are prepared or disseminated by the respondent:

(1) The total number of prizes to be awarded;

(2) The exact nature of the prizes, their approximate retail value, and the number of each;

(3) The approximate numerical odds of winning each prize which will be awarded; *Provided*, That if such approximate numerical odds are not reasonably capable of calculation, the respondent will disclose clearly and conspicuously the approximate number of recipients to whom the offer is directed if such facts may reasonably be determined;

(4) The geographic area or states in which any such device is used; and

(5) The date the device is opened for participation and the date the device is to end.

It is further ordered, That respondent Reuben H. Donnelley Corporation shall;

(1) File with the Commission, within sixty (60) days after service upon it of this order, a report in writing setting forth in detail the manner and form in which it has complied with the provisions of this order;

(2) Maintain for a period of five (5) years after the date on which the "sweepstakes," contest, game or any similar promotional device involving chance is opened for participation adequate records

(a) which disclose the facts upon which any of the representations of the type described in the preceding paragraphs of this order are based, and

(b) from which the validity of the representations of the type described in the preceding paragraphs of this order can be determined;

(3) Furnish upon the request of the Federal Trade Commission:

(a) a complete list of the names and addresses of the winners of each prize, and an exact description of the prize, including its retail value;

(b) a list of the winning numbers or symbols, if utilized, for each prize;

(c) the total number of coupons or other entries distributed;

(d) the total number of known participants in the promotion;

(e) the total number of prizes in each category or denomination which were made available; and

(f) the total number of prizes in each category or denomination which were awarded.

It is further ordered, That the 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 its corporate form 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 corporation which may affect compliance with this order.

It is further ordered, That with respect to the respondent's services for the Reader's Digest Association, Inc., Paragraphs A (2) and B (3) of this order shall not become effective until December 1, 1971; it is also ordered that sixty (60) days thereafter the respondent shall file with the Commission a second report in writing setting forth in detail the manner and form in which it has complied with the terms of those paragraphs with respect to its services for the Reader's Digest Association, Inc.

IN THE MATTER OF

POPEIL BROTHERS INCORPORATED

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

Docket C-2061. Complaint, Oct. 13, 1971—Decision, Oct. 13, 1971

Consent order requiring a Chicago, Ill., seller and distributor of food cutters to cease misrepresenting the type of food its products will cut, making any guarantee for its products by broadcast or otherwise unless it furnishes such guarantee in writing, and misrepresenting that its products are made from surgical grade steel.

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 Popeil Brothers Incorporated, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Popeil Brothers Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2323 West Pershing Road in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of the "Veg-O-Matic" variable food cutter, "Hi Temp Frozen Food & Slicer Knife" and other products to distributors and to retailers for resale to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondent now causes, and for some time last past has caused, its said

products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its product "Veg-O-Matic," the respondent has made, and is now making, numerous statements and representations in television advertisements with respect to the operational capacity of said product.

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

A television commercial demonstrates the use of the product to slice and dice onions and celery, to slice a potato into french fries, and to slice a tomato. First, the demonstrator uses the product to slice a potato, then to slice and dice an onion and celery. Next carrots are shown being diced, although the necessary prior slicing and stacking of the sliced segments on the instrument's blades are not shown. Then the demonstrator cuts a tomato into slices with the product. Finally, the slices of the previously sliced potato are cut into strips for french fries by the instrument.

During this visual demonstration of the product the audio portion of the commercial is as follows:

Here's why women love Veg-O-Matic. It slices a whole potato in one stroke. Turns whole onions into zesty, thin slices for hamburgers. Now turn the dial and slices are automatically thicker. Dial from slice to dice and sliced onions become diced by the panful. Dice carrots the same way. Prepare celery for soups and stews this easily. Over five million Veg-O-Matics now in use. They must be good. And it's yours for just seven-seventy-seven. Imagine, Veg-O-Matic can slice a whole firm tomato like this in one stroke or make everybody's favorite, golden french fries, hundreds in one minute. Veg-O-Matic, just seven-seventy-seven, the perfect Christmas gift. Another great product from P.B.I.

PAR. 5. By and through the use of the above statements and representations, and others of similar import and meaning but not expressly set out herein, respondent has represented, and is now representing, directly or by implication that the Veg-O-Matic variable food cutter will cut and slice raw carrots, ripe tomatoes and other such vegetables and foods.

PAR. 6. The instruction booklet packaged with said product contains the following statements:

(a) **IMPORTANT.** Improper use can damage your VEG-O-MATIC. The manufacturer will only assume responsibility as war-

ranted on page 8. PLEASE ADHERE TO THE FOLLOWING . . . DON'T—Slice raw carrots, raw beets, lemons, oranges, ripe or over ripe tomatoes. VEG-O-MATIC is NOT intended to slice these foods.

(b) VEG-O-MATIC was NOT intended for slicing ripe or over-ripe tomatoes.

PAR. 7. The statements and representations set forth and referred to in Paragraphs Four and Five hereof and others similar thereto not specifically set forth herein are inconsistent with, negate and contradict the statements regarding the operational capacity of said product in the instruction booklet packaged with respondent's product as set forth in Paragraph Six hereof, which inconsistency, negation and contradiction have the tendency and capacity to mislead and confuse purchasers of said product as to the operational capacity of said product for cutting and slicing carrots, tomatoes and other vegetables and foods.

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

PAR. 8. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its product "Veg-O-Matic" the respondent has caused its product to be offered for sale to consumers with a money back guarantee in case of user dissatisfaction, which guarantee is contradicted by a guarantee packaged with the product purporting to limit warranty of the product to freedom from defects in materials and workmanship and including the underscored words, "*Please don't return the broken cutting ring or the appliance.*" Packaging with the product such a specific, limited guarantee represents, directly or by implication, that the said specific, limited guarantee is the only outstanding guarantee of the product or the controlling guarantee of the product, whereas, in truth and in fact, the product is also subject to a money back guarantee conditioned only on consumer dissatisfaction. Therefore, said representations were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its product "Hi Temp Frozen Food & Slicer Knife" and its product "Hi Temp Fork Tipped Carver Knife," the respondent has made, and is now making, numerous statements and representations in television advertisements with respect to the quality and operational capacity of said products.

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

A television commercial demonstrates the use of the "Hi Temp Frozen Food & Slicer Knife" to cut certain items. During this visual

demonstration of the use of the product the audio portion of the commercial is as follows:

Hi Temp, the surgical steel Wonder Knife. Tired of hacking food with dull knives? This will never happen with Hi Temp. Watch how this solid bronze nail is cut through by this tough stainless blade. It still stays so sharp it can slice through frozen food quickly and easily. Imagine, slice onions paper thin or cheese without crumbling. Even slice a whole watermelon in one stroke, then quarter it just as easily. Hi Temp sells for only \$2.98. Get one today and receive free this fabulous fork tip carver. Now you can carve roasts just like a professional. Use Hi Temp for ten days. Be completely satisfied or the store will refund your money.

PAR. 10. By and through the use of the above statements and representations and others of similar import and meaning but not expressly set out herein, respondent has represented, directly or by implication, that:

(a) The "Hi Temp Frozen Food & Slicer Knife" is made from such high quality stainless steel that its blade will never become dull.

(b) The "Hi Temp Frozen Food & Slicer Knife" is made from surgical steel of the same grade and quality used for surgical cutting instruments.

(c) The "Hi Temp Fork Tipped Carver Knife" will be given "free," as a gift or gratuity to the purchaser of the "Hi Temp Frozen Food & Slicer Knife" at the usual and customary retail price of the latter knife.

PAR. 11. In truth and in fact:

(a) The "Hi Temp Frozen Food & Slicer Knife" is not made from such high quality stainless steel that its blade will never become dull.

(b) The "Hi Temp Frozen Food & Slicer Knife" is not made from surgical steel of the same grade and quality used for surgical cutting instruments.

(c) The "Hi Temp Fork Tipped Carver Knife" was not, and is not now, given without cost to the retail purchaser since the purchaser must pay the advertised price which was, and is now, the usual and regular retail selling price for the two knives.

Therefore, the statements and representations set forth in Paragraphs Nine and Ten above were and are false, misleading and deceptive.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of food cutting devices and other products.

PAR. 13. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and

now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Popeil Brothers Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2323 West Pershing Road in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondent Popeil Brothers Incorporated, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any food cutter, or any other similar product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, the type or form of food such product will cut, in a manner which is inconsistent with, negates or contradicts any statements set forth in any instructions accompanying any such product or which limits, qualifies or detracts from any statement set forth in any such instructions.

2. Representing, directly or by implication, that any such product is subject to a limited warranty or guarantee when any other warranty or guarantee is outstanding for the product; *Provided however,* That such a representation of a limited warranty or guarantee may be made if the basic terms of any other outstanding warranty or guarantee are clearly disclosed in immediate conjunction therewith and, as conspicuously as the limited guarantee or warranty.

3. Representing, directly or indirectly, in any broadcast advertising any guarantee for any such product without making available, to purchasers or prospective purchasers, at the point of purchase or point of prospective purchase, said guarantee in written form completely consistent with the broadcast representations.

4. Representing, directly or by implication, that any such product is made from surgical steel if such steel is not the same grade and quality as that used for surgical cutting instruments.

5. Representing, directly or by implication, that the cutting edge of any such product will never become dull.

6. Representing, directly or by implication, that any such product is being given free or as a gift, or without cost or charge, when such is not the fact.

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

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

It is further ordered, That respondent shall, within sixty (60) days after service of the 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

INDIA'S FINEST, INC., ET AL.

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

Docket C-2062. Complaint, Oct. 13, 1971—Decision, Oct. 13, 1971

Consent order requiring a New York City importer and seller of Indian-made goods, including ladies' scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that India's Finest, Inc., a corporation, and Arthur H. Harding, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent India's Finest, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its address is 1133 Broadway, New York, New York.

Respondent Arthur H. Harding is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are engaged in the importation and sale of Indian made goods, including, but not limited to, ladies' scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were ladies' scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent India's Finest, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondent Arthur H. Harding, is an officer of corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent.

Respondents are engaged in the importing and wholesaling of various Indian made products including, but not limited to, scarves, with their office and principal place of business located at 1133 Broadway, New York, New York.

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

ORDER

It is ordered, That the respondents India's Finest, Inc., a corporation, and its officers, and Arthur H. Harding, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commis-

sion a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since April 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Upon request, respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material.

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

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

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

IN THE MATTER OF

UNITED LEMAK FURNITURE CO., INC., ET AL.

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

Docket C-2063. Complaint, Oct. 13, 1971—Decision, Oct. 13, 1971

Consent order requiring a Los Angeles, Calif., furniture store to cease violating the Truth in Lending Act by failing to furnish customers with the instru-

Complaint

ment containing disclosures required by Sec. 226.8 of Regulation Z, failing to disclose the annual percentage rate, and to make all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulations promulgated thereunder, 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 United Lemak Furniture Co., Inc., a corporation, and Louis Becker, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent United Lemak Furniture Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business formerly located at 5833 South Vermont Avenue, Los Angeles, California.

Respondent Louis Becker is president and jointly with his wife holds all the shares of said corporation. He formulates, directs and controls the policies, acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is 269 East Gleason Street, Monterey Park, California.

PAR. 2. Respondents formerly for many years had been engaged in the offering for sale, sale, and distribution of furniture and other merchandise to the public through retail stores.

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

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, had caused customers to execute retail installment conditional sales contracts. Respondents had made no other written disclosures in order to comply with the Truth in Lending Act. By and through the use of these contracts, respondents:

1. Failed to furnish the customer with a duplicate of the instrument containing the disclosures required by Section 226.8 or a statement

by which the required disclosures are made, as prescribed by Section 226.8(a) of Regulation Z.

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

PAR. 5. By and through the acts and practices set forth above, respondents failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents have violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent United Lemak Furniture Co., 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 formerly located at 5833 South Vermont Avenue, Los Angeles, California.

Respondent Louis Becker is president and jointly with his wife holds all the shares of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is 269 East Gleason Street, Monterey Park, California.

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

ORDER

It is ordered, That respondents United Lemak Furniture Co., Inc., a corporation, and Louis Becker, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to furnish the customer with a duplicate of the instrument containing the disclosures required by Section 226.8 or a statement by which the required disclosures are made at the time those disclosures are made, as prescribed by Section 226.8(a) of Regulation Z.

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

3. 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 prescribed by Sections 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

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

It is further ordered, That the respondents herein shall, within sixty

(60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

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

IN THE MATTER OF

TRIANGLE SPORT HEADWEAR CO., INC., ET AL.

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

Docket C-2064, Complaint, Oct. 13, 1971—Decision, Oct. 13, 1971

Consent order requiring a Hialeah, Fla., wholesaler and seller of ladies' wearing apparel, including ladies' scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Triangle Sport Headwear Co., Inc., a corporation, and Harold Kittay, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Triangle Sport Headwear Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. Its address is 8315 West 20th Avenue, Hialeah, Florida.

Respondent Harold Kittay is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are engaged in the wholesaling and sale of ladies' wearing apparel, including, but not limited to, ladies' scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products; as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which products failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were ladies' scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure

prescribed in section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdiction findings, and enters the following order:

1. Respondent Triangle Sport Headwear Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida.

Respondent Harold Kittay is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent.

The respondents are engaged in the wholesaling of ladies' wearing apparel, including, but not limited to, ladies' scarves with their office and principal place of business located at 8315 West 20th Avenue, Hialeah, Florida.

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 Triangle Sport Headwear Co., Inc., a corporation, and its officers, and Harold Kittay, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to the complaint, of the flammable nature of said products, and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into compliance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Com-

mission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since December 14, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

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

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

IN THE MATTER OF

B & L BUILDING MODERNIZATION CORP., ET AL.

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

Docket C-2065. Complaint, Oct. 14, 1971—Decision, Oct. 14, 1971

Consent order requiring an Albany, N.Y., seller of home improvement services and materials to cease violating the Truth in Lending Act by failing to dis-

close the cash price, cash downpayment, amount financed, deferred payment price, annual percentage rate, failing to disclose the customer's right to rescind contract within three days, failing to note on the contract a Notice that any holder takes it subject to all terms, and failing to make all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that B & L Building Modernization Corp., a corporation, and Henry S. Bloomgarden and Harold Lavine, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent B & L Building Modernization Corp. 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 1054 Central Avenue, Albany, New York.

Respondents Henry S. Bloomgarden and Harold Lavine are officers of the corporate respondent. They formulate, direct and control the policy, acts and practices of the corporation, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

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

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing their customers to enter into contracts for the sale of respondents' goods and services. On these contracts, hereinafter referred to as "the contract," respondents provide certain consumer credit cost

information. Respondents do not provide these customers with any other consumer credit cost disclosures.

PAR. 5. By and through the use of the contract set forth in Paragraph Four respondents have:

1. Failed to accurately disclose the "cash price," to describe the price at which respondents offer, in the regular course of business, to sell for cash the property or services which are the subject of the credit sale, as required by Section 226.8(c) (1) of Regulation Z.

2. Failed to accurately disclose the "cash downpayment," to describe the amount of downpayment in money made in connection with the credit sale, as required by Section 226.8(c) (2) of Regulation Z.

3. Failed to disclose the "amount financed" to describe the amount of credit of which the customer has the actual use, as required by Section 226.8(c) (7) of Regulation Z.

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

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

6. Failed to disclose the date on which the finance charge begins to accrue, when different from the date of the transaction, as required by Section 226.8(b) (1) of Regulation Z.

PAR. 6. By and through use of the contract, as set forth in Paragraph Four, respondents retain or acquire a security interest in real property which is or is expected to be used as the principal residence of the customer. The customer thereby has the right to rescind the transaction, as provided in Section 226.9(a) of Regulation Z. Having consummated a rescindable credit transaction, respondents:

1. Failed to accurately state on the notice of rescission the date on which the customers' right of rescission expired, said date being not earlier than the third business day following the date of the transaction, as required by Section 226.9(b) of Regulation Z. In at least one instance, respondents failed to disclose any date on which the customer's right to rescind expired.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent B & L Building Modernization Corp., 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 1054 Central Avenue, in the city of Albany, State of New York.

