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

It is further ordered, That 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

FABBIS, INC., ET AL., DOING BUSINESS AS ROCHESTER PLUMBING AND HEATING CONTRACTORS

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

Docket 8833. Complaint, Jan. 18, 1971—Decision Oct. 30, 1972.

Order requiring a Rochester, New York, firm engaged in the sale of plumbing and heating equipment and installation services to the public, among other things to cease violating the Truth in Lending Act by failing to provide each customer with a notice of the right to rescind prior to consummation of the transaction; making any physical changes in customer's property or performing any work on such property before expiration of the rescission period; and failing to make any other necessary disclosures as required by Regulation Z of the 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 Fabbis, Inc., a corporation, doing business as Rochester Plumbing and Heating Contractors, and Richard J. Fabrizi and James J. Rebis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and 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 Fabbis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business

located at 123 Barberry Terrace, Rochester, New York. It is doing business under the name of Rochester Plumbing and Heating Contractors.

Respondents Richard J. Fabrizi and James J. Rebis are officers of said corporation. They formulate, direct and control the policies, acts and practices of said 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 sale of plumbing and heating equipment and installation services to the public.

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

PAR. 4. Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with their arranging for consumer credit, have caused, and are causing, customers to execute retail installment contracts, herein referred to as "the contract," which results or may result in a security interest being retained or acquired in real property which is used or is expected to be used as the principal residence of the customer. The customers thereby have the right to rescind such transactions, as provided in Section 226.9(a) of Regulation Z.

PAR. 5. In connection with the consumer credit transactions set forth in Paragraphs Three and Four hereof, respondents prepare documents containing consumer credit cost disclosures required by Section 226.8 of Regulation Z and obtain from customers written acknowledgment of receipt of these disclosures, but in some instances nevertheless fail to provide the customer with a copy of such disclosures, as required by Section 226.8(a) of Regulation Z.

PAR. 6. In connection with the consumer credit transactions set forth in Paragraphs Three and Four hereof, respondents complete notices of the right of rescission in the form required by Section 226.9(b) of Regulation Z and obtain from customers written acknowledgment of receipt of these notices, but in some instances nevertheless fail to provide each customer who has the right to rescind the transaction with two copies of such notices, as required by Sections 226.9(b) and (f) of Regulation Z. In many such instances, respondents fail to provide the customer with any copies of the required notice.

PAR. 7. Having entered into the consumer credit transactions set forth in Paragraphs Three and Four hereof, respondents in some instances fail to delay making any physical changes in the property of the customer and fail to delay performing any work or service for the customer until the three day rescission period provided for in Section 226.9(a) of Regulation Z has expired, in violation of Section 226.9(c) of Regulation Z.

PAR. 8. Pursuant to Section 103(k) of the Truth in Lending Act, respondents' aforesaid failures to comply with the requirements of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents thereby have violated the Federal Trade Commission Act.

Mr. James M. Katz and *Mr. Myer S. Tulkoff* supporting the complaint.

Mr. Percival D. Oviatt, Jr., and *Mr. Samuel P. Merlo*, of *Woods, Oviatt, Gilman, Sturman & Clarke*, Rochester, New York for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

JUNE 16, 1971

PRELIMINARY STATEMENT

Respondents, a corporation, and two individual officers, are charged with violating the Truth in Lending Act (15 U.S.C. 1601), as implemented by Federal Reserve Regulation Z (12 C.F.R. § 226). The complaint was issued on January 18, 1971, against Fabbis, Inc., doing business as Rochester Plumbing and Heating Contractors and its officers, Richard J. Fabrizi and James J. Rebis, individually and as officers of the corporation.

It charged that:

1. Respondents regularly arrange for the extension of consumer credit to their customers, and have failed to provide them with a duplicate copy of consumer credit cost disclosures, to retain, as required by Section 226.8(a) of Regulation Z.

2. In rescindable transactions, respondents have failed to provide their customers with requisite copies of notices of the right of rescission, as required by Section 226.9(b) of Regulation Z.

3. In rescindable transactions, respondents have failed to delay during the three day rescission period, making any physical changes in the customers' property, commencement of the work or deliveries to customers' residences for the duration of the rescission period, in violation of Section 226.9(c) of Regulation Z.

Respondents' Answer admitted the following facts:

1. Respondent Fabbis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 123 Barberry Terrace, Rochester, New York. It is doing business under the name of Rochester Plumbing and Heating Contractors.

2. Respondents Richard J. Fabrizi and James J. Rebis are officers of said corporation. Their address is the same as that of the corporate respondent. Respondents are now, and for some time last past have been, engaged in the sale of plumbing and heating equipment and installation services to the public.

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

Respondents' Answer either flatly denied, or denied knowledge of, all of the other allegations in the complaint.

A prehearing conference was held in Washington, D.C., on March 2, 1971. Evidentiary hearings were held in Rochester, New York commencing on March 18, 1971, and were concluded on March 22, 1971.

The following abbreviations will sometimes be used herein making references to the record: Transcript—Tr.; Commission Exhibits—CX; Respondents' Exhibits—RX; Complaint Counsels' proposed findings of fact—CPF; [1] Respondents' proposed findings of fact—RPF; Complaint—C; Answer—A.

On the basis of the entire record [2] the hearing examiner makes the following findings, conclusions and order. All proposed findings not found expressly or in substance are denied as erroneous, irrelevant or immaterial.

1. Respondent Fabbis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 123 Barberry Terrace, Rochester, New York. It is doing business under

[1] References to proposed findings of the parties include the citation of authority or reasons submitted therewith on the accuracy of which the hearing examiner has relied in light of the requirements of the ninety (90) day rule.

[2] In accordance with the Commission rules reference is made to the principal supporting items of evidence. The citation of particular references in no way indicates that the entire record has not been considered. The findings are based on the record as a whole and not only on the citations to the exhibits or transcript pages specifically noted.

the name of Rochester Plumbing and Heating Contractors (Tr. 44; C., A.).

2. Respondents are now, and for some time last past, have been engaged in the sale of plumbing and heating equipment and installation services to the public (Tr. 44; C., A.). There was no proof that respondents have engaged in interstate commerce (Tr. 98–101, 411, 423–425).

3. In the ordinary course and conduct of their business as aforesaid, respondent corporation under the direction and control of the individual respondents has arranged and for some time last past, regularly has arranged, for the extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System (C., A.; Tr. 85–88, 95, 443–444, 528).

A number of customer witnesses testified expressly that respondent corporation arranged for the extension of consumer credit to them: (Tr. 61–62; Tr. 110; Tr. 137). Commission Exhibits 25A–59G (Tr. 390) are the bank records in evidence of thirty-six additional instances in which respondent corporation arranged credit for customers.

4. Subsequent to July 1, 1969, respondent corporation in the ordinary course and conduct of its business and in connection with arranging for consumer credit, has caused, and is causing, customers to execute retail installment contracts to finance home improvements on real property that is used as the principal residence of the customer.

A number of customer witnesses testified that respondent corporation performed work on a structure which was used as a home and that was the principal residence of the witness and his or her spouse (Tr. 56–57; 105–106; 132; 166; 182; 236–237; 253; 263–264; 280; 315; 335–336; 357).

5. Respondent corporation employed workmen to install the plumbing and heating equipment it sold to its customers (Tr. 80).

6. No waivers of workmen's liens were presented at the hearing (CPF 6), however, the corporate respondent specifically waived any security interest or right of lien in connection with each transaction (RPF 5).

7. In consumer credit transactions respondents have failed to render consumer credit cost disclosures to their customers prior to consummation of their transactions.

A number of customer witnesses who testified at the hearing indicated that he or she discussed the method of payment with respondents' salesman before or at the time the sales agreement was executed

and that it was understood that respondents would arrange for the extension of credit to them (Tr. 61; 110; 137; 173; 189–190; 212–213; 242; 256–257; 282–283; 317; 340–342; 361–362).

Mr. Apostalou, one of the respondents' salesmen, testified that the first thing discussed with a customer who indicated an intent to make a purchase was the method by which payment would be made (Tr. 478–479). Mr. Rease testified that the company wants to know that it is going to be paid so that the method of payment is discussed with the customer (Tr. 432, 440).

Mr. Apostalou testified that he would contact Mr. Rease after a contract was signed in order to have him come out to a customer's home and seek execution of the bank papers (Tr. 478).

Mr. Rease's testimony indicated that by the time he arrived at the home of a customer, to arrange for the extension of consumer credit, the sales contract would already be signed (Tr. 432).

Thus, the consumer witnesses would not receive the consumer credit cost disclosures prior to execution of the sales proposal or of the retail installment contract. (Tr. 62; 108–112; 116; 135–137; 168–169; 186–189; 212–214; 241–243; 258; 282–284; 317–318; 357–361).

8. In connection with consumer credit transactions respondents obtained from customers written acknowledgment of receipt of documents containing spaces for consumer credit cost disclosures, but in some instances, nevertheless, failed to provide customers with a completed copy of such disclosures.

Customer witnesses presented by counsel supporting the complaint testified that respondents failed to provide them with a fully completed retainable copy of consumer credit cost disclosures. The documents in evidence, nevertheless, reveal that each customer signed an acknowledgment of receipt of the disclosures. (Tr. 116–117, CX 10–A; Tr. 137, CX 12–A; Tr. 169, CX 8–B; Tr. 187–189, CX 11–A; Tr. 214–216, CX 14–B; Tr. 241, CX 9–C; Tr. 258–260, CX 17–C; Tr. 285–286, 288 CX 21–B; Tr. 323, CX 15–B; Tr. 345–346, CX 24–A; Tr. 360, CX 13–B).

9. In connection with consumer credit transactions, respondents obtained from customers written acknowledgment of receipt of notices of right of rescission, but failed, in fact, to provide each such customer who it is claimed had the right to rescind with any copies of such notices.

Customer witnesses testified that they did not receive a copy of these notices of right of rescission to retain. However, the documents reveal that receipt thereof was acknowledged (e.g. Tr. 170; 116–117; CX 10–C, 10–D; Tr. 137, 148, CX 12–C, D; Tr. 216; Tr. 258, CX 17–C, D; Tr. 288; Tr. 323, CX 15–D, E; Tr. 345–346, CX 24–C, D; Tr. 360, CX 13–D, E).

10. Having entered into credit transactions with their customers, respondents failed to delay making any physical changes in their customers' property, performing any work or making any deliveries to the residences of such customers, for the duration of a three-day period. A number of customer witnesses testified that the respondents commenced performance of the work during the first three days after the contract was signed (Tr. 62, 67; 111; 138–139; 172; 189; 217; 245; 262; 291; 317; 348; 362).

11. In such credit transactions, respondents did not obtain valid waivers of the right of rescission from such customers. A number of customer witnesses testified that there was no emergency situation requiring that the work upon their homes be performed before expiration of the three-day period (Tr. 117; 172; 208).

Although respondents' counsel elicited testimony from several of Commission witnesses indicating that they believed they had executed waivers of their right of rescission (Tr. 171; 204–205) the witnesses testified that there was no bona fide emergency situation requiring immediate performance of the work (Tr. 172; 190).

A witness from one of the banking institutions testified that he had examined the records of transactions arranged with his bank by respondents during the period of July 1, 1969, through December 30, 1969, and was unable to find any waivers of the right of rescission in the bank files for the period of July 1, 1969, through December 1969 (Tr. 387). George Rease, respondents' general manager, testified on cross-examination that, during the period covered by the Commission's investigation no valid waivers of the right of rescission were obtained (Tr. 446–447). Respondent Rebis confirmed that some waivers that had been obtained were deemed inadequate by counsel and were thrown away upon counsel's advice (Tr. 540–541).

12. Shortly before the hearings in this matter were scheduled, respondents' attorneys were supplied with a list of complaint counsel's prospective witnesses. Thereafter, Mr. Rebis, one of the individual respondents, contacted a number of prospective witnesses and sought to obtain handwritten statements (Tr. 537–539). Mr. Larmon, the respondents' customer relations man, accompanied Mr. Rebis to the homes of the prospective Federal Trade Commission witnesses. He made notes, then asked that witness copy, in his or her own handwriting, a statement embodying what was contained in the notes (Tr. 495–506).

A number of the Commission's witnesses testified that they executed such statements for respondents. However, each one also testified under oath, contrary to the written statement, at the hearing and in-

dicated that the contradictory written statements were in error (Tr. 141; 146–148; 202–203; 231–232; 306–308; CPF 12).

13. During the hearing, respondents also produced certain questionnaires signed by customer witnesses, entitled "Help Us Maintain Good Business," and offered them into evidence to contradict the sworn testimony of these witnesses. Because of the manner in which these documents were procured and because of the concealment of their true purpose by respondents' employees, the hearing examiner accepts the sworn statements given at the hearing.