Respondents, Henry Bloomgarden and Harold Lavine are the president and vice president, respectively, of said corporation. They formulate, direct and control the consumer credit policies, acts and practices of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, B & L Building Modernization Corp., a corporation, and its officers, Henry Bloomgarden and Harold Lavine, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any

corporate or other device, or under any other name, in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose or to accurately disclose the "cash price," to describe the price at which respondents offer, in the regular course of business, to sell for cash the property or services which are the subject of the credit sale, as required by Section 226.8(c)(1) of Regulation Z.
2. Failing to disclose or to accurately disclose the "cash downpayment," to describe the amount of the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.
3. Failing to disclose the "amount financed," to describe the amount of credit of which the customer has the actual use, as required by Section 226.8(c)(7) of Regulation Z.
4. Failing to disclose the "deferred payment price," to describe the sum of the cash price, all other charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, as required by Section 226.8(c)(8)(ii) of Regulation Z.
5. Failing to disclose the annual rate of the finance charge expressed as an "annual percentage rate," as required by Section 226.8(b)(2) of Regulation Z.
6. Failing to disclose the date on which the finance charge begins to accrue, when different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.
7. Failing to disclose, or to accurately disclose on the notice of rescission, the date on which the customer's right of rescission expires, said date being not earlier than the third business day following the date of the transaction, as required by Section 226.9(b) 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, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.
9. Assigning, selling or otherwise transferring respondents' notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be

asserted against any assignee or subsequent holder of such note, contract or other documents evidencing the indebtedness.

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

NOTICE

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

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

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

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

IN THE MATTER OF

SHAW BROS. CO., ET AL.

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

Docket C-2066. Complaint, Oct. 15, 1971—Decision, Oct. 15, 1971

Consent order requiring a Chicago, Ill., firm selling at retail radios, television sets, phonographs, jewelry and furniture to cease violating the Truth in Lending Act by failing to use the terms cash price, cash downpayment, trade-in, total downpayment, amount financed, deferred payment, failing to disclose the annual percentage rate, and all other disclosures required by Regulation Z of said Act.

Complaint

79 F.T.C.

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 Shaw Bros. Co., a corporation, and Arnold Cohn and Harold Cohn, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Shaw Bros. 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 208 South Wabash Avenue, Chicago, Illinois. Respondent Arnold Cohn is president of the corporate respondent. Respondent Harold Cohn is chairman of the board of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their address is 208 South Wabash Avenue, Chicago, Illinois.

PAR. 2. Respondents are now and for some time last past have been engaged in the offering for sale, sale and distribution of radios, televisions, phonographs, jewelry, furniture and other articles of merchandise at retail to the public.

PAR. 3. Since July 1, 1969, in the ordinary course and conduct of their business as aforesaid, respondents have regularly extended consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Regulation Z, enter into retail installment contracts with their customers, hereinafter referred to as "the contract." Respondents make no consumer credit cost disclosures other than on the contract.

By and through the use of the contract, respondents:

1. Fail to use the term "cash price" to describe the price of the merchandise or services which are the subject of the transaction, as required by Section 226.8(c)(1) of Regulation Z.

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

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

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

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

6. Fail to use the term "amount financed" to describe the amount of credit of which the customer will have the actual use, determined in accordance with Sections 226.4, 226.8(c)(7) and 226.8(d)(1) of Regulation Z, as required by Section 226.8(c)(7) of Regulation Z.

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

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

9. Fail to disclose the date the finance charge begins to accrue when different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

10. Fail to disclose the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

11. Fail to use the term "finance charge" in disclosing the right of prepayment and the method of computing any unearned portion of the finance charge in the event of prepayment, as required by Section 226.8(b)(7) of Regulation Z.

12. Fail, in any transaction in which respondents retail or acquire a security interest in real property which is used or is expected to be used as the principal residence of the customer, to provide each customer with notice of the right to rescind, in the form and manner specified by Section 226.9(b) and Section 226.9(f) of Regulation Z, prior to consummation of the transaction.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 implementing regulation, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 (b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Shaw Bros. 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 208 South Wabash Avenue, Chicago, Illinois.

Respondent Arnold Cohn is president of the corporate respondent. Respondent Harold Cohn is chairman of the board of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their address is 208 South Wabash Avenue, Chicago, Illinois.

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.

Decision and Order

ORDER

It is ordered, That respondents Shaw Bros. Co., a corporation, and its officers, and Arnold Cohn and Harold Cohn, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to use the term "cash price" to describe the price of the merchandise or services which are the subject of the transaction, as required by Section 226.8(c) (1) of Regulation Z.
2. Failing to use the term "cash downpayment" to describe the amount of any downpayment in money, as required by Section 226.8(c) (2) of Regulation Z.
3. Failing to use the term "trade-in" to describe the amount of any downpayment in property, as required by Section 226.8(c) (2) of Regulation Z.
4. Failing to use the term "total downpayment" to describe the sum of the "cash downpayment" and the "trade-in," as required by Section 226.8(c) (2) of Regulation Z.
5. Failing to disclose all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c) (4) of Regulation Z.
6. Failing to use the term "amount financed" to describe the amount of credit of which the customer will have the actual use, determined in accordance with Sections 226.8(c) (7) and (d) (1) of Regulation Z, as required by Section 226.8(c) (7) of Regulation Z.
7. Failing to use the term "deferred payment price" to describe the sum of the cash price, the finance charge, and all other charges which are included in the amount financed but which are not included in the finance charge, as required by Section 226.8(c) (8) (ii) of Regulation Z.
8. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.
9. Failing to disclose the date the finance charge begins to ac-

crue if different from the date of the transaction, as required by Section 226.8(b) (3) of Regulation Z.

10. Failing to disclose the "total of payments," as required by Section 226.8(b) (3) of Regulation Z.

11. Failing to use the term "finance charge" in disclosing the right of prepayment and the method of computing any unearned portion of the finance charge in the event of prepayment, as required by Section 226.8(b) (7) of Regulation Z.

12. Failing, in any transaction in which respondents retain or acquire a security interest in real property which is used or is expected to be used as the principal residence of the customer, to provide each customer with notice of the right to rescind, in the form and manner specified by Section 226.9(b) and Section 226.9(f) of Regulation Z, prior to consummation of the transaction.

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

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

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

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

Order

IN THE MATTER OF

ISRAEL RETTINGER, ET AL. DOING BUSINESS AS
RETTINGER RAINCOAT MFG. CO., INC.

ORDER OF DISMISSAL IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 6534. Complaint, March 22, 1956—Decision Oct. 19, 1971

Order and decision reopening the proceeding as to two respondents, rescinding an order to cease and desist (53 F.T.C. 132) as modified (75 F.T.C. 944), and dismissing the complaint.

ORDER AND DECISION REOPENING PROCEEDING, RESCINDING ORDER
AND DISMISSING COMPLAINT

The Commission having issued an order to cease and desist, as modified by its order of May 27, 1969 [75 F.T.C. 944], against the respondents David Rettinger and Rettinger Raincoat Mfg. Co., Inc., a corporation; and

The Commission having issued its order to show cause why this proceeding should not be reopened for the purpose of rescinding its said order to cease and desist and dismissing its complaint; and

The respondents not having responded to said Order To Show Cause within 30 days after service of said order on each of them; and

The Commission, for the reasons set forth in its Order to Show Cause, being of the opinion that the public interest will best be served by reopening the proceedings herein, rescinding its order to cease and desist, and dismissing its complaint, hereby issues its order as follows:

It is ordered, That this matter be, and it hereby is, reopened as to respondents named herein.

It is further ordered, That the Commission's Order to Cease and Desist as modified by the Commission's order of May 27, 1969, be, and it hereby is, rescinded as to the respondents Rettinger Raincoat Mfg. Co., Inc., a New York corporation, and David Rettinger, individually and as a former copartner in Rettinger Raincoat Mfg. Co., a partnership now dissolved, and as a former officer and active stockholder of Rettinger Raincoat Mfg. Co., Inc., a New York corporation, which corporation, is the successor and assign of said partnership, and that the complaint as to such respondents be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action as circumstances may warrant.

Complaint

79 F.T.C.

IN THE MATTER OF
THE KROGER COMPANY, ET AL.

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

Docket C-2067. Complaint, Oct. 26, 1971—Decision, Oct. 26, 1971

Consent order requiring the Nation's third largest chain supermarket headquartered in Cincinnati, Ohio, to divest three of its food departments in stores located in Dayton, Ohio, and for a period of ten years not to acquire without prior Commission approval five or more stores with annual sales of more than \$5 million or more than 5 percent of the food store sales in any city or county in the United States; these prohibitions apply in sixteen states and certain portions of four others.

COMPLAINT

The Federal Trade Commission has reason to believe that the Kroger Company has made certain acquisitions from Federated Department Stores, Inc., as hereinafter described, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C., Section 18), and in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C., Section 45). Accordingly the Commission hereby issues its complaint, stating its charges with respect thereto as follows:

DEFINITIONS

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

(a) "Supermarket"—a food department in a nonfood store or a food store with annual sales of one million dollars or more.

(b) "Food Department in a Nonfood Store"—a department selling grocery and other food products (for preparation and consumption away from the premises), located in an establishment primarily engaged in selling other than food products.

(c) "Dayton Marketing Area"—the metropolitan Dayton area encompassing Greene, Miami, Montgomery, and Preble Counties in the State of Ohio.

(d) "Food Stores"—retail establishments primarily engaged in selling food for home preparation and consumption.

RESPONDENTS

2. Respondent, the Kroger Company ("Kroger"), is a corporation organized and existing under the laws of the State of Ohio, with its

offices and principal place of business at 1014 Vine Street, Cincinnati, Ohio.

3. Kroger is a fully integrated food distributor; it is principally engaged in the ownership and operation of approximately 1500 retail food stores in 23 states. Kroger also manufactures and processes food and kindred products, including breads, roasted coffee, packaged and canned milk, and candy. In 1969, Kroger ranked third in terms of sales in the United States among companies operating retail food stores.

4. From the period January 1, 1960 through December 31, 1969, Kroger made some 42 separate acquisitions. These acquisitions involved about 90 food stores, 33 drug stores, 6 wholesalers, 2 food departments, 2 meat processors, and a hatchery. The aggregate sales of these companies in the years prior to acquisition approximated \$200 million.

5. At all times relevant herein, Kroger purchased, sold and shipped products in interstate commerce throughout the United States, and was engaged in commerce as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act.

6. Respondent, Federated Department Stores, Inc., ("Federated"), is a corporation organized and existing under the laws of the State of Delaware, with its offices and principal place of business at 222 West Seventh Street, Cincinnati, Ohio.

7. Federated is principally engaged in the ownership and operation of conventional department stores and discount operations throughout the United States. For the fiscal year ending January 31, 1970, Federated had net sales and other income of \$1.999 billion. Among these discount operations are several Gold Circle Discount Stores located in Columbus and Dayton, Ohio. These stores, which retail a broad line of soft goods, each normally occupy approximately 120,000 square feet of which about 24,000 square feet is devoted to a food department. Federated first opened two Gold Circle Stores in 1967 in Columbus and in 1969, Federated opened three Gold Circle Stores in Dayton and one more Gold Circle Store in Columbus. The food departments in the Dayton Gold Circle Stores were operated by Federated prior to the subject acquisition. The food departments in the Columbus Gold Circle Stores are operated by a third party.

8. At all times relevant herein, Federated and Gold Circle purchased, sold and shipped products in interstate commerce throughout the United States and were engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

ACQUISITION

9. Kroger acquired the food departments of each of the three Gold Circle Stores located in the Dayton marketing area through a lease agreement between Kroger and Federated, dated May 22, 1970, and effective May 24, 1970.

TRADE AND COMMERCE

10. There is a steady stream of commerce involved in the distribution of groceries and other food store products from manufacturers located throughout the United States to consumers residing in the Dayton marketing area through supermarkets and other food stores. Total food store sales in the Dayton marketing area approximated \$330 million in 1969.

11. Kroger is the leading food store operator in the Dayton marketing area. Kroger's \$66 million in food store sales represented about 20 percent of total food store sales in the Dayton marketing area.

12. The four leading food store operators in the Dayton marketing area accounted for approximately 42 percent of the 1969 food store sales. The eight largest food store operators in the Dayton marketing area accounted for approximately 56 percent of the 1969 food store sales.

13. Supermarkets account for about 70 percent of all food store sales in the Dayton marketing area. Total supermarket sales in the area approximated \$225 million in 1969. Kroger is the leading supermarket operator in the Dayton market area. The sales of Kroger's 25 supermarkets represented about 29 percent of the area's supermarket sales in 1969.

14. The four leading companies in the supermarket business in the Dayton marketing area accounted for approximately 62 percent of the 1969 supermarket sales in the Dayton marketing area. The eight leading companies accounted for over 82 percent of the 1969 supermarket sales in the area.

15. In 1969, the food departments of the Gold Circle Stores in Dayton, one of which was open for six months of the year and the other two of which were each open for only two months, had aggregate sales of \$2.8 million. During 1970, prior to the acquisitions by Kroger, these food departments had sales of \$3.4 million. From January 1, 1970, to June 30, 1970, the Gold Circle supermarkets in Dayton accounted for about 2.5 percent of the area's food store sales and almost 3.5 percent of the area's supermarket sales.

EFFECTS OF ACQUISITION

16. The acquisition of the three Gold Circle food departments in Dayton, Ohio by Kroger constitutes an unfair method of competition and an unfair act or practice.

17. The effects of said acquisition may be to substantially lessen competition or to tend to create a monopoly in the sale and distribution of groceries and other food store products by supermarkets and by all food stores in the Dayton marketing area, among other ways, as follows:

(a) Actual and potential competition between Kroger and Gold Circle in the distribution and sale of groceries and other food store products in the Dayton marketing area has been eliminated.

(b) Concentration in the retail distribution of groceries and other food store products increased in the Dayton marketing area.

(c) Gold Circle has been eliminated as a substantial independent competitive factor in the distribution and sale of groceries and other food store products in the Dayton marketing area.

(d) Further mergers and acquisitions in the food industry may be encouraged.

VIOLATIONS

18. The acquisition of the three Gold Circle food departments in the Dayton marketing area by Kroger, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. 18) as amended, and a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the Kroger Company, a corporation, and Federated Department Stores, Inc., a corporation, respondents herein, with a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18), and of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C., Section 45); and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, the Kroger Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1014 Vine Street, Cincinnati, Ohio.

Respondent Federated Department Stores, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its offices and principal place of business at 222 West Seventh Street, Cincinnati, Ohio.

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 within nine (9) months from the effective date of this order, respondent the Kroger Company ("Kroger") shall cease operating the food departments in each of the premises in Dayton, Ohio, leased to Kroger by the leases executed by Kroger, as tenant, and Federated Department Stores, Inc. ("Federated"), as landlord, on May 22, 1970, and Kroger shall not thereafter resume operation of the food departments in any of said premises at any time during the term of said leases, including any renewal term thereof; and Federated shall take no action to require Kroger to continue to operate or resume operation of the said premises after the effective date of this order, and shall cooperate with Kroger in Kroger's cessation of the aforesaid operation within the said nine (9) month period. Any assignment of the aforesaid leases, or any new leases of the aforesaid premises for operation as food departments commencing upon the termination of Kroger's operation of those premises, to any food store chain having more than \$500 million annual food store sales or more than five percent (5%) of the Dayton, Ohio marketing area food store sales (according to the Fairchild Publications' "1971 Distribution of Food Store Sales In 288 Cities"), shall be subject to prior approval by the Commission; any such assignment or new lease to any other party engaged in the operation of food stores shall not be consummated without providing ten (10) days' prior notification to the Commission.

II

It is further ordered, That:

(A) For a period of ten (10) years from the effective date of this order, to the extent specified in subparagraphs (B) and (C) below, Kroger shall not merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, except with the prior approval of the Commission upon written application, the whole or any part of any food store or the whole or any part of a food department in a non-food store, where such acquisition involves:

(1) Five (5) or more food stores or food departments in non-food stores, or

(2) Annual food store or food department sales of more than five million dollars (\$5,000,000), or

(3) Combined (Kroger and the food stores or food departments to be merged or acquired) food store or food department sales of more than five percent (5%) of total food store sales in any city or county in the United States.

(B) The prohibition contained in subparagraph (A) shall apply to any merger or acquisition of food stores or food departments in non-food stores located in the following described areas of the United States: The States of Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Tennessee, West Virginia, Wisconsin; those portions of the States of Pennsylvania and Virginia west of the 78th meridian; that portion of the State of Texas east of the 100th meridian; and those portions of the State of California located south of an east-west line through the northern boundary of the City of Fresno and within the standard metropolitan statistical areas of San Francisco-Oakland and Stockton.

(C) The prohibition contained in subparagraph (A) shall also apply to any merger or acquisition of food stores or food departments in non-food stores located in any city or county in those portions of the United States not described in subparagraph (B), if Kroger is then operating any food stores or food departments in non-food stores in such city or county.

(D) For a period of ten (10) years from the effective date of this order, Kroger shall not merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any food store or food department in a non-food store for which prior ap-

proval is not required pursuant to subparagraphs (A)-(C) without providing sixty (60) days' prior notification to the Commission, or, when the time schedule does not permit such notification, without providing a letter to the Commission within ten (10) days after the agreement or understanding in principle is reached, stating that the time schedule does not permit sixty (60) days' prior notification and setting forth the reasons why such prior notification cannot be made; *Provided, however*, That for mergers or acquisitions involving not more than four (4) food stores or food departments in non-food stores and representing annual food store or food department sales of not more than five million dollars (\$5,000,000), notification to the Commission shall be provided within thirty (30) days following the consummation of such merger or acquisition.