The questionnaire was prepared as a result of the Commission's investigation (Tr. 532–533). Examination of these questionnaire forms reveals that part of Question 2 relate to allegations of violations which were subsequently brought against the company by the Commission (RX 7, 9, 11, 13, 15, 16).

Representatives of the respondents called upon every credit customer with whom the company dealt during the period covered by the investigation (Tr. 550) and, in some instances, the salesman who sold the equipment to the customers interviewed was the same person who came with the questionnaire (Tr. 552).

The method by which these questionnaires were completed was confusing and lent itself to erroneous answers being obtained. The company's representative read each question orally to the respective signer (Tr. 468) and marked or checked off the answers himself (Tr. 467). Although Question 2 of the questionnaire referred to the respective customer's receipt or non-receipt of certain documents, the questioner did not have any samples of those documents available for the customer's examination (Tr. 488). The company's representative asked to see the documents that the customers had in their possession; some had them and others did not (Tr. 488). The customers were not informed as to the true purpose of the questionnaire. Although, one of the salesmen who went around with the questionnaires explained that they were merely designed to see if the company's customers received required papers and knew their rights (Tr. 482). Mr. Larmon, the customer relations man of the company, testified that he himself did not know the true purpose of the questionnaire (Tr. 505–508). Mr. Kramer, another company salesman, testified that it was merely to help the company maintain good business (Tr. 476).

Mrs. Szczepanski, one of the customer witnesses, testified that she believed the questionnaire which she executed (RX 4) was a public relations device (Tr. 178). She also stated that she was not told the significance of the document or the reason for its execution (Tr. 179).

Mrs. Simon testified that she did not pay much attention to the

questionnaire before signing (Tr. 199). She did not even look at it (Tr. 200).

Mrs. Grodner testified that she only signed the questionnaire because the company's representative, who came with it, promised that she would thereafter be furnished with copies of everything which she had signed at the time the transaction was entered into (Tr. 250).

Mr. Crews testified that the answers contained in the boxes in the questionnaire were not true and never had been true (Tr. 272–274).

Mr. Zimmer testified that the respondents' representatives came around with the questionnaire and indicated that the company had found a number of incomplete papers behind a desk and that they wanted to be sure he had received all documents which he was entitled to and that it was to be used merely for public relation purposes (Tr. 302, 305). He also stated that he did not read the statement (Tr. 304).

Mr. Dunbar testified that he did not read the statement and that the answers were marked by the company's representative (Tr. 355).

The statements contained in the questionnaire are unclear and capable of misinterpretation. The testimony of Mr. Henning indicates the possibility of misinterpretation because of the omission of dates (Tr. 75–76).

Mr. Wiemer testified that he did not understand the questions asked in the questionnaire (Tr. 119). Mrs. Szczepanski stated that she did not understand the questions and only later realized that what she had signed was not the truth (Tr. 179). Mrs. McKnight testified that her answers to the questionnaire were erroneous (Tr. 229–231).

14. Respondents Richard J. Fabrizi and James J. Rebis are officers of said corporation. Their address is the same as that of the corporate respondent. (Admitted by Respondents' Answer, and Amended Answer to Paragraph One of the Complaint, and Stipulation (Tr. 44).)

15. Respondents Richard J. Fabrizi and James J. Rebis are responsible for the acts and practices of Fabbis, Inc., with regard to the requirements of the Truth in Lending Act.

Mr. Fabrizi testified that he and Mr. Rebis are the president and vice president, respectively, of the corporate respondent, and have been such since the firm's incorporation in 1963 (Tr. 84–86). They are its chief operating officers, being the company's general manager (Tr. 78) and its sales manager (Tr. 85). During the entire corporate existence the individual respondents, Messrs. Fabrizi and Rebis, have been the company's sole stockholders, sharing the stock equally (Tr. 84, 86, 411). In essence, the company is a continuation of the informal partnership between these individuals which was begun several years

prior to formation of the present corporation (Stipulation, Tr. 44). The very name of the corporation, "Fabbis," was derived from a combination of the first part of Mr. Fabrizi's name and the last part of Mr. Rebis' name (Tr. 84).

The individual respondents testified that they were aware of what Regulation Z required of them. Mr. Fabrizi stated that the lending institutions with which the respondents dealt informed him and Mr. Rebis about these requirements (Tr. 90). Marine Midland's sales representative, Frank Griffin, testified that he called upon the individual respondents many times regarding Truth in Lending matters and spoke with them personally (Tr. 377–379). Additionally, the individual respondents had conferences with their attorney relating to compliance with Truth in Lending (Tr. 415). Mr. Rebis testified that he and Mr. Fabrizi knew what their company was required to do to comply with the law (Tr. 528).

Mr. Fabrizi testified that he or Mr. Rebis telephoned one out of ten customers when the law first became effective to ascertain whether they received their copies of the bank papers (Tr. 95).

Mr. Rebis hired all the company salesmen, was responsible for assigning them their duties and supervising their activities (Tr. 85–87). Together, the individual respondents hired George Rease (Tr. 86) whose duty it was to make consumer credit cost disclosures and to secure execution of retail installment obligations on the finance paper of the various local banks (Tr. 94). Mr. Rease was, and is, responsible to them for his activities (Tr. 87). Mr. Rease testified that he has been employed by the company for 7 years (Tr. 427) and that he sees Messrs. Fabrizi and Rebis every day that they are in town and often discusses individual consumer credit transactions with them (Tr. 443–444). He testified that Mr. Fabrizi was shown every paper relating to every transaction of the company during the period in question (Tr. 444).

REASONS FOR DECISION

The threshold question in this matter, *i.e.*, the power of Congress to legislate on credit questions regardless of their interstate character has been resolved by the Supreme Court's action on another Title of the Truth in Lending legislation.[3] Since the jurisdiction delegated to the Commission expressly deals with the the question of commerce and states that the Commission may act "irrespective of whether the person is engaged in commerce * * *."[4] The question of jurisdiction requires no further comment.

[3] *Perez* v. *United States* 39 LW 4487 [402 U.S. 146], April 26, 1971.
[4] 15 U.S.C. 1601.

The next serious question involves the credibility of the consumer witnesses. Respondents take the position that because the witnesses, prior to the trial, signed statements for the respondents that were contradictory to their testimony (some both in the form of questionnaires and also in the form of written statements and others in the form of questionnaires only) their testimony should be given no weight. We disagree.

The questionnaires were presented as a form of public relations device. "Help Us Maintain Good Business" was the title. These questionnaires were made out after the investigation by the Federal Trade Commission was commenced, and designed, not by counsel who would have had a responsibility to the Commission to insure that they were properly taken, but, by employees of the corporate respondent who were wholly untrained and who were clearly interested in securing the "right" answers. The written statements were not secured until after the complaint was issued and the list of witnesses submitted to counsel. These too were taken, not by counsel, but by one of the respondents accompanied by another employee. One witness was told that she could avoid coming to the hearing if she signed (Tr. 202–203). Under the circumstances, the weight of the combined testimony under oath that the questionnaires and statements were false makes it much more probable than not that the respondents had failed to abide by the Truth in Lending Act and regulations. This is particularly true when the recollection of the respondents' employees was vague concerning their instructions in securing the questionnaires and concerning the events which gave rise to the requirements for notice of rescission and delay of commencement of the work. Moreover, several of respondents' witnesses made it clear that the question of how the financing was to be done was discussed before the sales proposal was signed and at that time the prerequisites of disclosure were not complied with so that the customers had no opportunity to compare financing costs. The contention that the transactions started out as cash transactions and only later credit was sought is inherently incredible, despite the form of the proposal.[5] The witnesses made it very apparent in their testimony that they they could not afford the large expenditures required and had to secure financing. We turn next to the far more serious question of the waiver of lien by respondents.

Respondents contend and the papers filed establish that they waived any lien they would secure on the property. Thus, they claim the transaction does not create any security interest and accordingly it is not

[5] We need therefore not consider the claim by respondents that they had secured an interpretation from the Chief of the New York Office of the Federal Trade Commission that in the case of financing, not discussed at the time of the proposal but later requested, the provisions of the act and regulation have no application.

rescindable. Respondents further claim that an interpretation to this effect was secured from the Chief of the New York Office of the Commission.[6]

Complaint counsel take the position that even though the waiver might be effective to prevent respondents from securing a lien on the property for themselves, the New York lien law creates a lien in favor of their workmen and their material supplies in the event that the wages or material charges are not paid [7] and it was the purpose of the Truth in Lending legislation to require that all liens be considered even though not under the control of the lender. This position, it seems to the undersigned is wholly unwarranted. It would make it impossible ever to secure a waiver because, particularly in the case of union labor where the union may dispatch the employees directly to the job, the employer would not even know who they were at the time the transaction was entered into and could not secure waivers from them. There is moreover, here, no claim that the materialmen were unpaid or that the workmen did not receive their wages. To the contrary, the materials were paid for in the normal course in advance of their delivery to the job. Unless the law and regulations are to be construed to require a waiting period and a right to rescission in all cases—which is clearly not true since a waiver by the customer in cases of emergency is provided for [8]—there cannot be a requirement that the possible liens of workmen and materialmen must be waived also. By reason of the waivers of the banks and of the respondents, it seems to me that this phase of the charge must be dismissed.

This is not, however, dispositive of the proceeding. Paragraph Five of the complaint contains the following charge:

In connection with the consumer credit transactions set forth in Paragraphs Three and Four [9] hereof, respondents prepare documents containing consumer

[6] Since the person by whom the interpretation was allegedly given was not called to deny it, we must assume that the claim was correct. While as a matter of law such interpretation may carry little weight, from the standpoint of the public interest in issuing an order in this matter it may be very significant.

[7] McKinneys "Lien Law" Volume Article 1, 1–3.

[8] I have not discussed the waiver by the customer of the waiting period because respondents admit that the waivers secured were inadequate.

[9] The paragraphs referred to provide as follows:

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

Paragraph Four: Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with their arranging for consumer credit, have caused, and are causing, customers to execute retail installment contracts, herein referred to as "the contract," which results or may result in a security interest being retained or acquired in real property which is used or is expected to be used as the principal residence of the customer. The customers thereby have the right to rescind such transactions, as provided in Section 226.9(a) of Regulation Z.

credit cost disclosures required by Section 226.8 of Regulation Z and obtain from customers written acknowledgment of receipt of these disclosures, but in some instances nevertheless fail to provide the customer with a copy of such disclosures, as required by Section 226.8(a) of Regulation Z.

This it seems to the hearing examiner includes a charge that the customer is not provided with the cost disclosures prior to the time he or she signs the sales proposal. This is true because Section 226.8 (a) of Regulation Z specifically provides:

(a) General rule. Any creditor when extending credit other than open end credit shall, in accordance with § 226.6 and to the extent applicable, make the disclosures required by this section with respect to any transaction consummated on or after July 1, 1969. Except as provided in paragraphs (g) and (h) of this section[10] *such disclosures shall be made before the transaction is consummated.* At the time disclosures are made, the creditor shall furnish the customer with a duplicate of the instrument or a statement by which the required disclosures are made and on which the creditor is identified. All of the disclosures shall be made together on either

(1) 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

(2) One side of a separate statement which identifies the transaction. (Emphasis and Footnote added)

Admittedly, it was the practice of the salesmen prior to November or early December 1969 when Mr. Rease was in sole charge of handling the "bank papers" to secure the commitment in the sales proposal and then to call Mr. Rease to come over to the customer's house and have the

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[10] The subsections referred to have no applicability. They read as follows:

(g) Orders by mail or telephone. If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or written communication without personal solicitation, the disclosures required under this section may be made any time not later than the date the first payment is due, provided:

(1) In the case of credit sales, the cash price, the downpayment, the finance charge, the deferred payment price, the annual percentage rate, and the number, frequency, and amount of payments are set forth in or are determinable from the creditor's catalog or other printed material distributed to the public; or

(2) In the case of loans or other extensions of credit, the amount of the loan, the finance charge, the total scheduled payments, the number, frequency, and amount of payments, and the annual percentage rate for representative amounts or ranges of credit are set forth in or are determinable from the creditor's printed material distributed to the public, in the contract of loan, or in other printed material delivered or made available to the customer.

(h) Series of sales. If a credit sale is one of a series of transactions made pursuant to an agreement providing for the addition of the amount financed plus the finance charge for the current sale to an existing outstanding balance, then the disclosures required under this section for the current sale may be made at any time not later than the date the first payment for that sale is due, provided:

(1) The customer has approved in writing both the annual percentage rate or rates and the method of treating any unearned finance charge on an existing outstanding balance in computing the finance charge or charges; and

(2) The creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sale price including any finance charges attributable thereto. For the purposes of this subparagraph, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

other papers signed. Thus the customers did not at the time they agreed to the purchase on time have any disclosure of what the cost of financing would be. So the expressed purpose of the Act "* * * that the customer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit" (15 U.S.C. § 1661) was frustrated.