III

It is further ordered, That, within sixty (60) days from the effective date of this order, and every sixty (60) days thereafter until Part I of this order has been fully complied with, Kroger and Federated shall each submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which they intend to comply, are complying, or have complied, with this order.

IN THE MATTER OF

THE BRIDIE CORPORATION, ET AL.

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

Docket C-2068. Complaint, Oct. 26, 1971—Decision, Oct. 26, 1971

Consent order requiring a Bridgehampton, N.Y., real estate firm to cease violating the Truth in Lending Act by failing to use the terms cash price, cash downpayment, unpaid balance of cash price, amount financed, failing to notify customers so entitled to their right to rescind, and in its consumer credit transactions failing to make all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that

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

PARAGRAPH 1. Respondent The Bridie Corporation 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 Montauk Highway, Bridgehampton, New York, Post Office Box AX.

Respondent John M. Matthews is the president of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the offering for sale to the public of parcels of land situated primarily throughout the eastern portions of Suffolk County.

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

PAR. 4. Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with their credit sales as "credit sale" is defined in Regulation Z have caused and are causing their customers to execute contracts for the sale of land, hereinafter referred to as "the contract." The following is an illustration of the contract:

THIS AGREEMENT made this 27th day of July, 1969, between **THE BRIDIE CORP.**, A domestic corporation having its principal place of business at Montauk Highway, Bridgehampton, New York 11932, P.O. Box AX, Known herein as the **SELLER** and Darcy M. Messina and Annette B. Messina, his wife, residing at 190 Willoughby Street, Brooklyn, New York 11201, Known herein as **THE PURCHASER**.

WITNESSETH, that for and in consideration of the sum of Fifteen thousand and 00/100 * * * (\$15,000.00) Dollars to be fully paid by the Purchaser, the Seller agrees to sell all the following described property: ALL that certain Lot or Parcel of land situate, lying and being at Watermill, Deerfield, Town of Southampton, State of New York, tentatively described as Lot #20 proposed MAP OF DEERFIELD HILLS, Dimensions approximately 150± feet x 260± ft, a more definite description to be supplied when map has received final approval of the Planning Board of Town of Southampton.

Complaint

79 F.T.C.

And the Purchaser agrees to purchase the above described property and pay for the same as follows:

One thousand and 00/100 * * * (\$1,000.00) Dollars on the signing of this agreement, receipt of which is hereby acknowledged by the Seller, and the further sum of One hundred and 00/100 * * * (\$100.00) Dollars or more, on the 27th day of every month hereafter until the full amount of the purchase price is paid.

However, nothing elsewhere to the contrary herein contained shall be construed so as to extend this contract beyond a period of Seven (7) Years from the date hereof. Seller agrees to accept monthly installments for the term of Seven (7) Years at the end of which time any balance and interest shall be due and payable.

THE PURCHASER agrees to pay interest at the rate of Seven and one-half Percent (7½%) per annum on all monthly unpaid balances said interest to be paid semi-annually, and the Purchaser will assume all taxes accruing after the date of this contract, said taxes to be paid on or before the tenth day of January every year hereafter.

That as prompt performance is the nature and essence of this contract, therefore, any default in any of the above mentioned payments for a period of sixty days after the same shall become due, voids all rights of the Purchaser hereunder, and Seller may retain all monies paid hereon as liquidated damages. This clause in the event of default hereunder, becomes effective upon fourteen days notice by certified mail by the Seller to the Purchaser, it being provided, however, if default become effective as provided above, then, and in that event, all principal payments in excess of 75% of the purchase price shall be refunded to the Purchaser, less any arrears in interest which may be due the Seller and less any taxes which at that time shall be due and unpaid.

IT IS AGREED THAT THE PREMISES ARE SOLD SUBJECT TO THE FOLLOWING COVENANTS AND RESTRICTIONS which shall be incorporated in the deed to be delivered as hereinafter provided, and that the Purchaser for himself, his heirs and executors, administrators and assigns covenants and agrees with the Seller as follows:

(a) That the arrangements for water supply and sewage disposal shall be in accordance with the plans approved by the Suffolk County Department of Health.

(b) That the premises herein shall be conveyed subject to Zoning Ordinances and Building Regulations of the Town of Southampton.

IT IS MUTUALLY AGREED that the seller upon receiving payments in full will execute, acknowledge and deliver to the purchaser a Bargain and Sale Deed with Covenants, Against the Grantor, subject only to the conditions above set forth, and the Seller, further agrees to deliver and the Purchaser to accept such title as any reputable Title Co. will insure.

All the payments, hereinabove provided for shall be made at the office of JOHN M. MATTHEWS, P.O. Box AX, Montauk Highway, Bridgehampton, N.Y., 11932. ALL BALANCES HEREUNDER SHALL BECOME DUE AND PAYABLE SEVEN YEARS FROM DATE HEREOF.

IT IS AGREED that this contract supersedes all oral representations made in effecting this sale and that only the elements herein are binding on parties hereto.

The foregoing stipulations shall apply to and bind the parties hereto, their successors, heirs, administrators or assigns.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals the day and year first above written.

WITNESS:

John M. Matthews L.S.
President, The Bridie Corp.
Darcy M. Messina L.S.
Annette B. Messina L.S.

By and through the use of the contract set forth in Paragraph Four hereof, respondents:

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

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

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

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

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

6. Failed to provide each customer who has the right to rescind with two copies of the notice prescribed by Section 226.9(b) of Regulation Z, as required by that Section.

7. Failed to make all of the prescribed disclosures together on either the note or other instrument evidencing the obligation, on the same side of the page and above or adjacent to the place for the customer's signature, or on one side of a separate statement which identifies the transaction, as required by Section 226.8(a) (1) and (2).

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging respondents named in the caption hereof with violation of the Federal Trade Commission Act, the Truth in Lending Act and the implementing regulation promulgated thereunder, and

respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

1. Respondent the Bridie Corporation 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 Montauk Highway, Bridgehampton, New York, Post Office Box AX.

Respondent John M. Matthews is the president of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same at 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 the Bridie Corporation, a corporation, and its officers, and John M. Matthews, individually and as an officer of said corporation, and respondents' subsidiaries, divisions, successors, assigns, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with any consumer credit sale of real property, or any advertisement to aid, promote or assist directly or indirectly any consumer credit sale of real property, as "credit sale" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

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

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

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

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

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

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

7. Failing to make all of the prescribed disclosures together on either the note or other instrument evidencing the obligation, on the same side of the page and above or adjacent to the place for the customer's signature, or on one side of a separate statement which identifies the transaction, as required by Section 226.8(a) (1) and (2).

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

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

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

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

IN THE MATTER OF

BENGE CORPORATION, ET AL.

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

Docket C-2069. Complaint, Oct. 26, 1971—Decision, Oct. 26, 1971

Consent order requiring a Los Angeles, Calif., manufacturer and seller of musical instruments to cease requiring their dealers to maintain respondents specified resale prices as a condition of buying respondents' products, and requiring dealers to report others who do not maintain respondents' prices; respondents are also required to advise a terminated dealer that he may apply for reinstatement.

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 Benge Corporation, a corporation, and Donald Benge, individually and as an officer of said corporation, and more particularly described and referred to herein-after as respondents, have violated and are now violating the provisions of Section 5 of said Act (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 in respect thereto as follows:

1. Respondent Benge Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1239 South Olive Street, Los Angeles, California.

Respondent Donald Benge 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. Respondents have been and are now engaged in the manufacture, sale and distribution of musical instruments and accessories with net sales in fiscal year 1970 in excess of \$146,000. Respondents manufacture musical instruments and accessories at its plant located in Los

Angeles, California, and sell such products directly to approximately 51 dealers located throughout the United States.

3. In the course and conduct of its business as aforesaid respondents have been and are now engaged in commerce as "commerce" is defined in the Federal Trade Commission Act in that respondents have caused and now cause its various products to be shipped from the state of manufacture thereof to other States of the United States for resale and distribution through retail dealers.

4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondents have been and are now in competition with other persons, firms and corporations engaged in the manufacture, sale and distribution of musical instruments and accessories.

5. Respondents in combination, agreement, understanding and conspiracy with some of its dealers or with the cooperation or acquiescence of other of its dealers have for the last several years been engaged in a planned course of action to fix, establish and maintain certain specified uniform prices at which its products are resold. In furtherance of said planned course of action respondents have for the past several years engaged in the following acts and practices among others:

(a) regularly furnishing all its dealers with price lists and necessary supplements thereto containing the established resale price;

(b) establishing agreements, understandings and arrangements with its dealers, some of whom are located in states which do not have fair trade laws, as a condition precedent to the granting of a dealership that such dealers will maintain its resale prices;

(c) informing its dealers by direct and indirect means that it expects and requires all of its dealers to maintain and enforce its resale price or such dealership will be terminated;

(d) soliciting and obtaining from its dealers cooperation and assistance in identifying and reporting dealers who have advertised, offered to sell, or sell respondents products at prices lower than its established resale price;

(e) directing its salesmen, representatives and other employees to secure and report information identifying any dealer who fails to adhere to and maintain its established resale price; and

(f) threatening to terminate and terminating its dealers who fail or refuse to observe and maintain respondents established resale price:

6. By means of the aforesaid acts and practices and more, respondents in combination, agreement, understanding and conspiracy with

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certain of its dealers and with the acquiescence of others of its dealers, have established, maintained and pursued a planned course of action to fix and maintain certain specified uniform prices at which respondents' products will be sold.

7. The acts and practices of respondents as hereinabove described have been and are now having the effect of hindering, lessening, restricting, restraining and eliminating competition in the resale and distribution of respondents' musical instruments and accessories and constitute unfair methods of competition in commerce all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of the 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 had violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedures prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, making the following jurisdictional findings, and enters the following order:

PARAGRAPH 1. Respondent Benge Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1239 South Olive Street, Los Angeles, California.

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

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

ORDER

It is ordered, That respondent Benge Corporation, a corporation, its subsidiaries, successors, assigns, officers, directors, agents, representatives and employees individually or in concert, directly or through any corporate or other device, and Donald Benge, individually and as an officer of said corporation, in connection with the manufacture, distribution, offering for sale or sale of musical instruments and accessories in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from hindering, suppressing, or eliminating competition or from attempting to hinder, suppress, or eliminate competition between or among dealers handling respondents' products by:

1. Requiring dealers to agree that they will resell at prices specified by respondents or that they will not resell below or above specified prices;
2. Requiring prospective dealers to agree, through direct or indirect means, that they will maintain respondents' specified resale price as a condition of buying respondents' products;
3. Requiring dealers, either directly or indirectly, to report any person or firm who does not observe the resale prices suggested by respondents or acting on reports so obtained by refusing or threatening to refuse sales to the dealer so reported;
4. Harassing and intimidating, coercing or threatening dealers, either directly or indirectly, to observe, maintain or advertise established retail prices;
5. Directing or requiring respondents' salesmen or any other agents, representatives or employees, directly or indirectly, as part of any plan or program of requiring its dealers to adhere to its suggested resale prices to report dealers who do not observe such suggested resale prices or to act on such reports by refusing or threatening to refuse sales to dealers so reported;
6. Requiring from dealers charged with price cutting or failure to observe suggested resale prices, promises or assurances of ob-

servance of respondents' resale prices as a condition precedent to future sales to said dealer;

7. Publishing, disseminating, or circulating to any dealer any price lists, price books, price tags or other documents indicating any resale or retail prices without stating on such lists, books, tags or other documents that the prices are suggested or approximate;

8. Utilizing any other corporate means of accomplishing the maintenance of resale prices established by respondents.

Provided however, nothing herein shall be construed to waive, limit or otherwise affect the right of respondents to enter into, establish, maintain and enforce, in any lawful manner, any price maintenance agreement excepted from the provisions of Section 5 of the Federal Trade Commission Act by virtue of the McGuire Act Amendments to said Act and any other applicable statutes, whether now in effect or hereinafter enacted.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon it of this order, mail a copy of the letter annexed hereto as Exhibit A to each of its dealers in the several states and furnish the Commission proof of the mailing thereof.

It is further ordered, That the respondents herein shall:

1. Within sixty (60) days after service upon it of this order send the dealer terminated between January 1, 1968, and the date hereof and listed in Exhibit B annexed hereto (such list of terminated dealer having been previously verified by the staff of the Federal Trade Commission) a letter advising him that he may apply within thirty (30) days from receipt of that letter for reinstatement as a dealer;

2. Upon receipt of such application promptly reinstate such dealer.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions and to all of its sales personnel and shall instruct each sales person employed by it now or in the future to read this order and to be familiar with its provisions.

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

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.

EXHIBIT A

(Benge letterhead)

DEAR (DEALER) : We would like to take this opportunity to welcome you as an authorized dealer and representative for the BENGGE Trumpet. Our efforts will constantly be directed toward providing you with the finest instruments available in the brass field.

I would like to tell you something about our distributing and pricing policies. We may, from time to time, suggest prices for our products, but we will not ask or induce you to adhere to those suggested prices; we will not encourage dealers to report any person not following our suggested prices and we will not act on any such reports that might be received; and furthermore we will not require or induce you to refrain from advertising or selling our products at any price and to any person you may choose.

We'll look forward to serving you. Let us know if you need any additional information regarding the BENGGE line.

Very truly yours,

DONALD BENGGE,
President.

EXHIBIT B

BRINGE & WILSEY

822 Central Avenue

St. Petersburg, Florida

 IN THE MATTER OF

COMPUTER CREDIT SYSTEMS, INC., ET AL.

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

Docket C-2070. Complaint, Oct. 26, 1971—Decision, Oct. 26, 1971

Consent order requiring an Atlanta, Ga., seller of credit card services to franchisees who in turn sell retail merchants memberships in respondents' services to cease violating the Truth in Lending Act by failing to make the disclosures required by Regulation Z of the Act; respondents are also required to cease misrepresenting the number of sales a franchisee can make in a given geographic area, that a franchisee needs no skill or training, that franchise holders receive substantial benefits from the respondent organization, that

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they will receive assistance if they fall below their monthly quota, and making other similar misrepresentations in selling and servicing their franchises; respondents are also required to cease using simulated legal processes in efforts to collect monies owed by consumers on charges submitted by member merchants.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Computer Credit Systems, Inc., a corporation, and George H. Naterman, individually and as an officer of Computer Credit Systems, Inc., hereinafter referred to as respondents, have violated the provisions of the said Acts and of the regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PAR. 1. Respondent Computer Credit Systems, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 290 Interstate North, Atlanta, Georgia.

Respondent George H. Naterman is an individual and an officer of Computer Credit Systems, Inc. His business address is the same as the corporate respondent.

Respondent George H. Naterman has been and is president of the said corporate respondent and is primarily responsible for establishing, supervising, directing and controlling its acts and practices hereinafter set out.

PAR. 2. Respondents Computer Credit Systems, Inc. and George H. Naterman were and are now engaged in the advertising and offering for sale and sale of franchises which authorize the franchisees to sell retail merchants memberships in respondents' "Honor All Credit Card" Program for the use of respondents' credit card services, and in the advertising and offering for sale and sale of such services to retail merchants.

Respondents first sell franchises to persons who invest a substantial sum of money as a condition to being granted exclusive rights to sell memberships in respondents' "Honor All Credit Card" Program (hereinafter referred to as respondents' program). Second, directly and through such franchisees, respondents sell their credit card clearing services to retail merchants (hereinafter referred to as members), who invest substantial sums of money as fees and service discounts on credit

sales. Respondents' program entitles members to sell their respective products and services to customers presenting any one of a large number of credit cards approved by respondents, and to submit such credit charges to respondents. Respondents collect the charges from the customers of members and remit payment to the members.

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, the respondents were and are now causing their promotional materials to be mailed or otherwise conveyed to various persons residing outside of the State of Georgia, in various other States of the United States. Advertising matter, applications, contracts, franchise agreements, letters, checks, and other written instruments and communications have been sent and have been received between the respondents at their places of business located in Georgia and persons in various other States of the United States. As a result of said interstate advertising and promotion, and as a result of said transmission and receipt of said written instruments and communications, respondents have maintained a substantial course of trade in said franchises and credit card services in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing purchases of franchises to sell respondents' services, and of selling memberships in respondents' program, respondents and their salesmen or representatives have represented and now represent, directly or by implication, in advertising and promotional material and in oral solicitations:

a. To all prospective franchisees, that:

1. Typical franchisees selling memberships in respondents' program can expect to sell ten (10) memberships per month, from which they can expect to earn in excess of \$21,840 per year and achieve a return of their investments within months.
2. Typical franchisees can expect to remain active selling memberships for many years.
3. Respondents' program can be sold with ease to retail merchants.
4. Geographical areas offered to prospective franchisees have not been previously franchised.
5. No skill, knowledge, or prior training is necessary to successfully operate respondents' franchises.

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6. There is a "regional manager" or other sales representative of respondents who is interviewing other franchise applicants for the same area as each franchise prospect; and that the prospective franchisees must act immediately to be considered for a franchise.

7. Franchise holders receive substantial benefits from bookkeeping charges and bonuses based on a percentage of net credit charges submitted by members in each franchisee's territory.

8. Prospective franchisees risk losing little or nothing in investing in a franchise in that the respondents will repurchase a franchise and/or aid in its resale.

9. In the event franchise holders do not maintain minimum monthly production quotas of new membership agreements, the respondents will not exercise the right of termination as provided in the Franchise Agreements, and will provide the assistance of the respondents' sales personnel in increasing to acceptable standards the sales production of the franchises.

b. To both prospective franchisees and prospective members, that:

1. Respondents' program has received national acceptance.

2. There are thousands of members honoring all credit cards under respondents' program each and every month.

3. All credit charges submitted under respondents' program are guaranteed payable without recourse; that respondents assume all risks of non-payment by the members' customers; that members can expect to be successful and satisfied with the program's performance; and that members usually continue using respondents' program for one year or longer.

4. Respondents' program is economically feasible in that it results in increased sales volume for members and the program costs members less than competing bank credit card programs.

5. Members complete just one simple form for all credit charges; and that members receive payment on or about the 25th of every month for each credit charge submitted to and processed by the respondents before the 10th of the same month.

6. Respondents have available a \$5 million fund to provide financial resources and ability to service members.

PAR. 5. In truth and in fact:

a. With respect to the representations directed to prospective franchisees:

1. The vast majority of franchisees selling memberships in respondents' program have not sold ten (10) memberships per month nor have they earned in excess of \$21,840 per year. The vast majority of the

franchisees receive no earnings from the operation of their franchises and do not achieve the return of their original investment.

2. The vast majority of the franchisees do not achieve even one year longevity as franchisees actively pursuing sales.

3. Respondents' program has not been and cannot be sold with ease to retail merchants.

4. In a substantial number of instances, the geographical areas offered to prospective franchisees have been previously franchised.

5. Skill, knowledge and/or prior training in sales and business administration is necessary to successfully operate respondents' franchises.

6. There is no "regional manager" or other sales representative of respondents who is interviewing other franchise applicants in each area, but rather all persons responding to invitations for inquiries receive the same sales presentation stating that said "regional manager" or other sales representative is interviewing other interested persons for the same franchise area. In few, if any, instances need prospective franchisees act immediately to be considered for a franchise.

7. Franchise holders do not receive substantial benefits from book-keeping charges or bonuses based on a percentage of net credit charges submitted by members in each franchisee's territory.

8. Prospective franchisees do risk losing their investment. In a substantial number of instances, the respondents do not repurchase the franchise and where respondents do aid in its resale, they retain a substantial portion of the proceeds.

9. In the event franchise holders do not maintain a minimum monthly production quota of new membership agreements, the respondents do exercise the right of termination as provided in the franchise agreements and do not provide direct sales assistance in increasing to acceptable standards the sales production of the franchise.

b. With respect to the presentations directed to both prospective franchisees and prospective members:

1. Respondents' program has not received national acceptance.

2. There are not thousands of members honoring all credit cards under respondents' program each and every month.

3. Not all credit charges submitted under respondents' program are guaranteed payable without recourse. Respondents do not assume all risks of non-payment by the members' customers; the vast majority of the members have been neither successful nor satisfied with the program's performance. A substantial majority of the members have not continued using respondents' program for one year.

4. Respondents' program is not economically feasible in that its utilization has not resulted in increased sales volume for members and the program is more costly than competing bank credit card programs.

5. The forms which members must complete in order to process credit charges are not simple and are burdensome to fill out in practice. Members do not receive payment on or about the 25th of every month for each credit charge submitted to and processed by the respondents before the 10th of the same month.

6. Respondents do not have available a \$5 million fund to provide financial resources and ability to service members.

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

PAR. 6. In the further course and conduct of their business and in furtherance of efforts to collect monies owed by consumers on charges submitted by member merchants and accepted by them, respondents or its representatives have engaged in the following additional unfair, false, misleading and deceptive act and practice of sending through the United States mail written debt collection notices:

1. Which simulate legal process.

2. Which contain representations of creditors' rights after judgment to collect the principal, interest and cost without disclosing that judgment may not be entered against the debtor unless he has first had an opportunity to appear and defend himself in a court of law.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents Computer Credit Systems, Inc. and George H. Naterman have been and now are in substantial competition, in commerce, with corporations, firms and individuals in the sale of franchises or distributorships to persons interested in establishing their own businesses, and with corporations, firms and individuals in the sale of credit card services.

PAR. 8. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations and practices has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into investing substantial sums of money in becoming franchisees to sell respondents' services, and into investing substantial sums of money in becoming members of respondents' program for the use of respondents' services, and into the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and

of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

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

PAR. 10. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend and for some time last past have regularly extended consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 11. Respondents, subsequent to July 1, 1969, in the ordinary course and conduct of their business, extended open end credit to the customers of member merchants in connection with their member merchants' credit sales, as "open end credit" and "credit sales" are defined in Regulation Z. In connection with the extension of open end credit, the respondents have furnished to customers, prior to the first transaction, a disclosure statement which describes some of the credit terms of these open end accounts. By and through the use of the said disclosure statements, respondents:

1. Fail to employ the term "finance charge," as required by Section 226.7(a) of Regulation Z and also thereby fail to employ this term more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

2. Fail to employ the term "annual percentage rate," as required by Section 226.7(a) of Regulation Z and also thereby fail to employ this term more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.

3. Fail to employ the term "periodic rate" (or "rates"), as required by Section 226.7(a) of Regulation Z.

4. Fail to disclose the conditions under which any charges other than the finance charge may be imposed, and the method by which they will be determined, as required by Section 226.7(a) (6).

PAR. 12. Respondents, subsequent to July 1, 1969, in the ordinary course and conduct of their business, extended open end credit to the customers of member merchants in connection with their member merchants' credit sales, as "open end credit" and "credit sales" are defined in Regulation Z. In connection with the extension of open end

credit, the respondents have sent and are sending to its member merchants' credit customers periodic statements as "periodic statements" are described in Section 226.7(b) and (c) of Regulation Z. By and through the use of the periodic statements, respondents:

1. Fail to employ the term "previous balance" to describe the outstanding balance in the account at the beginning of the billing cycle, as required by Section 226.7(b) (1) of Regulation Z.
2. Fail to employ the term "payments" to describe the amounts credited to the account during the billing cycle for payments, as required by Section 226.7(b) (3) of Regulation Z.
3. Fail to employ the term "finance charge" to describe the amount of any finance charge debited to the account during the billing cycle, itemized and identified to show the amounts, if any, due to the application of periodic rates and the amount of any other charge included in the finance charge, as required by Section 226.7(b) (4) of Regulation Z and thereby fail to print the term "finance charge" more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.
4. Fail to disclose the periodic rate (or rates) that may be used to compute the finance charge (whether or not applied during the billing cycle) using the term "periodic rate" (or "rates"), as required by Section 226.7(b) (5) of Regulation Z.
5. Fail to employ the term "annual percentage rate" (or "rates"), as required by Section 226.7(b) (6) of Regulation Z and also thereby fail to employ this term more conspicuously than other required terminology, as required by Section 226.6(a) of Regulation Z.
6. Fail to include a statement of how the balance upon which the finance charge was computed is determined, as required by Section 226.7(b) (8) of Regulation Z.
7. Fail to employ a statement accompanying the term "new balance" indicating the date by which or the period, if any, within which payment must be made to avoid additional finance charges, as required by Section 226.7(b) (9) of Regulation Z.

PAR. 13. Pursuant to Section 103(q) of the Truth in Lending Act, respondents aforesaid failure to comply with the provisions of Regulation Z constitutes violations of that Act, and, pursuant to Section 108(c) thereof, respondents thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with

a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Truth in Lending Act and the implementing regulation promulgated thereunder; and

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

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

1. Respondent Computer Credit Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 290 Interstate North, Atlanta, Georgia.

Respondent George H. Naterman is an individual and officer of said corporation. Said individual formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices under investigation. Said individual respondent's address is the same as that of the corporate respondent.

Respondents cooperate and act together in carrying out the acts and practices being investigated.

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 Computer Credit Systems, Inc., a corporation, and its officers, and George H. Naterman, individually and as an officer of the said corporation, and respondents' franchisees, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for

sale or sale of franchises or credit card services, or any other products or services, or in the operation of any credit card service or other business in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or by implication:

1. (a) Representing that franchisees can expect to or will make any number of sales; or representing, in any manner, the number of sales made in the past by franchisees unless in fact the number of past sales represented are those of a substantial number of franchisees in the geographical area in which such representations are made and accurately reflect the average number of sales of these franchisees under circumstances similar to those of the person to whom the representation is made.

(b) Representing that franchisees will earn or receive any stated gross or net amount of earnings or profits; or representing, in any manner, the past earnings of franchisees unless in fact the past earnings represented are those of a substantial number of franchisees in the geographical area in which such representations are made and accurately reflect the average earnings of these franchisees under circumstances similar to those of the person to whom the representation is made.

2. Representing that franchisees can expect to remain active franchisees selling memberships for many years; or representing, in any manner, the longevity or tenure of past or existing franchisees unless in fact the periods of time represented are those during which sales efforts were actively pursued by a substantial number of franchisees in the geographical area in which the representations are made.

3. Representing that respondents' program can be sold with ease to retail merchants; or misrepresenting, in any manner, the saleability of respondents' program or the acceptance of respondents' program.

4. Representing that any geographical area offered as a franchise has not been previously franchised by the respondents unless in fact the said geographical area has not been previously franchised by the respondents.

5. Representing that a franchisee needs no skill, knowledge, prior training, or experience to operate a successful franchise, unless the prospective franchisee is fully and completely apprised of all facts and responsibilities of operating respondents' franchise.

6. Falsely representing that there is a "regional manager" or other sales representative of respondents who is interviewing

other franchise applicants or persons who are interested in the same area as are prospective franchisees; or that prospective franchisees must act immediately in order to be considered for a franchise; or misrepresenting, in any manner, the nature and extent of interest or the number of other applications for any franchise area.

7. Representing that franchise holders receive substantial benefits from bookkeeping charges or bonuses based on a percentage of net credit charges submitted by members; or representing, in any manner, benefits of franchisees which are dependent upon the actions of members, unless the benefits represented are those received by substantial numbers of the franchise holders under circumstances similar to those of the person to whom the representation is made.

8. (a) Representing that prospective franchisees risk losing little or nothing in investing in a respondents' franchise;

(b) Representing that respondents will repurchase franchises without contemporaneously, clearly and conspicuously disclosing in the franchise contracts or agreements the price at which the respondents will repurchase;

(c) Representing that respondents will aid or assist in the resale of franchises without contemporaneously, clearly and conspicuously disclosing in the franchise contract or agreement the amount of the resale purchase price which the respondents will retain.

9. (a) Representing that the respondents will not exercise their right to terminate franchises for failure to maintain minimum monthly sales quotas as is provided in the respondents' franchise agreements; or misrepresenting, in any manner, the actions to be taken by the respondents under its franchise agreements.

(b) Representing that the respondents will provide direct sales assistance to franchisees in the event the franchisees should fail to maintain their minimum monthly sales quota; or misrepresenting, in any manner, the sales and other assistance and training to be furnished or made available to the franchisees and their employees.

10. Representing, in any manner, that respondents' program has received national acceptance; or misrepresenting, in any manner, the extent or degree of acceptance or approval of respondents' program.

11. Representing that there are thousands of members honoring all credit cards each and every month under respondents' pro-

gram; or representing, in any manner, the number of members in respondents' program unless the number represented is the average number of members who actually accepted credit charges under the program and submitted payment vouchers therefor during the twelve month period preceding the month when the representation is made; or misrepresenting, in any manner, the nature and extent of respondents' membership.

12. Representing that all credit charges submitted under respondents' program are guaranteed payable or are payable without recourse; or that respondents assume all risk of non-payment by members' customers; or that members can expect to be successful or satisfied with the performance of the respondents' program; or that members usually continue using respondents' program for more than one year.

13. Representing that respondents' program is economically feasible for members; or that the use of the program will result in increased sales volume for members; or that the program cost less than competing bank credit card programs; or misrepresenting, in any manner, the cost or profitability of respondents' program to members.

14. Representing that members complete just one simple form for all credit charges; or misrepresenting, in any manner, the procedures necessary to process credit charges and receive payment therefor; or failing to disclose contemporaneously, clearly or conspicuously any and all reasons which will preclude receipt of full payment of credited charges submitted by members.

15. Representing that members receive payment on or about the 25th of every month for each credit charge submitted to and processed by the respondents before the 10th of the same month; or misrepresenting, in any manner, the period of time in which members will receive payment for credit charges submitted to the respondents.

16. Representing that respondents have available a \$5 million fund to provide financial resources and ability to service members; or representing, in any manner, the state of respondents financial resources, without disclosing the exact amount of net working capital as determined by an independent audit as of the end of the last completed fiscal period preceding the time the representation is made.

It is further ordered. That respondents Computer Credit Systems, Inc., a corporation, and its officers, and George H. Naterman, indi-

vidually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et seq.*), to forthwith cease and desist from:

1. Failing to employ the terms "finance charge," "annual percentage rate," "periodic rate" (or "rates"), as required by Section 226.7(a) of Regulation Z.

2. Failing to print the terms "annual percentage rate" and "finance charge," where required by Regulation Z to be used, more conspicuously than other required terminology as set forth in Section 226.6(a) of Regulation Z.

3. Failing to disclose the conditions under which any charges other than the finance charge may be imposed, and the method by which they will be determined, as required by Section 226.7(a)(6).

4. Failing to employ the term "previous balance" to describe the outstanding balance in the account at the beginning of the billing cycle, as required by Section 226.7(b)(1) of Regulation Z.

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

6. Failing to employ the term "finance charge" to describe the amount of any finance charge debited to the account during the billing cycle, itemized and identified to show the amounts, if any, due to the application of periodic rates and the amount of any other charge included in the finance charge, as required by Section 226.7(b)(4).

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

8. Failing to employ the term "annual percentage rate" (or "rates"), as required by Section 226.7(b)(6) of Regulation Z.

9. Failing to include a statement of how the balance upon which the finance charge was computed is determined, as required by Section 226.7(b)(8) of Regulation Z.

10. Failing to employ a statement accompanying the term "new balance" indicating the date by which or the period, if any, within

which payments must be made to avoid additional finance charges as required by Section 226.7(b)(9) of Regulation Z.

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

III

It is further ordered, That the respondents, in connection with their efforts to collect monies owed by consumers on charges submitted by member merchants and accepted by the respondents, cease and desist from the use of written debt collection notices which:

1. Simulate legal process.
2. Contain representations of creditors' rights after judgment to collect the principal, interest and cost without disclosing that judgment may not be entered against the debtor unless he has first had an opportunity to appear and defend himself in a court of law.

It is further ordered, That respondents incident to selling their franchises and credit card services:

(a) Inform orally all persons to whom solicitations are made and provide in writing in all applications and contracts that the application or contract may be cancelled for any reason by notification to the respondents in writing within seven (7) days from the date of execution.

(b) Refund immediately all monies to (1) all persons who request cancellation of the application or contract within seven (7) days from the execution thereof, and (2) all persons who henceforth pay any monies for franchise fees, deposits or downpayments on franchises, membership fees, membership dues or discount fees and who show that respondents' solicitations, applications, contracts or performance are or were attended by or involved violations of any of the provisions of this order.

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel engaged in the offering for sale, or sale of any product or service, and in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents

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

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

It is further ordered, That the 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
MATTEL, INC.

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

Docket C-2071. Complaint, Nov. 1, 1971—Decision, Nov. 1, 1971

Consent order requiring a Hawthorne, Calif., toy manufacturer to cease using in any broadcast, print or package advertising of their toy products, addressed to children, any distortion of their toys' performances; using fanciful and misleading brand names; and from making unfair and deceptive TV commercials and package advertising for their "Hot Wheels" and "Dancerina Doll" and making other deceptive exaggerations concerning the performance of their toys.

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 Mattel, Inc., a corporation, and Carson-Roberts, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mattel, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 5150 Rosecrans Avenue, Hawthorne, California.

Respondent Carson-Roberts, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Cali-

ifornia, with its principal office and place of business located at 8322 Beverly Boulevard, Los Angeles, California.