Accordingly, the following conclusions and order should be entered:

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over respondents and over the subject matter of this proceeding. Under the law it is not necessary that the transaction be in interstate commerce.

2. The individual respondents, by reason of their ownership of the corporate respondent, their direction and control over its operations, and the history of the corporation as successor to a partnership involving the individual respondents and the ease with which the corporation could be eliminated, should be held individually responsible if the corporation is held responsible.

3. The corporation and the banks validly waived any security interest they might have over the residences of respondents' customers and thus no right of rescission arose.

Securing a waiver from others who might conceivably secure a lien, in the event of malfeasance of respondents in failing to pay their obligations to wage earners and materialmen, is not required by the Act.

4. The respondents systematically failed to afford to the prospective customers the disclosure of the credit costs before the sales order was executed and a downpayment made. Thus the requirements of Section 226.8(a) of Regulation Z were not met and the purpose of the Act was not carried out.

5. The following order should be issued:

ORDER

It is ordered, That respondents Fabbis, Inc., a corporation, doing business as Rochester Plumbing and Heating Contractors or under any other name, and its officers, and Richard J. Fabrizi and James J. Rebis, 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 consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to provide any customer prior to consummation of the transaction with a copy, which the customer may retain, of all disclosures required to be made by Section 226.8 of Regulation Z, in the form and manner prescribed therein, as required by Section 226.8(a) of Regulation Z.

2. Failing, in any consumer credit transaction or advertisement, to make all disclosures required by Sections 226.6, 226.8, 226.9 and 226.10 of Regulation Z, in the manner, form and amount prescribed therein.

It is further ordered, That a copy of this order to cease and desist be delivered to all present and future personnel of respondents engaged in the consummation of any credit sale, and that respondents secure from each such person a signed statement acknowledging receipt of said order.

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

Concurring Statement of Chairman Kirkpatrick

I have serious reservations about the validity of Sections 226.9(a) and 226.2(z) of Regulation Z insofar as they define nonconsensual mechanics' liens arising by operation of law to be security interests which trigger the Act's rescission provisions. I would not have interpreted Section 125(a) of the Act in this way, and I believe the Board may have exceeded its authority in so doing.

I am reluctant, however, to take a position which, if adopted by the majority, would result in an unreviewable decision to terminate most governmental enforcement in this regard. The opportunity for appellate review is foreclosed, of course, when the Commission decides an issue in the favor of the respondent. That factor alone would not ordinarily influence my judgment. In this particular instance, however, I believe that for a variety of reasons the Commission's decision should be subject to the scrutiny of full judicial review.

The validity of the regulations here at issue presents a close question—one which involves a difficult matter of statutory interpretation. As the majority notes, courts in two jurisdictions have disagreed on whether or not Section 125(a) of the statute applies in the factual situation here present. The statute itself provides little guidance in determining the precise limits of the Board's discretion in

interpreting the statute. According to Section 105, regulations are valid if, "*in the judgment of the Board* (they) are necessary or proper to effectuate the purposes of (the statute) to prevent circumvention or evasion thereof or to facilitate compliance therewith." (emphasis added). Thus, the law gives the Board a broad mandate for the exercise and application of its expertise, and the outer boundaries of its discretion have not to date been satisfactorily defined.

To its task of interpreting the statute, the Board brings considerable knowledge acquired from its long involvement with monetary and credit matters, as well as from public comments which it receives on all regulations before they are promulgated in final form. We have little indication on this record of the factors which in the Board's judgment made necessary and proper the interpretation of the statute here challenged.

In these circumstances and in a case which does not involve a clear abuse of discretion, I am not inclined to rule that the regulations of a Congressionally empowered expert body operating under so broad a mandate are invalid.

Accordingly, I concur in the disposition of this case.

Opinion of the Commission

By MacIntyre, *Commissioner:*

This matter is before the Commission upon the appeal of complaint counsel from the initial decision of the administrative law judge filed June 16, 1971. In this decision the administrative law judge held that some, but not all, of the charges of the complaint were sustained, and he entered an order to cease and desist as to those practices he found to be unlawful. Complaint counsel filed an appeal, respondents have answered such appeal, and complaint counsel in turn have filed a reply. Oral argument on the appeal was held January 6, 1972.

The complaint charges the respondents with violations of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*) (referred to hereafter as the Act) and Regulation Z (12 C.F.R. § 226), the implementing regulation, as well as the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*). The charges are, in general, that respondents, in connection with the extension of consumer credit, in transactions covered by the Act, have failed, as required by Regulation Z, to provide customers with a copy of consumer credit cost disclosures; have failed, as required by Regulation Z, to provide their customers with copies of a notice of the right of rescission; and have failed, as required by Regulation Z, to delay, during the three-day rescission period, the making

of physical changes in the customers' property and the commencement of work or service.

The respondents are Fabbis, Inc., a New York corporation doing business as Rochester Plumbing and Heating Contractors, as well as the individuals Robert J. Fabrizi and James J. Rebis, named individually and as officers of the named corporation. The respondents, at the time of the hearing and prior thereto, engaged in the sale of plumbing and heating equipment and installation services to the public.

The administrative law judge, in his initial decision, held that respondents systemmatically failed to afford prospective customers the disclosure of credit costs before the sales order was executed and a downpayment made; thus, that the requirements of Section 226.8(a) of Regulation Z were not met and the purpose of the Act not carried out. He included in his initial decision an order to prohibit such practices. The administrative law judge failed to find a violation of law, however, insofar as the respondents were charged with failing to provide their customers with notices of the right of rescission as required by Section 226.9(b) of Regulation Z and with the failure to delay performance during the three-day rescission period required by Section 226.9(c) of Regulation Z. On the two latter charges the administrative law judge agreed with respondents' contention that since the corporation and the banks providing the loan money had waived any security interest they might have in the property there was thus no right of rescission for the customer. He rejected complaint counsel's position that liens created by operation of law, such as workmen's and materialmen's liens, constituted a security interest under the Act and made the transactions rescindable.

Complaint counsel appeals from the part of the initial decision in which the administrative law judge failed to find violations of law as charged in the complaint, contending that he was in error in not holding respondents' credit transactions to be rescindable and therefore subject to the requirements of the Act and Regulation Z covering the customer's right of rescission. Complaint counsel requests that the order prohibit for the future all the violations charged, and in addition he seeks a provision in the order which would require respondents to afford their customers in prior transactions the right to rescind such transactions.

Except for a question on the scope of the order, there is only one issue of substance raised by complaint counsel's appeal. It is whether or not respondents' credit transactions are rescindable transactions, and therefore subject to Section 125 of the Act and to Section 226.9 of Regulation Z providing a right of rescission, where respondent cor-

poration and the banks making the loans acted to waive all their security interest but where mechanic's liens or liens created by operation of law in favor of workmen and others were not waived.[1]

Since July 1, 1969 (the effective date of Regulation Z), respondents, in connection with the arranging for consumer credit caused customers to execute retail installment contracts to finance home improvements on real property used as customers' principal residences (finding 4, page 4 [p. 682, herein], initial decision). The record is clear, and the administrative law judge found, that respondents failed to supply copies of the required notice to such customers of their right of rescission and that they further failed to delay the making of physical changes in the customers' properties and the performing of work on such residences during the three-day rescission period (findings 9 and 10, pages 5 and 6 [pp. 683 and 684, herein] of the initial decision).

Although respondents claim that respondent corporation and the lending banks waived all of their security interest in the transactions involved, they made no such claim for the liens created by operation of state law covering subcontractors, workmen and others. The administrative law judge specifically found that no waivers of workmen's liens were presented at the hearing (finding 6, page 4 [p. 682, herein], initial decision). Respondents, who have the burden of going forward with the evidence on this point since they seek to establish that they come within an exception to the general requirements of the statute, have made no showing of a waiver of workmen's liens or of all other liens created by operation of law. Furthermore, the credit

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[1] Section 125(a) of the Act reads in part:

"Except as otherwise provided in this section [exceptions which are not here applicable], in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this chapter, whichever is later, by notifying the creditor, in accordance with the regulations of the Board, of his intention to do so. * * *"

Section 226.9 of Regulation Z implements this section of the Act and reads in part:

"* * * Except as otherwise provided in this section, in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day following the date of consummation of that transaction or the date of delivery of the disclosures required under this section and all other material disclosures required under this Part, whichever is later, by notifying the creditor by mail, telegram, or other writing of his intention to do so. * * *"

Other parts of Section 226.9 contain requirements relating to notice for opportunity to rescind, delay of performance and other matters.

forms used by the respondent corporation suggest that mechanic's liens of subcontractors, laborers and others were not waived.[2]

There is no dispute that the law of the State of New York, the jurisdiction in which the transactions presented herein took place, grants mechanic's liens on customers' homes to subcontractors, laborers and others for work performed (N.Y. Lien Law, § 3 (McKinney 1966)). Respondent corporation employed workmen to install the plumbing and heating equipment it sold to customers (finding 5, page 4 [p. 682, herein], in initial decision). Thus, it appears that if the mechanic's liens or the right to such liens granted to respondents' workmen by operation of law are a security interest within the meaning of that term in the Act, respondents are in violation of the Act and Regulation Z.

It is our view that a security interest under the Act does include mechanic's liens and other liens created by operation of law. In this view we follow the holding and the reasoning of the Circuit Court of the United States Court of Appeals for the District of Columbia, which held to that effect in *Gardner and North Roofing Siding Corporation* v. *Board of Governors of the Federal Reserve Board*, 464 F. 2d 838 (D.C. Cir. 1972); 4 CCH Consumer Credit Guide § 99159.[3] At issue in the *Gardner* case was the validity of the Board's regulations, which had the effect of requiring the seller to notify a customer of his right to rescind when there is a probability that a lien on his house will arise by operation of law even though he has not executed an indenture on the property. The statute (Section 125(a)) provides for the right of rescission in a consumer credit transaction "in which a security interest is retained or acquired" in customers' residences, whereas the Board's regulation reads in pertinent part: "in which a

[2] A section of respondents' "Retail Installment Obligation" used in the transactions shown in the record reads as follows:

"3. SECURITY INTERESTS: Represents that, except as a. provision is made in 'D-2' of this Obligation for the execution and delivery of a Collateral Mortgage on the above 'Property to be Improved' by the Buyer(s) [and by any other owner(s) of any interest in said Property] to the Bank designated above, and/or b. the right to a Mechanic's Lien on said Property of a subcontractor, laborer, materialman, or other person (excluding the Seller) who performs labor or furnishes materials for the improvement thereof, may be a security interest in said Property within the meaning of 'security interest' as used in Federal Reserve Board Regulation Z, no security interest is or is to be held, retained or acquired by the Seller, the Bank designated above, or any other person in connection with the extension of credit evidenced by this Obligation." (Commission Exhibit 9-j.)

[3] The same or a similar issue is raised in *N. C. Freed Company, Inc., et al.* v. *Board of Governors of the Federal Reserve System*, U.S.D.C. W.D.N.Y. September 29, 1971, CCH Consumer Credit Guide § 99356. The district court in the case held that only contracts which acquired a security interest through a mortgage, deed of trust, or other type consensual liens are rescindable; that Congress did not include liens which arise in the future by operation of law. The *Freed* case has been appealed to the United States Court of Appeals for the Second Circuit. *N. C. Freed Company, Inc., et al.* v. *Board of Governors of Federal Reserve Board, appeal docketed*, No. 72-1381 (2d Cir.).

security interest is *or will be* retained or acquired" (§ 226.9(a)) (emphasis supplied). The Board also defined the term "security interest" to include liens created by operation of law (§ 226.2(z)). The court upheld the Reserve Board's regulations on this point. It reasoned in part that a contract to renovate, remodel or repair a house imports the materials will be furnished in connection with that work; and that, therefore, *implicit in the contract* is a provision that a lien will attach to secure payment for the work and the materials. We believe it is clear from the decision that the court's reasoning and its holding covers all nonconsensual security interests, including the mechanic's liens granted by statute to the creditor as a contractor or supplier, as well as mechanic's liens granted to third parties not privy to the original contract, such as subcontractors, laborers and others, for their work, services or materials.

Accordingly, we hold that respondents violated the Act and Regulation Z not only in the respects found by the administrative law judge but also in the other respects charged in the complaint, *i.e.*, for failing to provide notice of rescission and for failing to delay performance within the three-day period provided by law.

There is no direct issue before the Commission on the validity of respondents' waiver policy. That issue would have been before us had respondents shown that all security interests were waived, including the mechanic's liens of their workmen and others. In the circumstances there is no need to inquire into the validity and appropriateness of the waivers. They were incomplete and so the defense must fail.[4]

It should be noted, however, that Section 226.901 also provides that if, as a result of the transaction, a security interest is or will be retained or acquired by a subcontractor, workman or other person, the transaction is rescindable and the creditor then would be responsible for delivering the rescission notice and the applicable disclosures and for delaying performance.

[4] Neither the Act nor Regulation Z expressly provides for the waiver of security interests. The only explicit language on waiver they contain is that for the *customer's* waiver of his right of rescission under certain emergency-type circumstances (see Section 125(d) of the Act and Section 226.9(e) of Regulation Z). The concept of a waiver of security interest by the creditor appears in Section 226.901 of the Reserve Board's "interpretations" of Regulation Z. This interpretation section provides that where a creditor *effectively* waives his right to retain or to acquire a mechanic's or a materialmen's lien he has not retained or acquired that security interest. Under this interpretation, if all security interests are waived, the transaction is not rescindable and the creditor does not have to comply with Section 125 of the Act and the regulation concerning the consumer's right of rescission.

It should be noted, however, that Section 226.901 also provides that if, as a result of the transaction, a security interest is or will be retained or acquired by a subcontractor, workman or other person, the transaction is rescindable and the creditor then would be responsible for delivering the rescission notice and the applicable disclosures and for delaying performance.

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As indicated above, complaint counsel, so far as remedy is concerned, contends for a new paragraph in the order which would require respondents on past sales between July 1, 1969 and January 18, 1971, for which they arranged the extension of consumer credit and in which a security interest in real property was retained or acquired, to afford the customers involved, within fourteen days of the receipt of a specified notice, the opportunity to rescind the transactions. The Commission's order, he argues, can and should compel respondents to give their credit customers what they are entitled to under the Act and regulations. He claims that such a remedy will bear more than a reasonable relationship to the violations uncovered. Complaint counsel cites the relief granted by the hearing examiner in another matter, *Charnita, Inc., et al.*, Docket No. 8829.

The Commission, on June 6, 1972 [80 F.T.C. 892], issued its own decision in that *Charnita* matter, holding, among other things, that so far as certain lot-buying customers were concerned those respondents had "an unfulfilled and continuing duty to give notice, in accordance with Section 226.9 of Regulation Z, of the customers' right of rescission." The Commission there further stated that "[u]ntil such notice is given, respondents are thus in a continuing violation of the statute."

We do not believe that the same approach is justified on the facts in this proceeding. *Charnita* concerned land sales, not home improvement sales as in this case. The installations and alterations involved in home improvement transactions cannot easily be undone, if they can be undone at all. These improvements are generally of a permanent nature, such as the installation of a new furnace, new air conditioning equipment and the like. Removal of this equipment will often be impractical and possibly damaging to the house in which it is installed. Furthermore, removal could lead to additional expenses to the home owner. Inflation and other factors might easily make replacement more costly than was the original installation. In such a case a mere right to rescind, without more, would not restore the customer to his prior position and might be detrimental to him if the seller in fact removed the equipment.

A provision in the Reserve Board's regulation covering the right of rescission (Section 226.9(d) of Regulation Z) appears to be directed to this situation. It states in part:

> If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligations under this section, the customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. * * *"

While the record here has not been developed on this point, it may be assumed that in most of the transactions return of the creditor's property would be impracticable and so cancellations would necessarily raise problems as to the return of "reasonable value." Very likely each situation would require individual negotiation to arrive at equitable results. We further assume in these situations of cancellation that under the Board's rule the customer would have the option of removal or of tendering reasonable value, though this is not altogether clear.

This matter, therefore, raises problems, as mentioned, of likely adjustments and negotiations not present in *Charnita* and the facts developed in this record are inadequate to make appropriate determinations as to just how such an order would work or what its impact would be insofar as the home owners are concerned or the respondents. Without greater factual details on this point we do not believe that an order looking to past transactions is justified on this record.

In our view, it would not be helpful to remand this matter for the taking of additional evidence on the scope of the order. Time is important in order to provide protection to respondents' future customers. We believe that a broader public interest will be served by seeking an immediate enforcement of a prospective order to cease and desist rather than to suffer the inevitable delays which would result from a remand for further facts.

In connection with the order, there is one further point which should be mentioned. The administrative law judge, in footnote 6, page 12 [p. 689, herein], stated that he assumed the correctness of respondents' claim to the effect they were advised by the head of the New York office that their transactions because of their waiver policy were not rescindable. He based this assumption on the fact that the person referred to was not called to deny the claim. The next sentence in the footnote reads: "While as a matter of law such interpretation [by the New York office head] may carry little weight, from the standpoint of the public interest in issuing an order in this matter it may be very significant." Whether or not the administrative law judge's assumption is warranted, we do not agree with the sentence above quoted if he means by this that the Commission is thereby in some way not fully free to issue an appropriate order in this case in the public interest. No principle of equitable estoppel bars the Commission from the performance of its duty because of the mistaken action of subordinates. *Double Eagle Lubricants* v. *F.T.C.*, 360 F. 2d 268, 270 (10th Cir. 1965). To prevent any misinterpretation on the issue we will strike the footnote.

Accordingly, complaint counsel's appeal will be granted to the extent above indicated and otherwise denied. The initial decision of the hearing examiner will be modified so as to conform to the views expressed in this opinion and as modified adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon complaint counsel's appeal from the administrative law judge's initial decision and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having rendered its decision determining that the initial decision should be modified in accordance with the views and for the reasons stated in the accompanying opinion and as modified adopted as the decision of the Commission:

It is ordered, That pages 123 and 13 [*supra* at 688–90] of the administrative law judge's initial decision be modified as follows:

witnesses made it very apparent in their testimony that they could not afford the large expenditures required and had to secure financing. We turn next to the far more serious question of the waiver of lien by respondents.

Respondents contend that they waived any lien they would secure on the property. Thus, they claim the transaction does not create any security interest and accordingly it is not rescindable. Respondents further claim that an interpretation to this effect was secured from the Chief of the New York Office of the Commission.

Complaint counsel take the position that even though the waiver might be effective to prevent respondents from securing a lien on the property for themselves, the New York lien law creates a lien in favor of their workmen and their material suppliers in the event that the wages or material charges are not paid [6] and it was the purpose of the Truth in Lending legislation to require that all liens be considered even though not under the control of the lender. The position of complaint counsel is correct for the reasons stated by the court in *Gardner and North Roofing and Siding Corporation* v. *Board of Governors of the Federal Reserve Board*, 464 F. 2d 838 (D.C. Cir. 1972); 4 CCH Consumer Credit Guide § 99159. Accordingly, respondents' transactions shown on this record were rescindable and subject to the requirements of § 226.9 of Regulation Z governing the customer's right to rescind.

Paragraph Five of the complaint contains the following charge:

> "In connection with the consumer credit transactions set forth in Paragraphs Three and Four [7] hereof, respondents prepare documents containing consumer credit cost disclosures required by Section 226.8 of Regulation Z and obtain from customers written acknowledgment of receipt of these disclosures, but in some instances nevertheless fail to provide the customer with a copy of such disclosures, as required by Section 226.8(a) of Regulation Z."

This it seems to the hearing examiner includes a charge that the customer is not provided with the cost disclosures prior to the time he or she signs the sales

proposal. This is true because Section 226.8(a) of Regulation Z specifically provides:

[6] McKinneys "Lien Law" Volume Article 1, 1–3.

[7] The paragraph referred to provide as follows:

"PARAGRAPH THREE: In the ordinary course and conduct of their business as aforesaid, respondents arrange, and for some time last past regularly have arranged, for the extension of consumer credit, as 'consumer credit' is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

"PARAGRAPH FOUR: Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with their arranging for consumer credit, have caused, and are causing, customers to execute retail installment contracts, herein referred to as 'the contract', which results or may result in a security interest being retained or acquired in real property which is used or is expected to be used as the principal residence of the customer. The customers thereby have the right to rescind such transactions, as provided in Section 226.9(a) of Regulation Z."

It is further ordered, That footnote 10, page 14 [*supra* 690], in the initial decision be, and it hereby is, renumbered 8.

It is further ordered, That conclusion 3 on page 16 [*supra* at 691] of the initial decision be, and it hereby is, modified to read as follows:

3. Respondents, in credit transactions shown in this record, violated the Truth in Lending Act and Section 226.9(b) of Regulation Z by failing to provide their customers with the opportunity to rescind and copies of a notice of the right of rescission in accordance with the regulation. Respondents, in credit transactions shown on this record, violated the Truth in Lending Act and Section 226.9(c) of Regulation Z by failing to delay during the three-day rescission period making physical changes in the customer's property and in the performing of work and services for such customers. The claim that security interests were waived is rejected because there is no showing that all liens created by operation of law, such as mechanic's liens of workmen, were waived.

It is further ordered, That the order contained in the initial decision be modified to read as follows:

ORDER

It is ordered, That respondents Fabbis, Inc., a corporation, doing business as Rochester Plumbing and Heating Contractors or under any other name, and its officers, and Richard J. Fabrizi and James J. Rebis, 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 consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to provide any customer prior to consummation of the transaction with a copy, which the customer may retain, of all disclosures required to be made by Section 226.8 of Regulation Z, in the form and manner prescribed therein, as required by Section 226.8(a) of Regulation Z.

2. Failing, in any transaction in which a security interest is or will be retained or acquired 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) of Regulation Z, prior to consummation of the transaction.

3. Making any physical changes in a customer's property or performing any work or services for the customer on such property before expiration of the rescission period provided for in Section 226.9(a) of Regulation Z, in any transaction in which a security interest is or will be retained or acquired in real property which is used or is expected to be used as the principal residence of the customer, as provided in Section 226.9(c) of Regulation Z.

4. Failing, in any consumer credit transaction or advertisement, to make all disclosures required by Sections 226.6, 226.8, 226.9 and 226.10 of Regulation Z, in the manner, form and amount prescribed therein.

It is further ordered, That a copy of this order to cease and desist be delivered to all present and future personnel of respondents engaged in the consummation of any credit sale, and that respondents secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale, 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 the initial decision of the administrative law judge, as modified herein, be, and it hereby is, adopted as the decision of the Commission.

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, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Chairman Kirkpatrick concurring in the disposition of this proceeding.

IN THE MATTER OF

CAL-ROOF WHOLESALE, INC., ET AL.

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

Docket C-2307. Complaint Oct. 30, 1972—Decision, Oct. 30, 1972

Consent order requiring a Portland, Oregon, wholesaler and distributor of building materials, including residential siding products, among other things to cease misrepresenting any aspect of contests or other promotional schemes or devices; misrepresenting the quality or properties of its siding or other building products; and representing that its products are guaranteed unless pertinent information with respect thereto is clearly and conspicuously disclosed.

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 Cal-Roof Wholesale, Inc., a corporation, and Morris Greenstein, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cal-Roof Wholesale, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 110 S.E. Taylor, Portland, Oregon.

Respondent Morris Greenstein is an officer of the corporate respondent. He formulates, directs and controls the acts and practices herein described. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been, engaged in the wholesale sale, offering for sale, and distribution of building materials, including residential siding products.

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

PAR. 4. To promote the sale of their building materials, respondents have distributed and have caused to be distributed in commerce to potential home siding purchasers, a substantial number of mailers announcing a "17 Second Contest." Two such mailers were so distributed. One advertised aluminum siding and the other advertised vinyl siding. Each had a number printed on it and solicited the entry of the recipient in a "contest." The offered grand prize was a free siding job, second prize was a color television set, and the third prize was a clock or a mystery gift. The foregoing is hereinafter referred to as the "promotion." Respondents have sent out or have caused to have sent out 137,200 of the aluminum siding mailer and approximately 135,000 of the vinyl siding mailer.

After the mailers are received, the recipients may, and many do, return the attached cards to the respondents, or their agents. The returned cards are then sent to siding contractors which have purchased the promotion service from respondents and contractor salesmen are sent to call on prospects who have returned the card to attempt to sell them siding installation jobs and to deliver the appropriate prizes.

In the said promotion mailers the following statements appear in connection with the advertised siding:

So new and different, it makes all other sidings obsolete

* * * * * * *

Imagine, you never have to paint your house again

* * * * * * *

. . . Save by eliminating house-painting and repairs over the next ten, twenty, or thirty years.

* * * * * * *

Mail this card within 5 days

* * * * * * *

PAR. 5. By and through use of the said promotion, and through the use of the aforementioned statements and assertions, respondents have represented directly or by implication that:

1. A true contest was being conducted in which the determination of whether each recipient of a promotion mailer was entitled to receive the third prize was based upon chance.

2. Promotion entrants could not qualify to participate unless the entry was mailed within five days of receipt.

3. The promotion would be limited to a relatively short period of time.

4. A grand prize of a residential siding installation job and three second prizes of new color television sets would be awarded in each of the two promotions.