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

PAR. 2. Respondent Mattel, Inc., is now and has been engaged in the manufacture, packaging, advertising, offering for sale, sale and distribution of toys and related products, including toys designated Hot Wheels, and the Dancerina Doll, to the public and to distributors and retailers for resale to the public.

Respondent Carson-Roberts, Inc., is now and has been an advertising agency retained by respondent Mattel, Inc; it has prepared and now prepares and places advertising, including but not limited to the advertising referred to herein, for the purpose of promoting the sale of respondent Mattel, Inc.'s products.

PAR. 3. In the course and conduct of its business, respondent Mattel, Inc., has caused and continues to cause its toys and related products to be packaged, sold, shipped and distributed from its place of business in the State of California or from the state of manufacture to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid businesses, and at all times mentioned herein, respondents are now and have been in substantial competition in commerce with corporations, firms and individuals in the sale and distribution of their respective products or services.

PAR. 5. In the course and conduct of their aforesaid businesses, and for the purpose of inducing the purchase of the Hot Wheels and Dancerina Doll toys, respondents have made statements and pictorial representations in:

1. advertising appearing on product packages; and
2. advertising which respondents have prepared, utilized and caused to be broadcast on television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines.

PAR. 6. By and through the use of the aforesaid advertisements, respondents have represented, directly and by implication, that:

1. The Dancerina Doll walks or dances by itself without assistance.
2. A Hot Wheels set as packaged and sold contains all parts or accessories shown or depicted in such advertisements.

PAR. 7. In truth and in fact:

1. The Dancerina Doll does not walk or dance by itself or without assistance, but requires the assistance of an operator to perform such movements.

2. A Hot Wheels set as packaged and sold does not contain all parts or accessories shown or depicted in such advertisements. Certain of such parts or accessories are obtainable only by way of separate purchase.

Therefore, the advertisements referred to in Paragraphs Five and Six were and are deceptive.

PAR. 8. The aforesaid advertisements purport to accurately and truthfully depict or describe the appearance or performance of the Hot Wheels toy. However, by and through the use of a manner of presentation including, but not limited to, special camera, filming, or sound techniques, said advertisements exaggerate or falsely represent said appearance or performance.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 9. By and through the use of a manner of presentation including, but not limited to, special camera, filming or sound techniques, the aforesaid advertisements convey a sense of involvement or participation in the use of the Hot Wheels toy which falsely represents the actual use of the toy.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 10. Respondents' aforesaid advertising was and is addressed primarily to children. In that advertising, respondents have utilized statements of endorsement as to the worth, value or desirability of the Hot Wheels toy by persons well known to the public as racing car drivers. Said statements were offered on the basis of and in connection with the experience and renown of said persons as racing car drivers. The nature of that experience and renown, however, extends to actual auto racing. It has not provided said persons with a special competence or expertise on which to base a judgment of the worth, value or desirability to children of the Hot Wheels toy, or with special competence or expertise in the formation of judgments on which children should be induced to rely.

Therefore, the use of such advertisements was and is unfair or deceptive.

PAR. 11. Respondent Mattel, Inc., has caused to be printed on the Hot Wheels package the statement "Drag chutes help slow them down after their 200 mph sprint down the drag strip." This statement describing velocity misrepresents the speed attainable by the car under ordinary or normal conditions of use.

Therefore, said statements were and are unfair or deceptive.

PAR. 12. Respondent Mattel, Inc., sells and distributes several varieties of toy racing car and track sets under the brand name Hot Wheels. Said sets are not identical in their dimensions and methods of opera-

tion, and in certain cases contain parts which are incompatible in their function and use with parts of other of said sets. Respondents in their aforesaid advertising fail to disclose such incompatibility. The aforesaid advertisements have the tendency and capacity to mislead prospective purchasers or consumers who may reasonably expect parts of said Hot Wheels sets to be compatible.

Therefore, said practices were and are unfair or deceptive.

PAR. 13. Respondent Mattel, Inc.'s toys including the Hot Wheels and Dancerina Doll toys, are designed primarily for children, and are bought either by or for the benefit of children. Respondents' deceptive or unfair advertising thus unfairly exploits a consumer group unqualified by age or experience to anticipate or appreciate the possibility that the representations may be exaggerated or untrue. Further, respondents unfairly play upon the affection of adults, especially parents and other close relatives, for children, by inducing the purchase of toys and related products through deceptive or unfair claims of their performance, which claims appeal both to adults and to children who bring the toys to the attention of the adults. As a consequence of respondents' exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform acts not substantiated by the facts. Consumers are thus misled to their disappointment and competing advertisers who do not engage in deceptive or unfair advertising are unfairly prejudiced.

PAR. 14. The use by respondents of the aforesaid deceptive advertising 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 representations were and are true, and into the purchase of substantial quantities of the products of respondent Mattel, Inc., by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent Mattel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 5150 Rosecrans Avenue, Hawthorne, California.

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 Mattel, Inc., a corporation and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, packaging, offering for sale, sale or distribution of any toy in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Portraying or describing in an advertisement addressed to children the performance, operation or use of such products by or through the use of:

(a) Any film or camera techniques which result in any visual perspective of such product which purports to be but is not one which a child can experience in the ordinary use of such product, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age

group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(b) Any sequence of different visual perspectives which purports to depict perspectives which a child can experience but which changes faster than a child can change his visual perspectives in the ordinary use of such product, when the effect of such sequence in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(c) Any visual perspective which purports to depict the actual performance of a particular function of the product and which differs substantially from the length of time required to perform that function, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(d) Camera over-cranking or under-cranking to depict a performance characteristic of such product which does not exist or cannot be perceived under ordinary conditions of the product's use, unless the fact of the use of such technique is established, if the effect of the failure to establish the use of such technique in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups.

2. Using in broadcast, print or package advertising of such products, addressed to children, any endorsements or other similar statements as to the worth, value or desirability to children of any such product, by any living person, persons, group or organization when such endorsements are offered on the basis of or in connection with any experience, special competence or expertise which the public may reasonably be expected to associate with

such person, persons, group or organization unless the person, persons, group or organization making the statement has acquired a degree or type of experience, special competence, or expertise which qualified him or it to form the judgments expressed.

Provided: That this paragraph shall not prohibit the use of a product name or likeness which includes the name or likeness of any person, persons, group or organization, or things, or the advertisement of any such product in any manner not prohibited by this order.

3. Portraying or describing in any advertisement two or more of such products which are sold or distributed under the fanciful brand name Hot Wheels or other similar fanciful brand name, used on more than one such product, if such products must be purchased separately, unless such advertisement establishes which of the products advertised therein must be purchased separately.

4. Commencing the production and causing the exhibition or distribution, within any twelve (12) month period following the date on which this order becomes final in the case of broadcast advertising, and within any twelve (12) month period following January 31, 1972, in the case of print or package advertising, of two (2) or more advertisements in the same medium for toys advertised, distributed or sold under the fanciful brand name Hot Wheels or other similar fanciful brand name if the toys therein advertised in said twelve (12) month period would reasonably be expected by purchasers to be, but are not, compatible in use and function with one another under ordinary conditions of use, unless the later of such two (2) or more advertisements in said twelve (12) month period establishes that the toy or toys advertised therein are either (a) not intended for use with all of the other toys or categories of toys advertised under the same fanciful brand name in the earlier advertisement or advertisements in said twelve (12) month period or (b) intended for use with less than all of the other toys or categories of toys advertised under the same fanciful brand name in the earlier advertisement or advertisements in said twelve (12) month period.

5. Representing that any toy car or other toy vehicle travels at any specific velocity other than that velocity determined by measuring the distance actually traversed divided by the time actually elapsed when both distance and time are calculated during the normal or ordinary conditions of use of such car or other toy vehicle.

6. Failing to disclose on their packages that the Dancerina doll or any other similar motorized ballerina, dancing or walking doll

requires human assistance to walk or dance if such is the fact.

It is further ordered, That the provisions of this order applicable to packages or labels shall apply only to packages or labels which are produced by or for respondent Mattel, Inc. after January 31, 1972.

It is further ordered, That the provisions of Paragraphs One (1) through Five (5) of this order shall not become final and effective against respondent Mattel, Inc., unless and until an order containing similarly restrictive provisions as to the respondent becomes final and effective against Topper Corporation. [See p. 681 herein]

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

It is further ordered, That respondent 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 the order.

It is further ordered, That the respondent corporation 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 provisions of this order applicable to broadcast advertising.

It is further ordered, That the respondent corporation shall, within sixty (60) days after the date of January 31, 1972, file with the Commission a second report in writing setting forth in detail the manner and form in which it has complied with the provisions of this order applicable to print advertising and to packages and labels and to advertising on packages and labels.

IN THE MATTER OF

CARSON-ROBERTS, INC.

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

Docket C-2072. Complaint, Nov. 1, 1971—Decision, Nov. 1, 1971

Consent order requiring a Los Angeles, Calif., advertising agency representing a Hawthorne, Calif., toy manufacturer to cease using in any broadcast advertisement involving its customers' toy products or in print or package advertising, addressed to children, any distortion of the toys' performance,

Complaint

using fanciful or misleading brand names, or making other deceptive exaggerations concerning the performance of the toys.

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 Mattel, Inc., a corporation, and Carson-Roberts, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mattel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 5150 Rosecrans Avenue, Hawthorne, California.

Respondent Carson-Roberts, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 8322 Beverly Boulevard, Los Angeles, California.

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

PAR. 2. Respondent Mattel, Inc., is now and has been engaged in the manufacture, packaging, advertising, offering for sale, sale and distribution of toys and related products, including toys designated Hot Wheels, and the Dancerina Doll, to the public and to distributors and retailers for resale to the public.

Respondent Carson-Roberts, Inc., is now and has been an advertising agency retained by respondent Mattel, Inc.; it has prepared and now prepares and places advertising, including but not limited to the advertising referred to herein, for the purpose of promoting the sale of respondent Mattel, Inc.'s products.

PAR. 3. In the course and conduct of its business, respondent Mattel, Inc., has caused and continues to cause its toys and related products to be packaged, sold, shipped and distributed from its place of business in the State of California or from the state of manufacture to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid businesses, and at all times mentioned herein, respondents are now and have been in substantial competition in commerce with corporations, firms and individuals in the sale and distribution of their respective products or services.

PAR. 5. In the course and conduct of their aforesaid businesses, and for the purpose of inducing the purchase of the Hot Wheels and Dancerina Doll toys, respondents have made statements and pictorial representations in:

1. advertising appearing on product packages; and
2. advertising which respondents have prepared, utilized and caused to be broadcast on television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines.

PAR. 6. By and through the use of the aforesaid advertisements, respondents have represented, directly and by implication, that:

1. The Dancerina Doll walks or dances by itself without assistance.
2. A Hot Wheels set as packaged and sold contains all parts or accessories shown or depicted in such advertisements.

PAR. 7. In truth and in fact:

1. The Dancerina Doll does not walk or dance by itself or without assistance, but requires the assistance of an operator to perform such movements.

2. A Hot Wheels set as packaged and sold does not contain all parts or accessories shown or depicted in such advertisements. Certain of such parts or accessories are obtainable only by way of separate purchase.

Therefore, the advertisements referred to in Paragraphs Five and Six were and are deceptive.

PAR. 8. The aforesaid advertisements purport to accurately and truthfully depict or describe the appearance or performance of the Hot Wheels toy. However, by and through the use of a manner of presentation including, but not limited to, special camera, filming, or sound techniques, said advertisements exaggerate or falsely represent said appearance or performance.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 9. By and through the use of a manner of presentation including, but not limited to, special camera, filming or sound techniques, the aforesaid advertisements convey a sense of involvement or participation in the use of the Hot Wheels toy which falsely represents the actual use of the toy.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 10. Respondents' aforesaid advertising was and is addressed primarily to children. In that advertising, respondents have utilized statements of endorsement as to the worth, value or desirability of the Hot Wheels toy by persons well known to the public as racing car drivers. Said statements were offered on the basis of and in con-

nection with the experience and renown of said persons as racing car drivers. The nature of that experience and renown, however, extends to actual auto racing. It has not provided said persons with a special competence or expertise on which to base a judgment of the worth, value or desirability to children of the Hot Wheels toy, or with special competence or expertise in the formation of judgments on which children should be induced to rely.

Therefore, the use of such advertisements was and is unfair or deceptive.

PAR. 11. Respondent Mattel, Inc., has caused to be printed on the Hot Wheels package the statement "Drag chutes help slow them down after their 200 mph sprint down the drag strip." This statement describing velocity misrepresents the speed attainable by the car under ordinary or normal conditions of use.

Therefore, said statements were and are unfair or deceptive.

PAR. 12. Respondent Mattel, Inc., sells and distributes several varieties of toy racing car and track sets under the brand name Hot Wheels. Said sets are not identical in their dimensions and methods of operation, and in certain cases contain parts which are incompatible in their function and use with parts of other of said sets. Respondents in their aforesaid advertising fail to disclose such incompatibility. The aforesaid advertisements have the tendency and capacity to mislead prospective purchasers or consumers who may reasonably expect parts of said Hot Wheels sets to be compatible.

Therefore, said practices were and are unfair or deceptive.

PAR. 13. Respondent Mattel, Inc.'s toys, including the Hot Wheels and Dancerina Doll toys, are designed primarily for children, and are bought either by or for the benefit of children. Respondents' deceptive or unfair advertising thus unfairly exploits a consumer group unqualified by age or experience to anticipate or appreciate the possibility that the representations may be exaggerated or untrue. Further, respondents unfairly play upon the affection of adults, especially parents and other close relatives, for children, by inducing the purchase of toys and related products through deceptive or unfair claims of their performance, which claims appeal both to adults and to children who bring the toys to the attention of the adults. As a consequence of respondents' exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform acts not substantiated by the facts. Consumers are thus misled to their disappointment and competing advertisers who do not engage in deceptive or unfair advertising are unfairly prejudiced.

PAR. 14. The use by respondents of the aforesaid deceptive advertising has had, and now has, the capacity and tendency to mislead

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members of the purchasing public into the erroneous and mistaken belief that the said representations were and are true, and into the purchase of substantial quantities of the products of respondent Mattel, Inc., by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Carson-Roberts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 8322 Beverly Boulevard, Los Angeles, California.

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 Carson-Roberts, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising of any toy in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Portraying or describing in a broadcast advertisement addressed to children the performance, operation or use of such products by or through the use of:

(a) Any film or camera techniques which result in any visual perspective of such product which purports to be but is not one which a child can experience in the ordinary use of such product, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(b) Any sequence of different visual perspectives which purports to depict perspectives which a child can experience but which changes faster than a child can change his visual perspectives in the ordinary use of such product, when the effect of such sequence in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(c) Any visual perspective which purports to depict the actual performance of a particular function of the product and which differs substantially from the length of time required to perform that function, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(d) Camera over-cranking or under-cranking to depict a performance characteristic of such product which does not exist or cannot be perceived under ordinary conditions of the product's use, unless the fact of the use of such technique is established, if the effect of the failure to establish the use of such technique in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups.

2. Using in broadcast advertising of such products, addressed to children, any endorsements or other similar statements as to the worth, value or desirability to children of any such product, by any living person, persons, group or organization when such endorsements are offered on the basis of or in connection with any experience, special competence or expertise which the public may reasonably be expected to associate with such person, persons, group or organization unless the person, persons, group or organization making the statement has acquired a degree or type of experience, special competence, or expertise which qualifies him or it to form the judgments expressed.

Provided, That this paragraph shall not prohibit the use of a product name or likeness which includes the name or likeness of any person, persons, group or organization, or things, or the advertisement of any such product in any manner not prohibited by this order.

3. Portraying or describing in any broadcast advertisement two or more of such products which are sold or distributed under the fanciful brand name Holt Wheels or other similar fanciful brand name, used on more than one such product, if such products must be purchased separately, unless such advertisement establishes which of the products advertised therein must be purchased separately.

4. Commencing the production and causing the exhibition or distribution, within any twelve (12) month period following the date on which this order becomes final of two (2) or more broadcast advertisements in the same medium for toys advertised, distributed or sold under the fanciful brand name Hot Wheels or other similar fanciful Mattel, Inc., brand name if the toys therein advertised in said twelve (12) month period would reasonably be expected by purchasers to be, but are not, compatible

in use and function with one another under ordinary conditions of use, unless the later of such two (2) or more advertisements in said twelve (12) month period establishes that the toy or toys advertised under the same fanciful Mattel, Inc. brand name advertised therein are either (a) not intended for use with all of the other toys or categories of toys advertised under the same fanciful Mattel, Inc., brand name in the earlier advertisement or advertisements in said twelve (12) month period or (b) intended for use with less than all of the other toys or categories of toys advertised under the same fanciful Mattel, Inc., brand name in the earlier advertisement or advertisements in said twelve (12) month period.