5. Individuals entered or participating in the promotions were afforded a reasonable opportunity to win the represented first and second prizes.

6. The advertised siding makes all other sidings obsolete.

7. The advertised siding is "new" and "different."

8. The advertised siding will eliminate the need for house painting and siding repairs for as long as 30 years.

PAR. 6. In truth and in fact:

1. The determination of whether mailer recipients would receive the third prize was not based on chance. Each and every promotion mailer entitled the recipient to receive the third prize under the criteria established in the mailer.

2. The mailing of promotion entry cards more than five days after receipt of the mailer would not disqualify the entrant.

3. The promotion has not been limited to a relatively short period of time, mailers having been sent into various areas intermittently from June 1970 through July 1971, in the case of the aluminum siding mailer, and since August 1970 in the case of the vinyl siding mailer.

4. No residential siding installation jobs or color television sets were won or awarded in either of the two promotions.

5. Individuals entered or participating in the promotions were not afforded a reasonable opportunity to win the represented first and second prizes. In the aluminum siding promotion, 137,200 mailers were sent, out of which one was a first prize winner and three were second prize winners. In the vinyl siding promotion, approximately 135,000 mailers were sent out, of which one was a first prize winner and three were second prize winners.

6. The advertised siding did not obsolete all other sidings.

7. The advertised siding was not "new" and "different."

8. The advertised siding will not eliminate the need for house painting and siding repairs for as long as 30 years.

PAR. 7. To promote the sale of their building materials, respondents have distributed and have caused to be distributed in commerce to potential home siding purchasers, a substantial number of mailers advertising steel house siding. The mailer invited the recipient to return a postage-paid card in order to obtain the free gift of a junior grandfather clock at the time of a sales presentation. The returned coupons were forwarded to siding contractors who had purchased the mailer service. The coupons were utilized by the siding contractors for obtaining leads for siding installation work. In the mailer, the following statements and representations, among others, were made:

This offer is limited to ten days only

* * * * * * *

For your security, vinylized siding comes with a transferable guarantee that you can depend on

* * * * * * *

Now say good-bye to house painting

* * * * * * *

Immediate financing available

* * * * * * *

Easy terms to fit your budget

* * * * * * *

Act now, absolutely free * * * no obligation, nothing to buy

* * * * * * *

This offer is limited to ten days only

* * * * * * *

PAR. 8. By and through use of the aforementioned statements and representations, respondents have represented directly or by implication:

1. That the offer to receive a junior grandfather clock by returning the coupon is only available for 10 days from the date of receipt of the mailer.

2. That the advertised steel house siding is guaranteed in all respects without conditions or limitations.

3. That houses to which the advertised steel house siding has been applied will never need painting.

4. That immediate financing would be provided to all recipients of

the mailer by the respondents or by some person or firm connected with respondents.

5. That lower downpayments, longer periods of repayment, lower interest charges, or lower monthly payments than those regularly offered would be available to each mailer recipient.

6. That recipients of the mailer which returned the card would be under no obligations with respect thereto.

PAR. 9. In truth and in fact:

1. The offer in the mailer was not limited to ten days.

2. The siding guarantee is not unconditional, but is pro-rated and contains other conditions to the obligations of the guarantor.

3. Application of the advertised steel house siding will not eliminate the need for house painting forever.

4. Financing of the house siding installation work is only available to those who can qualify for credit extensions.

5. The downpayments are not lower, the interest charges are not less, the periods of repayment are not longer, and the monthly payments are not less than those that would be regularly and ordinarily available to individuals obtaining financing for siding installation work.

6. The mailer recipient who returns the coupon obligates himself to listen to a siding sales presentation.

PAR. 10. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of siding materials and other products of the same general kind and nature as that sold by respondents.

PAR. 11. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

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 Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 5 of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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 Cal-Roof Wholesale, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 110 S.E. Taylor, Portland, Oregon.

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

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

ORDER

It is ordered, That respondents Cal-Roof Wholesale, Inc., a corporation, and its officers, and Morris Greenstein, individually and as an

officer of said corporation, and their successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the preparation, advertising, promotion, sale, distribution or use of any contest, game or other promotional device, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, orally or in any other manner, directly or indirectly, from:

1. Representing that a contest or other similar promotional device is being conducted in which the determination of whether a participant is a winner or loser is based on chance, when such is not the fact; or misrepresenting in any manner any aspect of any contest or other promotional scheme or device.

2. Representing that an offer to a potential individual participant of an opportunity to participate in any promotional scheme or receive a free gift is limited to a certain specific period of time, excepting such disclosures as are required in Paragraph 3 of this section of this order.

3. Failing to accurately and truthfully disclose on all materials distributed to the public the date that any contest, game, or other promotional device is initiated and the date it will end.

4. Failing to award and distribute all prizes of the value and type represented.

5. Engaging in the preparation, promotion, sale, distribution, or use of any contest, game, or other promotional device unless the following are disclosed clearly and conspicuously in all advertising and promotional material concerning said devices:

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

(b) The exact nature of the prizes, the approximate retail value of each prize, and the number of each separate type of prize;

(c) The odds of winning each prize;

(d) The geographical area or states in which any such device is used.

It is further ordered, That respondents and their successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of building or siding materials, or any other similar products in

commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, orally or in any other manner, directly or indirectly, from:

1. Representing that any siding or other building product renders all other similar products obsolete; or otherwise misrepresenting siding or other building products.

2. Representing that any siding or other building product is different when such product is not different and representing that any such product is new more than six months after initial introduction to the public, exclusive of any test marketing periods.

3. Representing that any siding or other building product will eliminate the need for house painting and siding repairs for as long as 30 years or forever.

4. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

5. Representing that financing is available without disclosing that credit is only available on approval of credit and without disclosing the source of such financing.

6. Representing that lenient credit terms are available, including, but not limited to use of the term "easy terms."

7. Representing generally that a mailer recipient or participant in any promotional device may receive a free gift or participate in a promotion without obligation or condition in connection with a promotion where a salesman may contact the recipient or participant.

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 deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale or sale of any product 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

SUGAR INFORMATION, INC., ET AL.

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

Docket C-2308. Complaint, Nov. 1, 1972—Decision, Nov. 1, 1972

Consent order requiring two sugar industry trade associations of New York City, among other things to cease making false and unsubstantiated weight reduction claims for refined sugar and misrepresenting its nutritional value in weight-reduction dieting. Respondents are further required to run full-page corrective ads in various publications listed in the order.

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 Sugar Information, Inc., Sugar Association, Inc., and Leo Burnett Company, Inc., 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. Respondents Sugar Information, Inc., and Sugar Association, Inc., are trade associations organized, existing and doing business as corporations under and by virtue of the laws of the State of New York, with their principal office and place of business located at 254 West 31st Street, New York, New York. Respondents Sugar Information, Inc., and Sugar Association, Inc., were organized and are maintained for the purpose of promoting, fostering and advancing the interests of their members who consist of firms engaged in busi-

nesses relating to the sugar industry, including but not limited to growers, refiners, and processors.

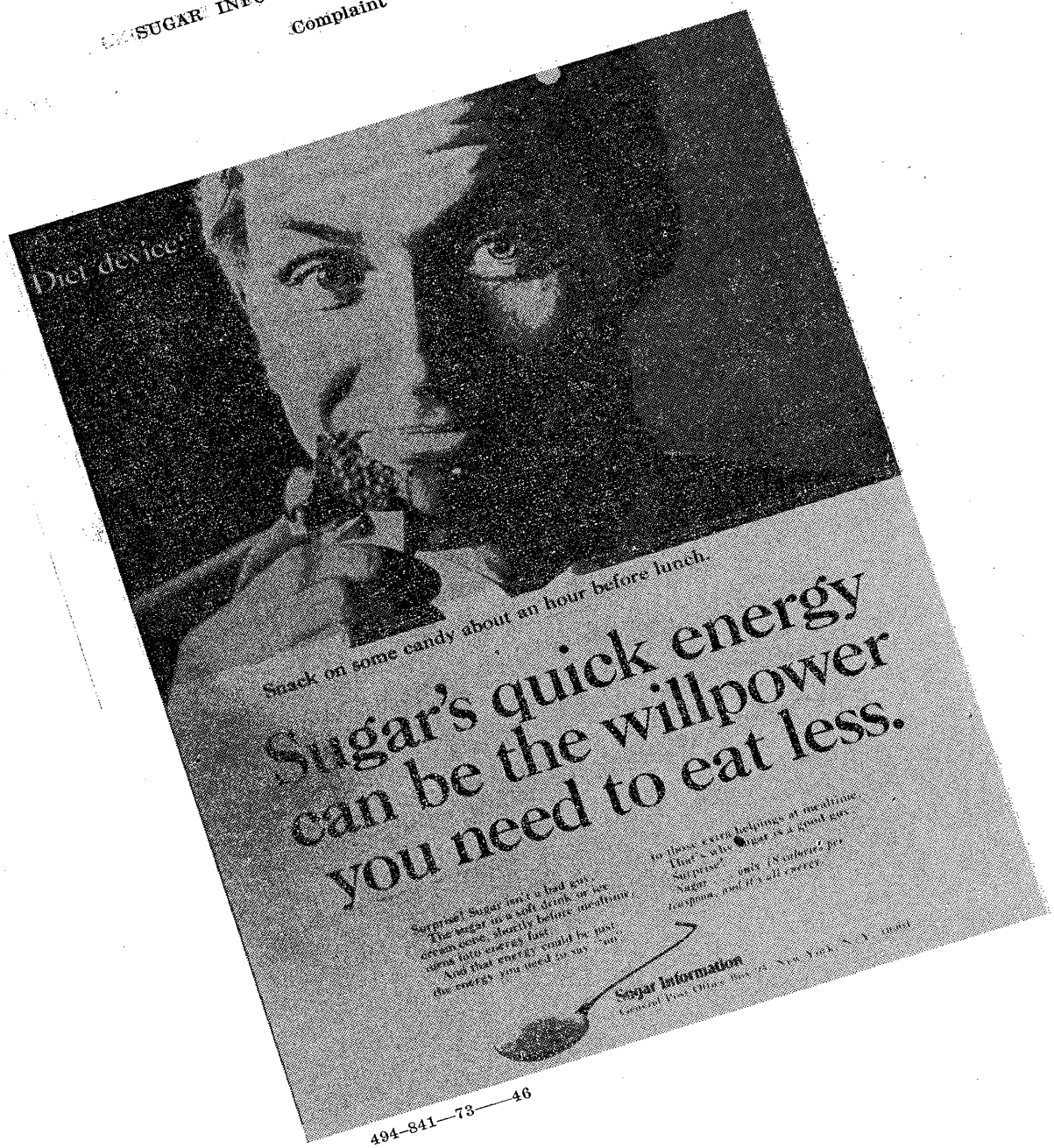
PAR. 2. Respondent Leo Burnett Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Prudential Plaza, Chicago, Illinois.

PAR. 3. Respondents Sugar Association, Inc., and Sugar Information, Inc., have been and now are engaged in a wide range of activities of mutual interest to their members including but not limited to the dissemination, publishing, and distribution of advertisements and promotional material concerning the uses, purposes, utility, characteristics and effects of sugar, which comes within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Leo Burnett Company, Inc., is now, and for some time last past has been, an advertising agency of Sugar Association, Inc., and Sugar Information, Inc., and now and for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of sugar, and products containing sugar, which come within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of certain advertisements concerning sugar and products containing sugar by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products; and have disseminated, and caused the dissemination of, advertisements concerning said products by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:


Diet device:
Snack on some candy about an hour before lunch.
Sugar's quick energy can be the willpower you need to eat less.
Sugar information

The "fat time of day": you're really hungry and ready to eat two of everything. Here's how sugar can help.

If sugar can fill that hollow feeling, I'm all for it.

The "fat time of day" is when you're over-hungry and want to overeat.

That's when your appestat* is turned up high.

To turn your appestat back to low, take a little sugar in a soft drink, or a candy bar, shortly before mealtime.

Sugar turns into energy faster than any other food.

Sugar helps keep your appetite down, your energy up —and—helps slip you safely past the "fat time of day."

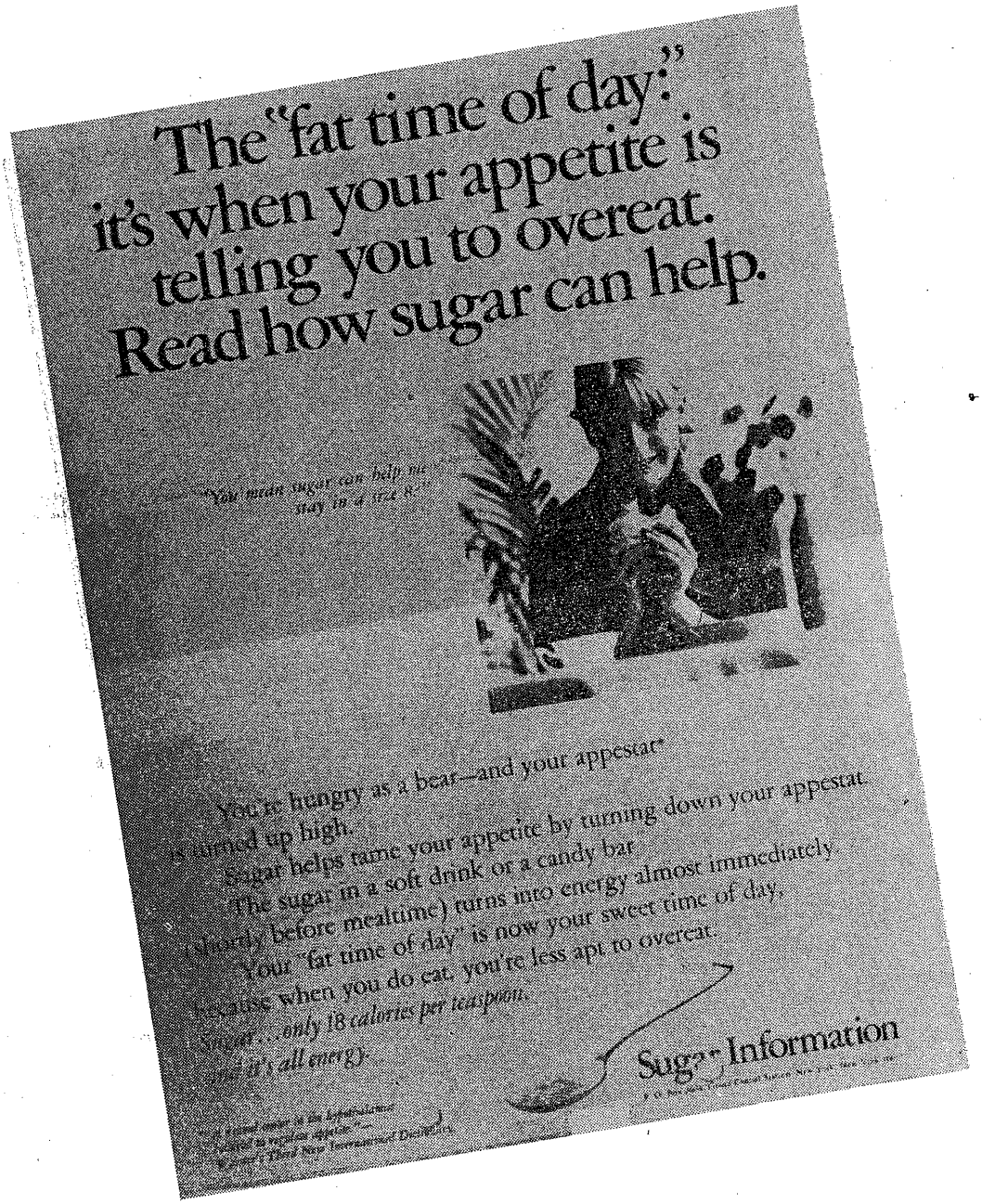
Sugar...only 18 calories per teaspoon, and it's all energy.

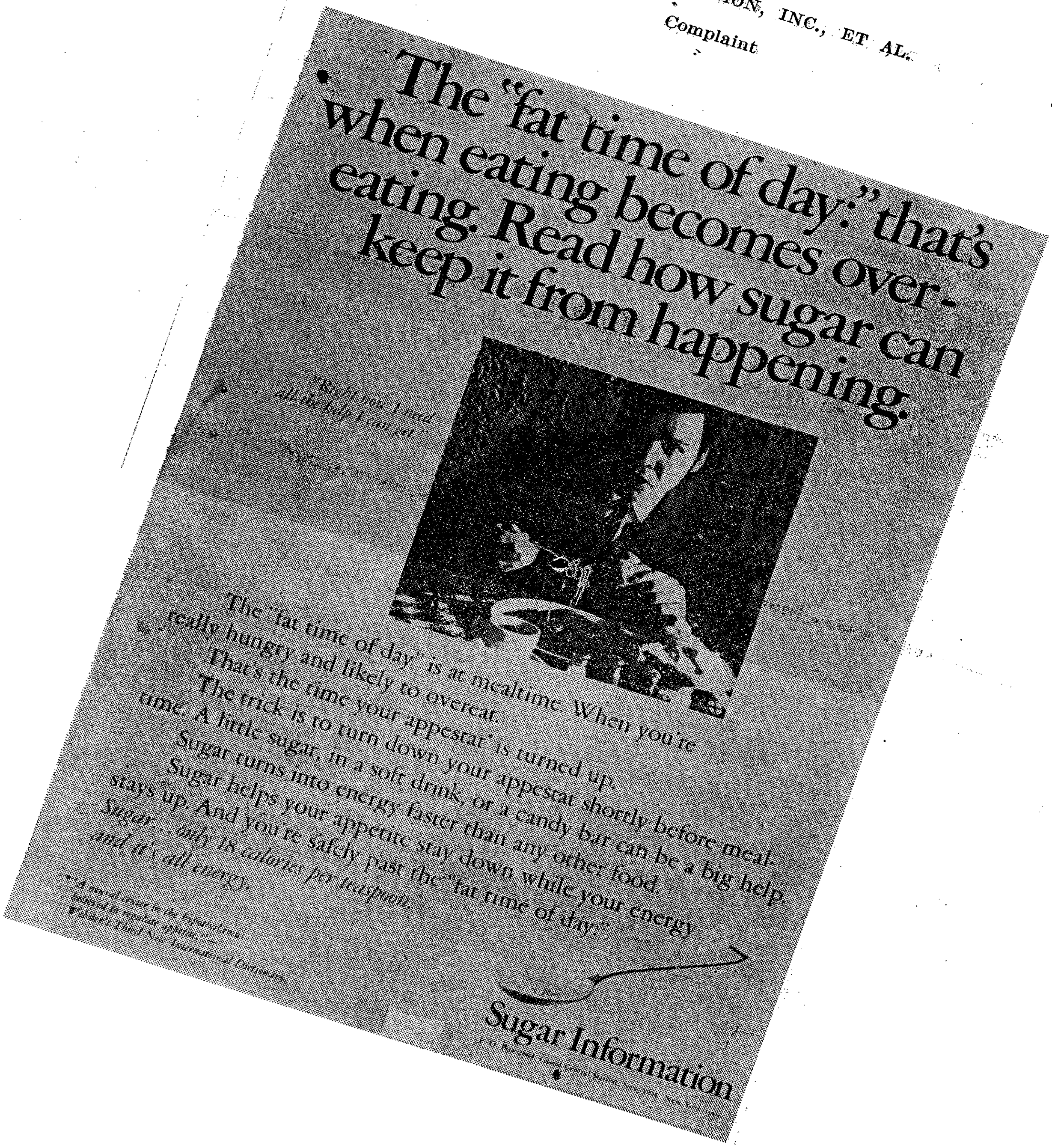
*A word coined in the hypothalamus [illegible] appetite."—Webster's Third New International Dictionary