It is further ordered, That the provisions of Paragraphs One (1) through Four (4) of this order shall not become final and effective against respondent Carson-Roberts, Inc., unless and until an order containing similarly restrictive provisions as to the respondent becomes final and effective against Dancer-Fitzgerald-Sample, Inc. [See p. 689 herein]

It is further ordered, That the respondent 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 the order.

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

It is further ordered, That the respondent corporation 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 provisions of this order.

IN THE MATTER OF
TOPPER CORPORATION

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

Docket C-2073. Complaint, Nov. 1, 1971—Decision, Nov. 1, 1971

Consent order requiring an Elizabeth, N.J., toy manufacturer to cease using in any broadcast, print or package advertising of their toy products, addressed to children, any distortion of their toys performances; using fanciful and misleading brand names; and from making unfair and deceptive TV com-

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mercials and package advertising for their "Johnny Lightning" car and making other deceptive exaggerations concerning the performance of their toys.

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 Topper Corporation, a corporation, and Dancer-Fitzgerald-Sample, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Topper Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 107 Trumbull Street, Elizabeth, New Jersey.

Respondent Dancer-Fitzgerald-Sample, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 347 Madison Avenue, New York, New York.

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

PAR. 2. Respondent Topper Corporation is now and has been engaged in the manufacture, packaging, advertising, offering for sale, sale and distribution of toys and related products, including toys designated Johnny Lightning, to the public and to distributors and retailers for resale to the public.

Respondent Dancer-Fitzgerald-Sample, Inc., is now and has been an advertising agency retained by respondent Topper Corporation; it has prepared and now prepares and places advertising, including but not limited to the advertising referred to herein, for the purpose of promoting the sale of respondent Topper Corporation's products.

PAR. 3. In the course and conduct of its business, respondent Topper Corporation has caused and continues to cause its toys and related products to be packaged, sold, shipped and distributed from its place of business in the State of New Jersey or from the state of manufacture to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid businesses, and at all times mentioned herein, respondents are now and have been in substantial competition in commerce with corporations, firms and

individuals in the sale and distribution of their respective products or services.

PAR. 5. In the course and conduct of their businesses, and for the purpose of inducing the purchase of the said Johnny Lightning toy, respondents have prepared, utilized and caused to be broadcast, advertisements of said Johnny Lightning toy transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines.

PAR. 6. By and through the use of the aforesaid advertisements, respondents have represented, directly and by implication that:

1. All Johnny Lightning cars have doors and hoods that open and close.

2. A Johnny Lightning set as packaged and sold contains all parts or accessories shown or depicted in such advertisements.

PAR. 7. In truth and in fact:

1. All Johnny Lightning cars do not have doors and hoods that open and close.

2. A Johnny Lightning set as packaged and sold does not contain all parts or accessories shown or depicted in such advertisements. Certain of such parts or accessories are obtainable only by way of separate purchase.

Therefore, the advertisements referred to in Paragraphs Five and Six, were and are deceptive.

PAR. 8. The aforesaid advertisements purport to accurately and truthfully depict or describe the appearance or performance of the Johnny Lightning toy. However, by and through the use of a manner of presentation including, but not limited to, special camera, filming, or sound techniques, said advertisements exaggerate or falsely represent said appearance or performance.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 9. By and through the use of a manner of presentation including but not limited to special camera, filming or sound techniques, the aforesaid advertisements convey a sense of involvement of participation in the use of the Johnny Lightning toy which falsely represents the actual use of the toy.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 10. Respondents aforesaid advertising was and is addressed primarily to children. In that advertising, respondents have utilized statements of endorsement as to the worth, value or desirability of the Johnny Lightning toy by persons well known to the public as racing car drivers. Said statements were offered on the basis of and in connec-

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tion with the experience and renown of said persons as racing car drivers. The nature of that experience and renown, however, extends to actual auto racing. It has not provided said persons with a special competence or expertise on which to base a judgment of the worth, value or desirability to children of the Johnny Lightning toy, or with special competence or expertise in the formation of judgments on which children should be induced to rely.

Therefore, the use of such advertisements was and is unfair or deceptive.

PAR. 11. Respondent Topper Corporation has caused to be printed on the Johnny Lightning package the statement "Cars go 1500 Miles per hour (in scale)." The use of scale measurements in describing velocity misrepresents the performance of the toy.

Therefore, said statements were and are unfair or deceptive.

PAR. 12. Respondent Topper Corporation sells and distributes several varieties of toy racing car and track sets under the brand name Johnny Lightning. Said sets are not identical in their dimensions and methods of operation, and in certain cases contain parts which are incompatible in their function and use with parts of other of said sets. Respondents in their aforesaid advertising fail to disclose such incompatibility. The aforesaid advertisements have the tendency and capacity to mislead prospective purchasers or consumers who may reasonably expect parts of said Johnny Lightning sets to be compatible.

Therefore, said practices were and are unfair or deceptive.

PAR. 13. Respondent Topper Corporation's toys, including the Johnny Lightning toy, are designed primarily for children, and are bought either by or for the benefit of children. Respondents' deceptive or unfair advertising thus unfairly exploits a consumer group unqualified by age or experience to anticipate or appreciate the possibility that the representations may be exaggerated or untrue. Further, respondents unfairly play upon the affection of adults, especially parents and other close relatives, for children, by inducing the purchase of toys and related products through deceptive or unfair claims of their performance, which claims appeal both to adults and to children who bring the toys to the attention of the adults. As a consequence of respondents' exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform acts not substantiated by the facts. Consumers are thus misled to their disappointment and competing advertisers who do not engage in deceptive or unfair advertising are unfairly prejudiced.

PAR. 14. The use by respondents of the aforesaid deceptive advertising has had, and now has, the capacity and tendency to mislead mem-

bers of the purchasing public into the erroneous and mistaken belief that the said representations were and are true, and into the purchase of substantial quantities of the products of respondent Topper Corporation by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Topper Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 107 Trumbull Street, Elizabeth, New Jersey.

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

ORDER

It is ordered, That Topper Corporation, a corporation and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, packaging, offering for sale, sale or distribution of any toy in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Portraying or describing in an advertisement addressed to children the performance, operation or use of such products by or through the use of:

(a) Any film or camera techniques which result in any visual perspective of such product which purports to be but is not one which a child can experience in the ordinary use of such product, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(b) Any sequence of different visual perspectives which purports to depict perspectives which a child can experience but which changes faster than a child can change his visual perspectives in the ordinary use of such product, when the effect of such sequence in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(c) Any visual perspective which purports to depict the actual performance of a particular function of the product and which differs substantially from the length of time required to perform that function, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(d) Camera over-cranking or under-cranking to depict a performance characteristic of such product which does not

exist or cannot be perceived under ordinary conditions of the product's use, unless the fact of the use of such technique is established, if the effect of the failure to establish the use of such technique in context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups.

2. Portraying or describing the appearance of such a product through the use of a star filter lens to photograph the product, when the effect of the use of such device in the context of the advertisement as a whole is to misrepresent the product's appearance.

3. Representing that the hood or doors of any Johnny Lightning car open or close unless such is the fact.

4. Using in broadcast, print or package advertising of such products, addressed to children, any endorsements or other similar statements as to the worth, value or desirability to children of any such product, by any living person, persons, group or organization when such endorsements are offered on the basis of or in connection with any experience, special competence or expertise which the public may reasonably be expected to associate with such person, persons, group or organization unless the person, persons, group or organization making the statement has acquired a degree or type of experience, special competence, or expertise which qualifies him or it to form the judgments expressed.

Provided, That this paragraph shall not prohibit the use of a product name or likeness which includes the name or likeness of any person, persons, group or organization, or things, or the advertisement of any such product in any manner not prohibited by this order.

5. Portraying or describing in any advertisement two or more of such products which are sold or distributed under the fanciful brand name Johnny Lightning or other similar fanciful brand name, used on more than one such product, if such products must be purchased separately, unless such advertisement establishes which of the products advertised therein must be purchased separately.

6. Commencing the production and causing the exhibition or distribution, within any twelve (12) month period following the date on which this order becomes final in the case of broadcast advertising, and within any twelve (12) month period following January 31, 1972, in the case of print or package advertising, of

two (2) or more advertisements in the same medium for toys advertised, distributed or sold under the fanciful brand name Johnny Lightning or other similar fanciful brand name if the toys therein advertised in said twelve (12) month period would reasonably be expected by purchasers to be, but are not, compatible in use and function with one another under ordinary conditions of use, unless the latter of such two (2) or more advertisements in said twelve (12) month period establishes that the toy or toys advertised therein are either (a) not intended for use with all of the other toys or categories of toys advertised under the same fanciful brand name in the earlier advertisement or advertisements in said twelve (12) month period or (b) intended for use with less than all of the other toys or categories of toys advertised under the same fanciful brand name in the earlier advertisement or advertisements in said twelve (12) month period.

7. Representing that any toy car or other toy vehicle travels at any specific velocity other than that velocity determined by measuring the distance actually traversed divided by the time actually elapsed when both distance and time are calculated during the normal or ordinary conditions of use of such car or other toy vehicle.

It is further ordered, That the provisions of this order applicable to packages or labels shall apply only to packages or labels which are produced by or for respondent Topper Corporation after January 31, 1972.

It is further ordered, That the provisions of Paragraphs One (1), Four (4), Five (5), Six (6), and Seven (7) of this order shall not become final and effective against respondent Topper Corporation, unless and until an order containing similarly restrictive provisions as to the respondent becomes final and effective against Mattel, Inc. [See p. 667 herein]

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

It is further ordered, That respondent 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 the order.

It is further ordered, That the respondent corporation 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 provisions of this order applicable to broadcast advertising.

Complaint

It is further ordered, That the respondent corporation shall, within sixty (60) days after the date of January 31, 1972, file with the Commission a second report in writing setting forth in detail the manner and form in which it has complied with the provisions of this order applicable to print advertising and to packages and labels and to advertising on packages and labels.

IN THE MATTER OF

DANCER-FITZGERALD-SAMPLE, INC.

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

Docket C-2074. Complaint, Nov. 1, 1971—Decision, Nov. 1, 1971

Consent order requiring a New York City advertising agency representing an Elizabeth, N.J., toy manufacturer to cease using in any broadcast advertisement involving its customers' toy products or in print or package advertising, addressed to children, any distortion of the toys performances, using fanciful or misleading brand names, or making other deceptive exaggerations concerning the performance of the toys.

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 Topper Corporation, a corporation, and Dancer-Fitzgerald-Sample, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Topper Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 107 Trumbull Street, Elizabeth, New Jersey.

Respondent Dancer-Fitzgerald-Sample, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 347 Madison Avenue, New York, New York.

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

PAR. 2. Respondent Topper Corporation is now and has been en-

gaged in the manufacture, packaging, advertising, offering for sale, sale and distribution of toys and related products, including toys designated Johnny Lightning, to the public and to distributors and retailers for resale to the public.

Respondent Dancer-Fitzgerald-Sample, Inc. is now and has been an advertising agency retained by respondent Topper Corporation; it has prepared and now prepares and places advertising, including but not limited to the advertising referred to herein, for the purpose of promoting the sale of respondent Topper Corporation's products.

PAR. 3. In the course and conduct of its business, respondent Topper Corporation has caused and continues to cause its toys and related products to be packaged, sold, shipped and distributed from its place of business in the State of New Jersey or from the state of manufacture to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid businesses, and at all times mentioned herein, respondents are now and have been in substantial competition in commerce with corporations, firms and individuals in the sale and distribution of their respective products or services.

PAR. 5. In the course and conduct of their businesses, and for the purpose of inducing the purchase of the said Johnny Lightning toy, respondents have prepared, utilized and caused to be broadcast, advertisements of said Johnny Lightning toy transmitted by television Stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines.

PAR. 6. By and through the use of the aforesaid advertisements, respondents have represented, directly and by implication that:

1. All Johnny Lightning cars have doors and hoods that open and close.
2. A Johnny Lightning set as packaged and sold contains all parts or accessories shown or depicted in such advertisements.

PAR. 7. In truth and in fact:

1. All Johnny Lightning cars do not have doors and hoods that open and close.
2. A Johnny Lightning set as packaged and sold does not contain all parts or accessories shown or depicted in such advertisements. Certain of such parts or accessories are obtainable only by way of separate purchase.

Therefore, the advertisements referred to in Paragraphs Five and Six, were and are deceptive.

PAR. 8. The aforesaid advertisements purport to accurately and truthfully depict or describe the appearance or performance of the Johnny Lightning toy. However, by and through the use of a manner of presentation including, but not limited to, special camera, filming, or sound techniques, said advertisements exaggerate or falsely represent said appearance or performance.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 9. By and through the use of a manner of presentation including but not limited to special camera, filming or sound techniques, the aforesaid advertisements convey a sense of involvement or participation in the use of the Johnny Lightning toy which falsely represents the actual use of the toy.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 10. Respondents' aforesaid advertising was and is addressed primarily to children. In that advertising, respondents have utilized statements of endorsement as to the worth, value or desirability of the Johnny Lightning toy by persons well known to the public as racing car drivers. Said statements were offered on the basis of and in connection with the experience and renown of said persons as racing car drivers. The nature of that experience and renown, however, extends to actual auto racing. It has not provided said persons with a special competence or expertise on which to base a judgment of the worth, value or desirability to children of the Johnny Lightning toy, or with special competence or expertise in the formation of judgments on which children should be induced to rely.

Therefore, the use of such advertisements was and is unfair or deceptive.

PAR. 11. Respondent Topper Corporation has caused to be printed on the Johnny Lightning package the statement "Cars go 1500 Miles per hour (in scale)." The use of scale measurements in describing velocity misrepresents the performance of the toy.

Therefore, said statements were and are unfair or deceptive.

PAR. 12. Respondent Topper Corporation sells and distributes several varieties of toy racing car and track sets under the brand name Johnny Lightning. Said sets are not identical in their dimensions and methods of operation, and in certain cases contain parts which are incompatible in their function and use with parts of other of said sets. Respondents in their aforesaid advertising fail to disclose such incompatibility. The aforesaid advertisements have the tendency and capacity to mislead prospective purchasers or consumers who may reasonably expect parts of said Johnny Lightning sets to be compatible.

Therefore, said practices were and are unfair or deceptive.

PAR. 13. Respondent Topper Corporation's toys, including the Johnny Lightning toy, are designed primarily for children, and are bought either by or for the benefit of children. Respondents' deceptive or unfair advertising thus unfairly exploits a consumer group unqualified by age or experience to anticipate or appreciate the possibility that the representations may be exaggerated or untrue. Further, respondents unfairly play upon the affection of adults, especially parents and other close relatives, for children, by inducing the purchase of toys and related products through deceptive or unfair claims of their performance, which claims appeal both to adults and to children who bring the toys to the attention of the adults. As a consequence of respondents' exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform acts not substantiated by the facts. Consumers are thus misled to their disappointment and competing advertisers who do not engage in deceptive or unfair advertising are unfairly prejudiced.

PAR. 14. The use by respondents of the aforesaid deceptive advertising 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 representations were and are true, and into the purchase of substantial quantities of the products of respondent Topper Corporation by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission have thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admis-

sion by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

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

1. Respondent Dancer-Fitzgerald-Sample, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 347 Madison Avenue, 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.

ORDER

It is ordered, That Dancer-Fitzgerald-Sample, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising of any toy in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Portraying or describing in a broadcast advertisement addressed to children the performance, operation or use of such products by or through the use of:

(a) Any film or camera techniques which result in any visual perspective or such product which purports to be but is not one which a child can experience in the ordinary use of such product, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(b) Any sequence of different visual perspectives which purports to depict perspectives which a child can experience but which changes faster than a child can change his visual perspectives in the ordinary use of such product, when the

effect of such sequence in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(c) Any visual perspective which purports to depict the actual performance of a particular function of the product and which differs substantially from the length of time required to perform that function, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(d) Camera over-cranking or under-cranking to depict a performance characteristic of such product which does not exist or cannot be perceived under ordinary conditions of the product's use, unless the fact of the use of such technique is established, if the effect of the failure to establish the use of such technique in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups.

2. Portraying or describing the appearance of such a product through the use of a star filter lens to photograph the product, when the effect of the use of such device in the context of the advertisement as a whole is to misrepresent the product's appearance.

3. Representing that the hood or doors of any Johnny Lightning car open or close unless such is the fact.

4. Using in broadcast advertising of such products, addressed to children, any endorsements or other similar statements as to the worth, value or desirability to children of any such product, by any living person, persons, group or organization when such endorsements are offered on the basis of or in connection with any experience, special competence or expertise which the public may reasonably be expected to associate with such person, persons, group or organization unless the person, persons, group or organization making the statement has acquired a degree or type of

experience, special competence, or expertise which qualifies him or it to form the judgments expressed.

Provided, That this paragraph shall not prohibit the use of a product name or likeness which includes the name or likeness of any person, persons, group or organization, or things, or the advertisement of any such product in any manner not prohibited by this order.

5. Portraying or describing in any broadcast advertisement two or more of such products which are sold or distributed under the fanciful brand name Johnny Lightning or other similar fanciful brand name, used on more than one such product, if such products must be purchased separately, unless such advertisement establishes which of the products advertised therein must be purchased separately.

6. Commencing the production and causing the exhibition or distribution, within any twelve (12) month period following the date on which this order becomes final of two (2) or more broadcast advertisements in the same medium for toys advertised, distributed or sold under the fanciful brand name Johnny Lightning or other similar fanciful Topper Corporation brand name if the toys therein advertised in said twelve (12) month period would reasonably be expected by purchasers to be, but are not, compatible in use and function with one another under ordinary conditions of use, unless the later of such two (2) or more advertisements in said twelve (12) month period establishes that the toy or toys advertised under the same fanciful Topper Corporation brand name advertised therein are either (a) not intended for use with all of the other toys or categories of toys advertised under the same fanciful Topper Corporation brand name in the earlier advertisement or advertisements in said twelve (12) month period or (b) intended for use with less than all of the other toys or categories of toys advertised under the same fanciful Topper Corporation brand name in the earlier advertisement or advertisements in said twelve (12) month period.

It is further ordered, That the provisions of Paragraphs One (1), Four (4), Five (5), and Six (6) of this order shall not become final and effective against respondent Dancer-Fitzgerald-Sample, Inc., unless and until an order containing similarly restrictive provisions as to the respondent becomes final and effective against Carson-Roberts, Inc. [See p. 674 herein]

Decision and Order

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It is further ordered, That the respondent 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 the order.

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

It is further ordered, That the respondent corporation 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 provisions of this order.

IN THE MATTER OF

READER'S DIGEST ASSOCIATION, INC.

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

Docket C-2075. Complaint, Nov. 2, 1971—Decision, Nov. 2, 1971

Consent order requiring the Reader's Digest Association with headquarters in New Castle, N.Y., to cease failing to disclose the number, nature, and value of the prizes in its circulation contests and all other pertinent information, failing to award all prizes advertised, using the word "lucky" on any ticket, failing to maintain adequate records for five years and furnish records to the Federal Trade Commission upon request, failing to obtain the consent of individuals before using their names in promotional material, and failing to disclose all essential details in advertising contests.

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 Reader's Digest Association, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Reader's Digest Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at New Castle, New York.

PAR. 2. Respondent is now and for some time past has been engaged in the publishing, advertising, offering for sale, sale and distribution of magazines including Reader's Digest magazine, books and other products to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent causes and for some time past has caused its products to be sold, shipped, and distributed from its place of business in the State of New York or from the state of publication to purchasers thereof located in various States of the United States and in the District of Columbia; and maintains and at all times mentioned herein has maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its products, the respondent has engaged in the solicitation of prospective customers through the United States mails. These solicitations, which utilized promotional materials concerning respondent's products, were mailed to millions of prospective customers throughout the country. Many of the said solicitations utilized a promotional device commonly known as a "sweepstakes." These "sweepstakes," which respondent has employed since at least 1966 were all conducted in a similar manner.

Millions of copies of promotional materials were printed and distributed in envelopes. Each envelope contained a ticket on which a number was printed. Before distribution to the public, some of the numbers were designated as winning numbers and others were designated as losing numbers. Recipients were directed to return the ticket, usually to "Reader's Digest" or to the Reuben H. Donnelley Corporation where it would be checked against a list of winning numbers. If the number on the ticket returned to "Reader's Digest" or the Reuben H. Donnelley Corporation matched a number contained on its list of winning numbers, the recipient was entitled to a specified prize. If a recipient of a ticket which contained a winning number failed to return the ticket to the respondent, the prize to which he would have been entitled if he had done so was not awarded.

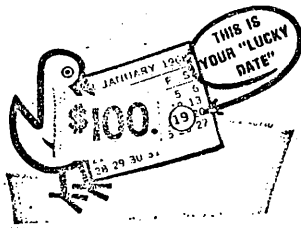
The above-described promotional device, in which winning numbers are designated before distribution, is commonly known as a "matching" or "pre-selected 'sweepstakes'."

Such "sweepstakes" were conducted by the respondent on numerous occasions between January 1966 and January 1969 as follows:

- (a) January 1966 Reader's Digest \$999,000 Sweepstakes
- (b) Spring 1966 Reader's Digest \$150,000 Sweepstakes
- (c) Fall 1966 Reader's Digest \$300,000 Sweepstakes
- (d) January 1967 Reader's Digest \$999,000 Sweepstakes
- (e) Spring 1967 Reader's Digest \$150,000 Sweepstakes
- (f) Summer 1967 Reader's Digest \$300,000 Sweepstakes
- (g) January 1968 Reader's Digest \$999,000 Sweepstakes
- (h) Spring 1968 Reader's Digest \$150,000 Sweepstakes
- (i) Summer 1968 Reader's Digest \$300,000 Sweepstakes
- (j) Holiday 1968 Reader's Digest \$299,000 Sweepstakes
- (k) January 1969 Reader's Digest \$999,000 Sweepstakes

PAR. 5. In the course and conduct of its business, the respondent engaged in the above-described "sweepstakes" and other promotions for the purpose of inducing the purchase of its products; and respondent has made and is now making in its advertising and promotional material statements and representations concerning its products and "sweepstakes."

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

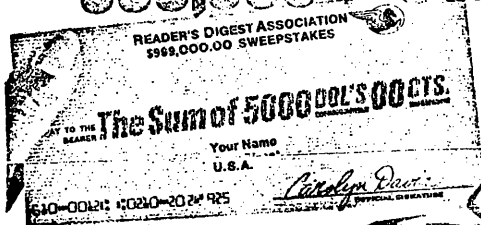


**BE AN "EARLY BIRD" AND WIN
\$100.00 A MONTH FOR LIFE!**

Mail your Lucky Number "Bills" with your Bonus Stamp before midnight, January 19, 1968, and you'll be eligible for this special bonus award... in addition to all the prizes described below. Imagine winning an income for life—just for sending back your Sweepstakes "Bills" early! Mail your "Bills" in the next few days, and you'll automatically have a chance to win \$100.00 a month for

life—in addition to the regular cash prizes, new cars, home entertainment centers, TV sets, blenders, etc., described on this page. So here's an extra opportunity to be a big winner—just for being prompt!
Remember: To be eligible for the "early bird" cash award of \$100.00 a month for life, your entry must be mailed with your Bonus Stamp before midnight, January 19,

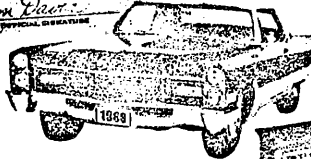
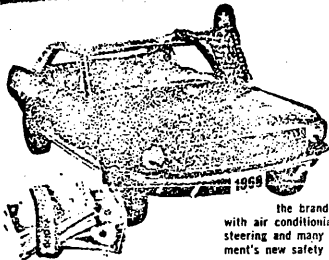
**Reader's Digest Sixth Annual
\$999,000.00 SWEEPSTAKES**



50 \$5,000 CASH PRIZES

Fifty certified checks for \$5,000.00 are waiting for winners. And you may be one of these winners right now... because the winning numbers have already been drawn! If you prefer, you have the privilege of

1968 Buick, Lincoln Continental or Chrysler Imperial instead of cash. Each is equipped with such luxury features as air conditioning, power steering & brakes, automatic transmission, and much more.



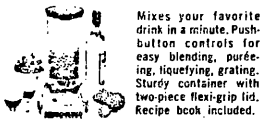
100 NEW 1968 CARS

Your choice of a new 1968 Ford Mustang, Chevelle Malibu, Plymouth Barracuda or the brand-new Javelin. Each car is fully equipped with air conditioning, radio, automatic transmission, power steering and many other features—plus all of U.S. Government's new safety features. OR \$3,000 CASH if you prefer.

200 MAGNAVOX HOME ENTERTAINMENT CENTERS

Big 25" Color TV with Magnavox's famous "Chromatone Purifier" for vivid, richer colors—adds a new dimension to warmth and depth of color TV... Plus stereo hi fidelity... Plus AM-FM radio. All in a beautiful, fine-furniture walnut cabinet.

1,000 WARING BLENDERS



Mixes your favorite drink in a minute. Push-button controls for easy blending, pureeing, liquefying, grating. Sturdy container with two-piece flexi-grip lid. Recipe book included.

500 MAGNAVOX PORTABLE COLOR TV SETS



Versatile 19" color TV. Moves easily from room to room. Brilliant color tube with powerful chassis and selective stabilizer for outstanding reception in fringe areas.

104,616 READER'S DIGEST 1968 ALMANACS

A complete reference library in one volume. Thousands of facts, maps, etc. Completely indexed.



YOU MAY HAVE ALREADY WON ONE OF 106,666 PRIZES!



HOW THE SWEEPSTAKES WORKS

Reader's Digest has reserved the prizes described in this brochure for holders of lucky numbers, selected under the direction of the



Return the enclosed four Lucky Number "4" of \$5,000.00 Bills today to see if you have already won \$100.00 a month for life...\$5,000.00 in cash...a new 1968 car...or one of the 106,666 prizes in the Reader's Digest Sixth Annual \$999,000.00 Sweepstakes. You have nothing to lose because it doesn't cost you a penny to enter. We would like to send you a beautiful Book Club volume free—and let you decide if you want to receive more books. Unless you cancel, you will receive future quarterly volumes. We will also send you a free "surprise package of mystery gifts." (You can be a spoilsport and say, "No, I don't want a free book and free gifts" and still be eligible for all prizes—but maybe you'll be sorry afterwards.)

Return the enclosed four Lucky Number "4" of \$5,000.00 Bills today to see if you have already won \$100.00 a month for life...\$5,000.00 in cash...a new 1968 car...or one of the 106,666 prizes in the Reader's Digest Sixth Annual \$999,000.00 Sweepstakes. You have nothing to lose because it doesn't cost you a penny to enter. We would like to send you a beautiful Book Club volume free—and let you decide if you want to receive more books. Unless you cancel, you will receive future quarterly volumes. We will also send you a free "surprise package of mystery gifts." (You can be a spoilsport and say, "No, I don't want a free book and free gifts" and still be eligible for all prizes—but maybe you'll be sorry afterwards.)

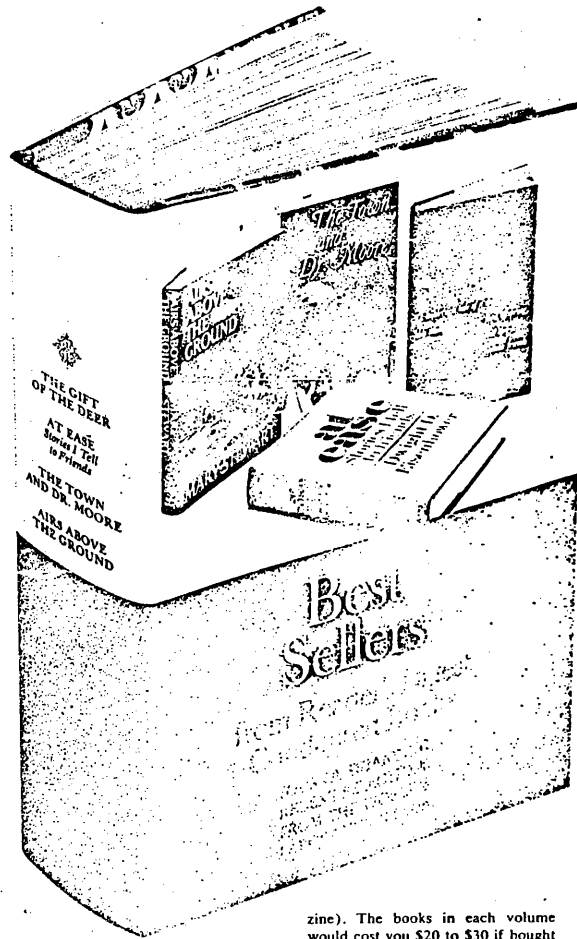
THE READER'S DIGEST is having a Sweepstakes to introduce our magazine to new readers. You are already a subscriber, so we want to be sure that you get a chance to win—four chances, as a matter of fact.

We have enclosed four Lucky Number "4" of \$5,000.00 Bills that may have already won you one of the prizes in our Sweepstakes. There are 106,666 prizes in all, and you may already be a winner because the numbers have already been drawn. In addition to giving you a chance to enter the Sweepstakes, we would also like to call your attention to our Book Club.

So to make this offer even more exciting, you can have a beautifully illustrated 504-page volume of "Best Sellers from Reader's Digest Condensed Books"—to enjoy and keep without cost—to introduce you to the wonderful reading values in Condensed Books.

Return your Lucky Number "Bills" in the enclosed envelope, and we will check them against the list of numbers already drawn to see if you have already won a prize. We will also send your free "mystery gifts" and the free Reader's Digest Book Club volume shown here.

When you receive your free



free gifts and you'll be depriving yourself of this beautifully illustrated volume.

It contains four outstanding books including the best-selling new book by Dwight D. Eisenhower, *At Ease: Stories I Tell to Friends*...*The Town and Dr. Moore*...*The Gift of the*

zine). The books in each volume would cost you \$20 to \$30 if bought in publishers' editions. But you get them all in condensed form for only \$3.19, plus shipping.

In addition to their reading value, Condensed Books are noted for their elegance and beauty. They decorate the bookshelves of some of the finest homes in the country. And now you can inexpensively build a home li-

AWIN-803

READER'S DIGEST \$250,000.00 SWEEPSTAKES PB 308123

If you are an Early Bird Prize winner—Reader's Digest guarantees to deposit each month in your personal account the below-mentioned sum at your local Kingsport bank (or any other bank you may designate).

Pay the sum of **\$100.00 DOLLARS A MONTH FOR LIFE**

Mr. Windle:
You have been selected to receive
20 30 40 50 60 70
Lucky Numbers.
See next page.

15 410 08124 88602 5

Mr. John B. Windle
1409 Crescent Dr.
Kingsport, Tenn. 37660

This check is not negotiable. But if you return it by March 24, 1969, and one of your Lucky Numbers is the early bird prize winner, you will receive the sum above each month for the rest of your life. Mail back this entire Sweepstakes Book today. SEND NO MONEY.

VALID ONLY IF RETURNED BEFORE MARCH 24 12

NON-TRANSFERABLE

ON THIS DATE 26 22, 1969

CERTIFICATE
\$250,000.00 SWEEPSTAKES

This is to certify that
Mr. John B. Windle
along with
Miss Wilson and
Mr. Wilson,
is among the lucky people in
Kingsport, Tennessee
to receive a Lucky Number
MB 274823

Dear Mr. Windle:

Here is good news for you! You and Miss Wilson and Mr. Wilson, also of Kingsport, are among the lucky Digest family members, selected to receive a Lucky Sweepstakes "Check" plus five Lucky Certificates in our Sweepstakes. To be eligible, mail this Sweepstakes Book by March 24. It is registered in your name:

Mr. John B. Windle
1409 Crescent Dr.
Kingsport, Tenn. 37660

Important: If the above name and address are wrong, please correct them before you return (turn to next page, please)

CERTIFICATE
\$250,000.00 SWEEPSTAKES

This is to certify that
Mr. John B. Windle
along with
Miss Wilson and
Mr. Wilson,
is among the lucky people in
Kingsport, Tennessee
to receive a Lucky Number
QB 319223

your Sweepstakes Book to us...to find out whether you have already won \$100 A MONTH FOR LIFE...\$4,000.00 in cash (or a new Dodge Polara, Mercury Cougar, Pontiac Grand Prix, or American Motors Ambassador SST, if you prefer)...a Magnavox Color TV...or any of 32,175 fabulous prizes in our new Reader's Digest \$250,000.00 Spring Sweepstakes!

You may be a winner right now because the winning numbers have already been drawn and you have six chances to win any of these wonderful prizes.

And you can be a winner in another way. For besides being eligible to win thousands of Sweepstakes prizes, you can also receive a package of free gifts and examine the

(turn to next page, please)

Complaint

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WINNER'S CERTIFICATE
\$250,000.00 SWEEPSTAKES

This is to certify that
Mr. John B. Windle
along with
Miss Wilson and
Mr. Wilson,
is among the lucky people in
Kingsport, Tennessee
to receive a Lucky Number

RB 330323

in one of the enclosed reply envelopes. We will check your six Lucky Numbers against the list of winners already drawn and tell you if you have won a Sweepstakes prize.