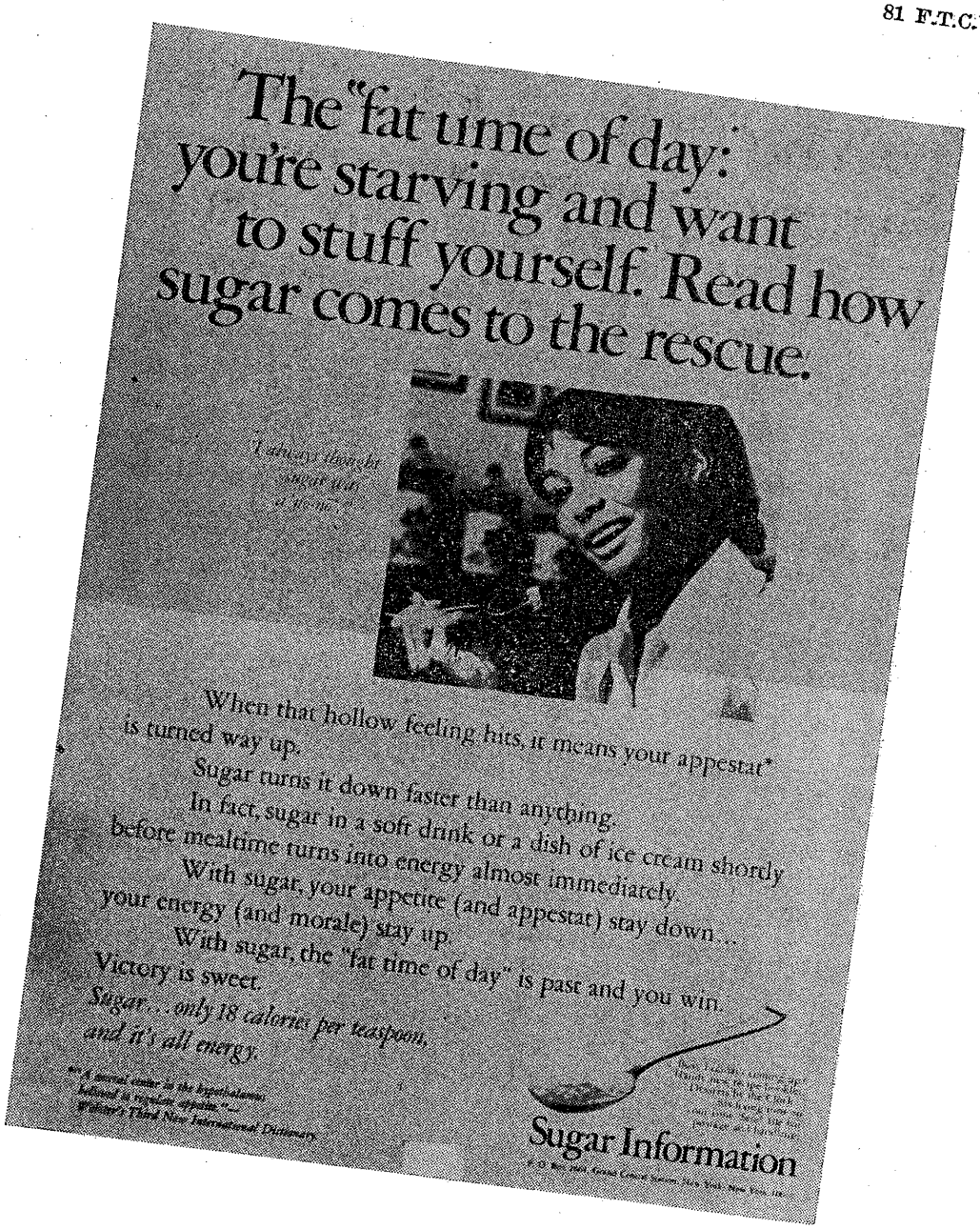
Sugar Information

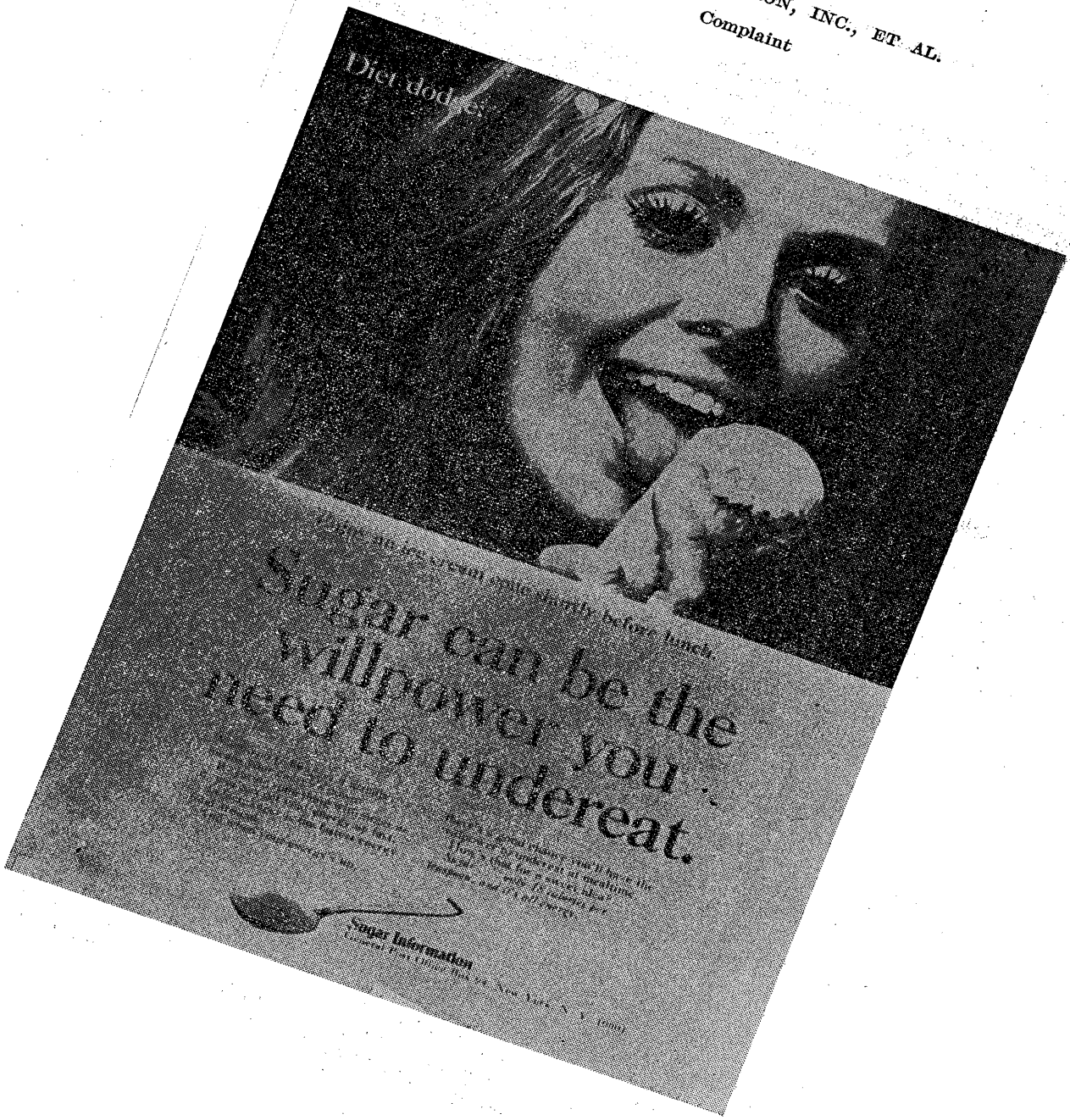
[illegible]


Diet hint:
Sugar just might be the willpower you need to curb your appetite.
Sugar Information


The "fat time of day":
it's when your appetite is
telling you to overeat.
Read how sugar can help.
You're hungry as a bear—and your appestat
is turned up high.
Sugar helps tame your appetite by turning down your appestat.
The sugar in a soft drink or a candy bar
(shortly before mealtime) runs into energy almost immediately.
Your "fat time of day" is now your sweet time of day,
because when you do eat, you're less apt to overeat.
Sugar... only 18 calories per teaspoon.
It's all energy.
Sugar Information


The "fat time of day:" that's when eating becomes over-eating. Read how sugar can keep it from happening.
"Right now, I need all the help I can get."
The "fat time of day" is at mealtime. When you're really hungry and likely to overeat.
That's the time your appestat* is turned up.
The trick is to turn down your appestat shortly before mealtime. A little sugar, in a soft drink, or a candy bar can be a big help.
Sugar turns into energy faster than any other food.
Sugar helps your appetite stay down while your energy stays up. And you're safely past the "fat time of day."
Sugar...only 18 calories per teaspoon, and it's all energy.
Sugar Information


The "fat time of day": you're starving and want to stuff yourself. Read how sugar comes to the rescue.
When that hollow feeling hits, it means your appestat* is turned way up.
Sugar turns it down faster than anything.
In fact, sugar in a soft drink or a dish of ice cream shortly before mealtime turns into energy almost immediately.
With sugar, your appetite (and appestat) stay down ... your energy (and morale) stay up.
With sugar, the "fat time of day" is past and you win.
Victory is sweet.
Sugar... only 18 calories per teaspoon, and it's all energy.
Sugar Information


Diet dodger:
Eating an ice cream cone shortly before lunch.
Sugar can be the
willpower you
need to undereat.
Sugar Information

PAR. 7. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication, that:

A. There is a reasonable basis from which to conclude that the consumption of sugar, and foods containing sugar, such as soft drinks, ice cream cones, or candy bars, before meals contributes significantly and reliably to the reduction of human weight and to the maintenance of reduced human weight.

B. Consumption of sugar and foods containing sugar, such as soft drinks, ice cream cones, or candy bars, before meals will result in reduced daily caloric intake.

C. Sugar is a uniquely suitable source of energy for persons attempting to lose weight or to prevent weight gain, because it provides more energy per calorie than other foods.

PAR. 8. In truth and in fact:

A. Respondents had no reasonable basis from which to conclude that the consumption of sugar, and foods containing sugar, such as soft drinks, ice cream cones, or candy bars, before meals contributes significantly and reliably to the reduction of human weight and to the maintenance of reduced human weight.

B. Consumption of sugar and foods containing sugar such as soft drinks, ice cream cones, or candy bars, before meals may result in increased daily caloric intake.

C. Sugar is not a uniquely suitable source of energy, in terms of the quantity of energy provided per calorie, for persons attempting to lose weight or to prevent weight gain. All foods contain the same amount of energy per calorie, since calories are a measurement of the energy value of food.

Therefore, the advertisements referred to in Paragraph Six were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the statements and representations set forth in Paragraphs Six and Seven were, and are, false, misleading and deceptive.

PAR. 9. Respondents have represented, through the use of the aforesaid advertisements and otherwise, directly and by implication, that consumption of sugar and foods containing sugar before meals is an effective means of reducing human weight and maintaining reduced human weight. There existed at the time of said representations no reasonable basis to support said representations pertaining to the health and dietary qualities of said food products.

Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive and unfair.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondents Sugar Association, Inc., and Sugar Information, Inc., as agents or representatives of its membership constituency, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals representing or engaged in the food industry.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Leo Burnett Company, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of sugar and products containing sugar.

PAR. 13. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," 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 and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 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, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, respondents then having submitted an agreement modified in light of said comments, 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. Respondents Sugar Information, Inc., and Sugar Association, Inc., are each corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their offices and principal places of business located at 254 West 31st Street, in the city of New York, State of New York.

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

ORDER

I. *It is ordered*, That respondents Sugar Information, Inc., and Sugar Association, Inc., corporations, and their officers, agents, representatives and employees, only as officers, agents, representatives and employees of Sugar Information, Inc., and Sugar Association, Inc., directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of refined sugar and products containing refined sugar forthwith cease and desist from:

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

(a) Refined sugar makes any contribution to weight reduction or to the prevention of weight gain, unless there exists a reasonable basis from which respondents could draw such a conclusion.

(b) Refined sugar supplies food energy uniquely suitable for persons attempting to lose weight or prevent weight gain.

(c) For purposes of weight reduction or the prevention of weight gain, food energy supplied by refined sugar acts other than as a body fuel.

2. Disseminating, or causing the dissemination of, any advertisement concerning dieting undertaken for the purposes of weight reduction or the prevention of weight gain by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which misrepresents in any manner the nutritional value of refined sugar.

It is provided, however, That nothing contained in this order shall be construed as prohibiting accurate representations of refined sugar's role in and contribution to a balanced diet undertaken for the purpose of weight reduction or for the prevention of weight gain, where supported by competent scientific or medical authority, or as prohibiting accurate representation of any non-nutritional characteristic of refined sugar.

A statement as to the qualities or attributes of refined sugar can amount to an implied uniqueness claim if it is made in a context which conveys an impression of uniqueness for refined sugar. However, statements as to the qualities or attributes of refined sugar covered by this order will not constitute a violation thereof for the sole reason that such statements could also be made with respect to other products.

3. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of refined sugar in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations, acts or practices prohibited in subparagraph 1 or the misrepresentation prohibited in subparagraph 2 above.

II. *It is further ordered and agreed*, That respondents Sugar Information, Inc., and Sugar Association, Inc., cause dissemination of a full-page printed message in the following publications and issues thereof:

1. McCall's	December 1972
2. Saturday Review	December 1972
3. National Geographic	February 1973
4. Time	February 1973
5. Vogue	February 1973
6. Parents	April 1973
7. Reader's Digest (B)	April 1973

The aforesaid message shall contain a clear and conspicuous disclosure as follows:

Do you recall the messages we brought you in the past about sugar? How something with sugar in it before meals could help you curb your appetite?

We hope you didn't get the idea that our little diet tip was any magic formula for losing weight. Because there are no tricks, or shortcuts, the whole diet subject is very complicated. Research hasn't established that consuming sugar before meals will contribute to weight reduction or even keep you from gaining weight.

It is provided, however, That in the event the effective date of this order occurs after the final date on which an advertisement may be submitted for placement in any of the specified publications and issues thereof, the aforesaid message may be placed in a subsequent issue of the same magazine(s).

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

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

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

IN THE MATTER OF

LEO BURNETT COMPANY, INC.

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

Docket C-2309. Complaint, Nov. 1, 1972—Decision, Nov. 1, 1972

Consent order requiring a Chicago, Illinois, advertising agency for two New York City sugar industry trade associations, among other things to cease making false and unsubstantiated weight reduction claims for refined sugar and misrepresenting its nutritional value in weight-reduction dieting.

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 Sugar Information, Inc., Sugar Association, Inc., and Leo Burnett Company, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a pro-

ceeding 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. Respondents Sugar Information, Inc., and Sugar Association, Inc., are trade associations organized, existing and doing business as corporations under and by virtue of the laws of the State of New York, with their principal office and place of business located at 254 West 31st Street, New York, New York. Respondents Sugar Information, Inc., and Sugar Association, Inc., were organized and are maintained for the purpose of promoting, fostering and advancing the interests of their members who consist of firms engaged in businesses relating to the sugar industry, including but not limited to growers, refiners, and processors.

PAR. 2. Respondent Leo Burnett Company, 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 Prudential Plaza, Chicago, Illinois.

PAR. 3. Respondents Sugar Association, Inc., and Sugar Information, Inc., have been and now are engaged in a wide range of activities of mutual interest to their members including but not limited to the dissemination, publishing, and distribution of advertisements and promotional material concerning the uses, purposes, utility, characteristics and effects of sugar, which comes within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Leo Burnett Company, Inc., is now, and for some time last past has been, an advertising agency of Sugar Association, Inc., and Sugar Information, Inc., and now and for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of sugar, and products containing sugar, which come within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of certain advertisements concerning sugar and products containing sugar by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products; and have disseminated, and caused the dissemination of, advertisements concerning said products by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to

induce, directly or indirectly, the purchase of said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following: [These advertisements are reproduced in Docket C–2308, pp. 713–719, herein.]

PAR. 7. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication, that:

A. There is a reasonable basis from which to conclude that the consumption of sugar, and foods containing sugar, such as soft drinks, ice cream cones, or candy bars, before meals contributes significantly and reliably to the reduction of human weight and to the maintenance of reduced human weight.

B. Consumption of sugar and foods containing sugar, such as soft drinks, ice cream cones, or candy bars, before meals will result in reduced daily caloric intake.

C. Sugar is a uniquely suitable source of energy for persons attempting to lose weight or to prevent weight gain, because it provides more energy per calorie than other foods.

PAR. 8. In truth and in fact:

A. Respondents had no reasonable basis from which to conclude that the consumption of sugar, and foods containing sugar, such as soft drinks, ice cream cones, or candy bars, before meals contributes significantly and reliably to the reduction of human weight and to the maintenance of reduced human weight.

B. Consumption of sugar and foods containing sugar such as soft drinks, ice cream cones, or candy bars, before meals may result in increased daily caloric intake.

C. Sugar is not a uniquely suitable source of energy, in terms of the quantity of energy provided per calorie, for persons attempting to lose weight or to prevent weight gain. All food contain the same amount of energy per calorie, since calories are a measurement of the energy value of food.

Therefore, the advertisements referred to in Paragraph Six were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the statements and representations set forth in Paragraphs Six and Seven were, and are, false, misleading and deceptive.

PAR. 9. Respondents have represented, through the use of the aforesaid advertisements and otherwise, directly and by implication, that

consumption of sugar and foods containing sugar before meals is an effective means of reducing human weight and maintaining reduced human weight. There existed at the time of said representations no reasonable basis to support said representations pertaining to the health and dietary qualities of said food products.

Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive and unfair.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondents Sugar Association, Inc., and Sugar Information, Inc., as agents or representatives of its membership constituency, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals representing or engaged in the food industry.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Leo Burnett Company, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of sugar and products containing sugar.