Return your Sweepstakes Book in the "YES" envelope and we will send your free gifts -- four beautiful 4-color printed or popular American birds from the world-famed Audubon Society, ideal for framing -- and the brand-new Reader's Digest book OUR AMAZING WORLD OF NATURE for 10 days free trial. If you wish to enter the Sweepstakes without examining this remarkable new volume and receiving your free gifts, you simply return your Sweepstakes Book in the "NO" envelope.

(turn to next page, please)

CERTIFICATE
\$250,000.00 SWEEPSTAKES

This is to certify that
Mr. John B. Windle
along with
Miss Wilson and
Mr. Wilson,
is among the lucky people in
Kingsport, Tennessee
to receive a Lucky Number

NB 285923

beautiful new book from Reader's Digest: OUR AMAZING WORLD OF NATURE -- a magnificently illustrated volume that tells over 100 tales about fantastic creatures and incredible wonders as far away as the stars or as close as your own backyard!

Previous Sweepstakes winners live in Memphis, Nashville, Chattanooga, Oak Ridge and many other cities and towns in Tennessee.

So -- who knows? -- A check for \$4,000.00 or a brand-new car may very shortly arrive at 1409 Crescent Dr., Mr. Windle.

Here's all you have to do to enter the Sweepstakes and become eligible to win all prizes: Return this entire Sweepstakes Book

(turn to next page, please)

CERTIFICATE
\$250,000.00 SWEEPSTAKES

This is to certify that
Mr. John B. Windle
along with
Miss Wilson and
Mr. Wilson,
is among the lucky people in
Kingsport, Tennessee
to receive a Lucky Number

OB 297023

You'll still be eligible to win any of the 32,175 prizes!

But remember, to be eligible for the thousands of exciting and valuable Sweepstakes prizes, you must return your Sweepstakes Book of Lucky Numbers before March 24, Mr. Windle.

The best way to be sure you don't miss the March 24 deadline is to mail back your entire Sweepstakes Book today.

Why not do it right now?

Sincerely,

Carolyn Davis

To be eligible for all prizes, mail back this entire Sweepstakes book to Reader's Digest, Pleasantville, New York 10570

READER'S DIGEST
NEW CAR CERTIFICATE

If person indicated is winner—(1) Confirm choice of car and color (2) Ship to address indicated

YR 555216

BQ 888516



YEAR	MAKE	MODEL	BODY TYPE	COLOR	VEHICLE IDENTIFICATION NO.
1970	FORD	MUSTANG	2DR HARDTOP	CANDY APPLE RED	92 04 10 17 22E
ROOF STYLE	WEIGHT	SOLD TO		SHIP TO	
"LANDAU" VINYL	2,763 LBS	READER'S DIGEST PLEASANTVILLE, N.Y.		MR. J. PREER 324 S. CHESTER AVE. PASADENA, CAL. 91106	
SHIP FROM	METHOD OF TRANSPORTATION				
DETROIT, MICH.	SHIP DIRECT				

MUSTANG GRANDE SPECIAL	*2,541	00	SELECT SHIFT CRUISE-O-MATIC	*200	85
COLUMN LOCKING STEERING WHEEL	NC		POWER FRONT DISC BRAKES	64	77
WIDE OVAL BELTED WSW TIRES	NC		HIGH-BACK BUCKET SEATS	NC	
"LANDAU" STYLE VINYL ROOF	NC		POWER STEERING	94	95
ROCKER PANEL MOULDINGS	NC		RADIO	61	40
RIM BLOW-DELUXE STRG WHEEL	NC		HANDLING SUSPENSION	30	64
ELECTRIC CLOCK	NC		TINTED GLASS	28	17
INT WOODGRAIN HIG LIGHTS	NC				
HOUNDSTOOTH TR. P.	NC		TOT.	*3,021	78

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondent represented, directly or by implication, that:

(a) 144,000 prizes worth \$999,000 in retail were to be awarded to individuals who held winning tickets in the January 1966 Reader's Digest \$999,000 Sweepstakes.

(b) 15,580 prizes worth \$150,000 at retail were to be awarded to individuals who held winning tickets in the Spring 1966 Reader's Digest \$150,000 Sweepstakes.

(c) 21,830 prizes worth \$300,000 at retail were to be awarded to individuals who held winning tickets in the Fall 1966 Reader's Digest \$300,000 Sweepstakes.

(d) 155,651 prizes worth \$999,000 at retail were to be awarded to individuals who held winning tickets in the January 1967 Reader's Digest \$999,000 Sweepstakes.

(e) 8,880 prizes worth \$150,000 at retail were to be awarded to individuals who held winning tickets in the Spring 1967 Reader's Digest \$150,000 Sweepstakes.

(f) 45,606 prizes worth \$300,000 at retail were to be awarded to individuals who held winning tickets in the Summer 1967 Reader's Digest \$300,000 Sweepstakes.

Complaint

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(g) 106,667 prizes worth \$999,000 at retail were to be awarded to individuals who held winning tickets in the January 1968 Reader's Digest \$999,000 Sweepstakes.

(h) 31,611 prizes worth \$150,000 at retail were to be awarded to individuals who held winning tickets in the Spring 1968 Reader's Digest \$150,000 Sweepstakes.

(i) 31,526 prizes worth \$300,000 at retail were to be awarded to individuals who held winning tickets in the Summer 1968 Reader's Digest \$300,000 Sweepstakes.

(j) 36,191 prizes worth \$299,000 at retail were to be awarded to individuals who held winning tickets in the Holiday 1968 Reader's Digest \$299,000 Sweepstakes.

(k) 101,751 prizes worth \$999,000 at retail were to be awarded to individuals who held winning tickets in the January 1969 Reader's Digest \$999,000 Sweepstakes.

(l) Individuals who submitted tickets bearing winning numbers in accordance with the rules had only to mail the ticket to "Reader's Digest" or to the Reuben H. Donnelley Corporation in order to claim and obtain a prize.

(m) Individuals who participated in respondent's "sweepstakes" had a reasonable opportunity to win the represented prizes.

(n) All of the represented prizes in respondent's "sweepstakes" had been purchased before or during the time the "sweepstakes" were in progress for individuals who held winning tickets.

(o) Tickets received by individuals are "lucky" number tickets" and as such are winning tickets which will entitle the recipient to a prize.

(p) Individuals who receive respondent's promotional materials have been "selected," "chosen," or are "one of the few people * * * to be invited" to participate in the respondent's "sweepstakes;" and that such selection is restricted to a significantly limited number of individuals.

(q) Simulated checks, "money" and other negotiable instruments and simulated "New Car Certificates" received by individuals from the respondent are valuable and can be cashed, redeemed, or exchanged for United States currency or for a new car.

(r) Individuals who participate in respondent's "sweepstakes" and agree to its negative option plan, in addition to being eligible to win the represented prizes, will receive a gift having some retail value.

PAR. 7. In truth and in fact:

(a) 144,000 prizes worth \$999,000 were not awarded to individuals

who participated in the "sweepstakes". Approximately 58,696 prizes having an approximate retail value of \$387,590 were in fact awarded.

(b) 15,580 prizes worth \$150,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 5,571 prizes having an approximate retail value of \$56,339 were in fact awarded.

(c) 21,830 prizes worth \$300,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 5,947 prizes having an approximate retail value of \$96,202 were in fact awarded.

(d) 155,651 prizes worth \$999,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 63,432 prizes having an approximate retail value of \$494,881 were in fact awarded.

(e) 8,880 prizes worth \$150,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 3,826 prizes having an approximate retail value of \$70,545 were in fact awarded.

(f) 45,606 prizes worth \$300,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 14,903 prizes having an approximate retail value of \$119,433 were in fact awarded.

(g) 106,667 prizes worth \$999,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 45,863 prizes having an approximate retail value of \$488,572 were in fact awarded.

(h) 31,611 prizes worth \$150,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 12,138 prizes having an approximate retail value of \$90,618 were in fact awarded.

(i) 31,526 prizes worth \$300,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 11,352 prizes having an approximate retail value of \$164,722 were in fact awarded.

(j) 36,191 prizes worth \$299,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 12,037 prizes having an approximate retail value of \$120,009 were in fact awarded.

(k) 101,751 prizes worth \$999,000 were not awarded to individuals who participated in the "sweepstakes". Approximately 40,517 prizes having an approximate retail value of \$441,789 were in fact awarded.

(1) Individuals who submitted tickets bearing winning numbers in accordance with the rules were asked to or had to do more than mail the ticket to "Reader's Digest" or to the Reuben H. Donnelley Corporation in order to claim and obtain a prize. Such individuals were asked to or had to comply with previously undisclosed terms and conditions. Individuals who mailed tickets bearing winning numbers which entitle them to third and fourth prizes are informed that they are to submit an affidavit before they can obtain a prize. Individuals who receive winning tickets which entitle them to first and second prizes are subjected to interviews by private detectives before they can obtain a prize.

(m) Individuals who participated in respondent's "sweepstakes" were not afforded a reasonable opportunity to win the represented prizes. For example, the January 1968 Reader's Digest \$999,000 Sweepstakes referred to in Paragraphs 6(g) and 7(g) hereof offered 106,667 prizes consisting in part of 50 first prizes, which were a choice of either luxury cars or \$5,000 cash; and 100 second prizes which were a choice of either sports cars or \$3,000 cash. Respondent distributed approximately 53,106,000 tickets to the public. Fifty-five tickets carried winning numbers which entitled the recipient to a first prize, and 110 carried winning numbers which entitled the recipient to a second prize. As a result, participants in the January 1968 Reader's Digest \$999,000 Sweepstakes had one chance in approximately 980,000 to win a first prize and one chance in approximately 480,000 to win a second prize.

(n) Most of the enumerated prizes were not purchased by the respondent either before or during the time its "sweepstakes" were in progress. Most of the prizes were purchased only after the termination of the "sweepstakes."

(o) Most of the tickets designated as "lucky" number tickets" are not winning tickets and do not entitle the recipient to a prize.

(p) Individuals who receive respondent's promotional materials have not been "selected," "chosen" nor are "one of the few people * * * to be invited" to participate in the respondent's "sweepstakes" and such selection is not restricted to a significantly limited number of individuals. Respondent distributes such advertising and promotional material to millions of individuals whose names and addresses have been obtained from a list of purchasers of its products or from subscribers to its magazine and from purchased mailing lists.

(q) Simulated checks, "money" and other negotiable instruments and simulated "New Car Certificates" received by individuals from the respondent are not valuable and cannot be cashed, redeemed, or exchanged by recipients for United States currency or for a new car.

(r) Individuals who participate in respondent's "sweepstakes" and agree to its negative option plan do not receive a gift having some retail value. Such individuals often receive a 24 page booklet containing anecdotes or similar material from previously published editions of *Reader's Digest* magazines.

PAR. 8. In connection with the promotion of its products, in many instances, respondent provides the same form for the use of individuals who wish to purchase the advertised products and enter its "sweepstakes" as for persons who wish merely to enter the "sweepstakes;" instructions in this regard on the form are unclear and con-

fusing, and cause the inadvertent purchase of the advertised products by persons who intended only to enter respondent's "sweepstakes."

PAR. 9. In the course and conduct of respondent's "sweepstakes," the respondent often uses the names and addresses of individuals who on previous occasions have purchased its products or have subscribed to *Reader's Digest* for promotional purposes.

At the time such individuals purchased these products or subscribed to *Reader's Digest* magazine, they were not informed that their names and addresses would be used for such purposes. Further, respondent has never asked for nor obtained the consent of these individuals to use their names and addresses.

Therefore, the aforesaid acts and practices were and are unfair, false, misleading and deceptive.

PAR. 10. In the course and conduct of its business and at all times mentioned herein, respondent has been in substantial competition in commerce with corporations, firms and individuals in the sale of magazines, books and other products.

PAR. 11. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and has induced many members of the public to participate in respondent's "sweepstakes" and into the purchase of substantial quantities of respondent's magazines, books and other products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

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

1. Respondent Reader's Digest Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at New Castle, 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.

ORDER

I

It is ordered, That Reader's Digest Association, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the preparation, advertising, sale, distribution or use of any "sweepstakes," "giveaways," contest, game, or any other similar promotional device in commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. (1) Failing to disclose clearly and conspicuously the total number of prizes which will be awarded, the nature of the prizes, the approximate value of each prize, and the approximate numerical odds of winning each such prize; *Provided, however*, That in a promotional device in which the odds cannot be determined with reasonable accuracy, respondent shall clearly and conspicuously disclose the approximate number of individuals to whom the

promotional device is being disseminated if such fact may be reasonably determined.

(2) Failing to award and distribute all prizes of the value and type represented.

(3) Representing directly or by implication that the number of participants has been significantly limited; or that any person has been especially selected to win a prize.

(4) Using the word "lucky" to describe any number, ticket, coupon, symbol, or other entry; or representing in any other manner directly or by implication that any number, ticket, coupon, symbol, or other entry confers or will confer an advantage upon the recipient that other recipients will not have or is more likely to win a prize than are others, or has some value that other entries do not have.

(5) Failing to disclose clearly and conspicuously all terms and conditions with which individuals who hold winning entries will be asked to or must comply in order to obtain a prize.

(6) Representing directly or by implication that prizes have been purchased or contracted for unless they have in fact been purchased or contracted for before the "sweepstakes," "give-aways," contest game or other promotional device begins.

(7) Failing to furnish to requesting individuals a complete list of the names of winners of all prizes having a retail value of \$15 or more, together with the city and state of and prize won by each.

(8) Failing to maintain for five years after the conclusion of the promotional device adequate records (a) which disclose the facts upon which any of the representations of the type described in Paragraphs 1-7 of this order are based, and (b) from which the validity of the representations of the type described in Paragraphs 1-7 of this order can be determined.

(9) Failing to furnish upon the request of the Federal Trade Commission:

(a) a complete list of the names and addresses of the winners of each prize, and an exact description of the prize, including its approximate value;

(b) a list of the winning numbers or symbols, if utilized, for each prize;

(c) the total number of coupons or other entries distributed;

(d) the total number of participants in the promotional device;

(e) the total number of prizes in each category or denomination which were made available; and

(f) the total number of prizes in each category or denomination which were awarded.

B. Engaging in the preparation, promotion, sale, distribution, or use of any "sweepstakes," "giveaways," contest, game, or other similar promotional device unless the following are disclosed clearly and conspicuously in the advertising and promotional material concerning such devices:

- (1) the total number of prizes to be awarded;
- (2) the exact nature of the prizes, their approximate value and the number of each;
- (3) all terms, conditions and obligations with which individuals will be asked to or must comply in order to obtain a prize;
- (4) the approximate numerical odds of winning each prize; *Provided, however,* That in a promotional device in which the odds cannot be determined with reasonable accuracy, respondent shall clearly and conspicuously disclose the approximate number of individuals to whom the promotional device is being disseminated if such fact may be reasonably determined.
- (5) the geographic area or states in which any such device is used.

II

It is ordered, That Reader's Digest Association, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the publication, advertising, offering for sale, sale, or distribution of magazines, books, or other products in commerce as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

- C. (1) Failing to obtain the express written or oral consent of individuals before their names are used for a promotional purpose in connection with a mailing to a third person.
- (2) Failing to disclose clearly and conspicuously the approximate value of any gift or other item furnished without charge, or at a nominal charge, or at a cost substantially below its retail value, to any purchaser or prospective purchaser of respondent's products.
- (3) Using or distributing simulated checks, currency, "new car certificates;" or using or distributing any confusingly simulated item of value.
- (4) Failing to disclose clearly and conspicuously on the order form, return reply coupon or similar material the way in which persons may participate in respondent's promotional devices without making or committing themselves to a purchase, or incurring

any other obligation, or agreeing to any other act or condition; and offering any product for sale when all of the terms and conditions of the offer are not explained fully and clearly and set forth conspicuously on any order form furnished with the offer to be used to order the product.

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

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

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 in which they have complied with this order: *Provided, however:* That with respect to those portions of Paragraphs I(A)(1) and (I)(B)(4) which cover the disclosure of odds, a second such report shall be filed within sixty (60) days after December 1, 1971, the date on which the portions of the aforesaid paragraphs which cover the disclosure of odds shall take effect.

IN THE MATTER OF

HELIX MARKETING CORPORATION, ET AL.

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

*Docket C-2076. Complaint, Nov. 3, 1971—Decision, Nov. 3, 1971**

Consent order requiring a New York City seller of articles of wearing apparel and nine affiliated firms in other cities who sell their goods to individuals, some 3000 'personal shoppers,' who in turn sell to the consuming public to cease misrepresenting the amount of money respondents' customers can earn, failing to disclose the liability of the customer for the goods in his possession, making threats of legal action against delinquent debtors through the use of spurious documents and by phone calls and letters, and failing to maintain adequate records documenting any matter covered in this order.

*Spanish translation of decision and order follows English version of order.