PAR. 13. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," 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 and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent 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 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 Leo Burnett Company 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 Prudential Plaza, in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondent Leo Burnett Company, Inc., a corporation, and its officers, agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of refined sugar forthwith cease and desist from:

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

a) Refined sugar makes any contribution to weight reduction or to the prevention of weight gain, unless there exists a reasonable basis from which respondent could draw such a conclusion.

b) Refined sugar supplies food energy uniquely suitable for persons attemping to lose weight or prevent weight gain.

c) For purposes of weight reduction or the prevention of weight gain, food energy supplied by refined sugar acts other than as a body fuel.

2. Disseminating, or causing the dissemination of, any advertisement concerning dieting, undertaken for the purposes of weight reduction or the prevention of weight gain, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which misrepresents, in any manner, the nutritional value of refined sugar.

It is provided, however, That nothing contained in this order shall be construed as prohibiting accurate representations of refined sugar's role in and contribution to a balanced diet undertaken for the purpose of weight reduction or for the prevention of weight gain, where supported by competent scientific authority, or as prohibiting accurate representations of any non-nutritional characteristic of refined sugar.

A statement as to the qualities or attributes of refined sugar can amount to an implied uniqueness claim if it is made in a context which conveys an impression of uniqueness for refined sugar. However, statements as to the qualities or attributes of refined sugar covered by this order will not constitute a violation thereof for the sole reason that such statements could also be made with respect to other products.

3. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of refined sugar in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations, acts or practices prohibited in subparagraph 1 or the misrepresentation prohibited in subparagraph 2 above.

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

494-841—73——47

IN THE MATTER OF

CHARLES LEVINE & CO., INC., ET AL.

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

Docket C-2310. Complaint, Nov. 1, 1972—Decision, Nov. 1, 1972

Consent order requiring a New York, New York, importer and wholesaler of fur skins, among other things to cease falsely advertising and deceptively invoicing its fur products and failing to maintain adequate records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Charles Levine & Co., Inc., a corporation and Charles Levine, individually and as an officer of the said corporation hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Fur Products Labeling 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 Charles Levine & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

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

Respondents are importers and wholesalers of fur skins with their office and principal place of business located at 358 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce; and have introduced into commerce, sold, advertised, and offered for sale in commerce, and transported and distributed in commerce, furs, as the terms "com-

merce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products or furs were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products or furs but not limited thereto were fur products or furs covered by invoices which failed:

1. To show the true animal name of the fur.

2. To disclose that the fur was pointed, bleached, dyed or otherwise artificially colored when such was the fact.

PAR. 4. Respondents sold and distributed fur products or furs which were pointed, bleached, dyed or artificially colored. Certain of these fur products or furs were falsely and deceptively invoiced in violation of Section 5(b)(2) of the Fur Products Labeling Act in that the said fur products or furs were described on invoices as "Dr. & Processed Ranch Males" without disclosing that said fur products or furs were pointed, bleached, dyed or otherwise artificially colored. The respondents' description of the said fur products or furs as "Dr. & Processed Ranch Males" without a disclosure that the said fur products or furs were bleached, pointed, dyed or artificially colored had the tendency and capacity to mislead respondents' customers and others into the erroneous belief that the fur products or furs were not pointed, bleached, dyed or otherwise artificially colored. Such failure to disclose a material fact was to the prejudice of respondents' customers and the purchasing public and constituted false and deceptive invoicing under Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under 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 Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with viola-

tion of the Federal Trade Commission Act, and the Fur Products Labeling Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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 Charles Levine & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Charles Levine is an officer of the said corporation. He formulates, directs, and controls the acts, practices and policies of the said corporation.

Respondents are importers and wholesalers of fur skins with their office and principal place of business located at 358 Seventh Avenue, New York, New York.

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 Charles Levine & Co., Inc., a corporation, its successors and assigns, and its officers, and Charles Levine, individually and as an officer of the said corporation, and repondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in

whole or in part of fur which has been shipped and received in commerce; or in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from falsely and deceptively invoicing fur products or furs by:

1. Failing to furnish an invoice as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by Section 5(b)(1) of the Fur Products Labeling Act.

2. Failing when a fur or fur product is pointed or contains or is composed of bleached, dyed or otherwise artificially colored fur, to disclose such facts as a part of the required information on invoices pertaining thereto.

3. Representing, directly or by implication, on invoices that the fur contained in furs or fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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 this order.

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

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

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

IN THE MATTER OF

THE YARDAGE SHOP, ET AL.

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

Docket C-2311. Complaint, Nov. 1, 1972—Decision, Nov. 1, 1972

Consent order requiring a Sacramento, California, distributor and retailer of wool products and textile fiber products, among other things to cease misrepresenting the fiber content of its wool products and falsely advertising and misbranding its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that the Yardage Shop, a corporation, and Dan Goldenberg, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, the Yardage Shop, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 3106 Arden Way in the city of Sacramento, State of California.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce of textile fiber products; and in the sale, offering for sale, advertising, delivery, transportation, and causing to be transported, of textile fiber products which have been advertised or offered for sale in commerce; and in the sale,

offering for sale, advertising, delivery, transportation, and causing to be transported, after shipment in commerce, of textile fiber products, whether in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of the textile fiber products were misbranded by the respondents in that they were not stamped, tagged, labeled or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely bolts of fabrics, with labels that failed:

1. To disclose the true generic name of the fiber or fibers present in said products.

2. To disclose the percentages by weight of such fiber or fibers in said products.

PAR. 4. The acts and practices of the respondents as set forth in Paragraph Three above were and are in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

PAR. 5. Respondents, now and for sometime last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 6. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

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

PAR. 7. The acts and practices of the respondents as set forth in Paragraph Six above were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the San Francisco 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 Textile Fiber Products Identification Act, and the Wool Products Labeling Act of 1939; and

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

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

1. Respondent the Yardage Shop is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3106 Arden Way, Sacramento, California.

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

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

ORDER

It is ordered, That respondents the Yardage Shop, a corporation, its successors and assigns, and its officers, and Dan Goldenberg, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Sections 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents the Yardage Shop, a corporation, its successors and assigns, and its officers, and Dan Goldenberg, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

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

It is further ordered, That the 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 this order.

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

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

IN THE MATTER OF

LEE ROGERS DOING BUSINESS AS AMERICAN HOLIDAY ASSOCIATION

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

Docket C—2312. Complaint, Nov. 1, 1972—Decision, Nov. 1, 1972

Consent order requiring a Los Angeles, Calif., conductor of puzzle contests, among other things to cease using misrepresentations in promoting the contests and failing to disclose material facts.

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 Lee Rogers, an individual trading and doing business as American Holiday Association, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Lee Rogers is an individual trading and doing business as American Holiday Association, with his office and principal place of business located at 8831 Sunset Boulevard, Los Angeles, California.

PAR. 2. Respondent is now and for some time last past has been engaged in the conduct of puzzle contests.

PAR. 3. In the course and conduct of respondent's aforesaid business, respondent has disseminated and has caused to be disseminated from his place of business located in Los Angeles, California advertisements and promotional literature for said puzzle contests through the United States mail, in egg cartons distributed in various States of the United States and in newspapers of general circulation located in various States of the United States.

In the further course and conduct of respondent's aforesaid business, respondent has disseminated and has caused to be disseminated puzzles and prize money through the United States mail.

In the further course and conduct of respondent's aforesaid business, respondent has induced by the use of the aforementioned advertisements and promotional literature entrants of respondent's puzzle contests to transmit extra cash prize eligibility fees through the United States mail.

Through the aforementioned dissemination and transmission of said advertisements, promotional literature, puzzles, extra cash prize eligibility fees, and prize money, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in puzzle contests in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of respondent's aforesaid business, respondent employs a general method of operation which consists of the following:

1. The contest is initiated by advertisements placed in newspapers, in egg cartons, or sent through the United States mail.

2. Said advertisements include a solicitation to the public to enter, an entry blank containing the first puzzle, a statement of the rules, the total amount of prize money to be awarded, the amount of prize money to be awarded each winner, and the date by which the puzzle must be returned.

3. Respondent mails to persons successfully completing the original puzzle a letter informing the contestant that he or she is tied with a number of others for first prize. The contestant is provided with a statement of the rules, an entry blank containing the first tiebreaker puzzle and the date by which the first tiebreaker puzzle must be returned.

4. The aforesaid letter also indicates heretofore unstated extra cash prizes may be won if certain amounts of money are enclosed with the contestant's tiebreaker entry and the contestant wins a prize. Space

is provided on the entry blank for the contestant to indicate the extra cash prizes for which the contestant wishes to become eligible and the amount charged the contestant for each.

5. Respondent mails to contestants successfully completing the first tiebreaker puzzle a letter informing the contestant that he or she is still tied with others for the first prize. The contestant is provided with a statement of the rules, an entry blank containing the second tiebreaker puzzle, and the date by which the second tiebreaker puzzle must be returned. Any contestant who did not indicate he or she wished to become eligible for any extra cash prize upon submission of the first tiebreaker puzzle is resolicited.

6. Respondent mails to contestants successfully completing the second tiebreaker puzzle a letter informing the contestant that he or she is still tied with others for first prize. The contestant is provided with a statement of the rules, an entry blank containing the third tiebreaker puzzle, and the date by which the puzzle must be returned. If ties remain this procedure is repeated until the predetermined number of tiebreaker puzzles are completed.

7. If more than one contestant successfully completes all tiebreaker puzzles, duplicate prizes are awarded.

8. When new contests are run, respondent solicits prior contestants of respondent's contests.

PAR. 5. By the use of the aforesaid general method of operation and advertisements, promotional literature, solicitations and other written materials, respondent induces the entry into said puzzle contests and the payment for eligibility for aforesaid extra cash prizes by representing and implying in substance as follows:

1. The contest is free and there are no fees of any kind.

2. Tiebreaker puzzles may be submitted only upon payment of money.

3. Only a small number of persons successfully solved the original puzzle and were tied for first prize.

4. Only one tiebreaker puzzle will be needed to determine the prize winner.

5. Contestants are allowed to pay money and to become eligible for extra cash prizes only at the time they submit the first tiebreaker puzzle.

6. Extra cash prizes are awarded eligible winners of any prize.

PAR. 6. In truth and in fact:

1. The contest is free if contestants wish to play for the prizes announced during the initial promotion of the contest, but fees are required to become eligible for substantially larger extra cash prizes

announced during the promotions of the first and second tiebreaker puzzles.

2. Although contestants may submit any puzzle without paying a fee, they are not given the opportunity to choose whether they wish to play for free or pay money to become eligible for extra cash prizes.

3. After the original puzzle is completed, substantially all contestants are tied for first prize.

4. More than one tiebreaker puzzle is always necessary to determine the prize winners.

5. Contestants may pay money to become eligible for extra cash prizes when they submit either the first or the second tiebreaker puzzle.

6. Extra cash prizes may be won only by the first prize winner.

Therefore, the general method of operation, statements and representations as set forth in Paragraph Four and Paragraph Five herein, were and are unfair, false, misleading and deceptive.

PAR. 7. The use by respondent of the aforesaid unfair, false, misleading, and deceptive statements, representations, and practices has had and now has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements, representations and practices were and are fair and true. By reason of said erroneous and mistaken belief, members of the public have entered said contests, paid substantial quantities of money and believed respondents general method of operation to be fair.

PAR. 8. In the course and conduct of respondent's aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce, with corporations, firms and individuals engaged in the conduct of puzzle contests of the same general kind and nature as those conducted by respondent.

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

DECISION AND ORDER

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

if issued by the Commission, would charge the 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 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 Lee Rogers is an individual trading and doing business as American Holiday Association, with his office and principal place of business located at 8831 Sunset 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 respondent Lee Rogers, an individual trading and doing business as American Holiday Association, or any other name or names, his successor and assigns and respondent's agents, representatives, salesmen and employees, directly or through any corporation, subsidiary, division or other device, in connection with the conduct of puzzle contests or the advertising, offering for sale, or sale of any product or service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, orally or in writing, that the contest, or any puzzle, is free unless it is clearly and conspicuously disclosed in close proximity thereto that the contestant will be given the option to pay money to become eligible to win

extra prizes; or misrepresenting in any manner the cost to enter or to remain a contestant in respondent's contests.

2. Representing, directly or by implication, orally or in writing, that any tiebreaker puzzle may be entered upon the payment of money qualifying the contestant for an extra cash or any other type prize or prizes unless:

(a) It is clearly and conspicuously disclosed contestants are not required to pay money and play for an extra cash or any other type prize or prizes;

(b) It is clearly and conspicuously disclosed contestants may choose to play for any single extra cash prize that may be offered; and

(c) Contestants are clearly and conspicuously given the opportunity to indicate they wish to enter any phase of the contest for free. The contestants' opportunity to indicate they wish to enter for free shall be in immediate conjunction with and in a like manner as the contestants' opportunity to indicate they wish to play for an extra prize.

3. Failing to:

(a) Clearly and conspicuously disclose, prior to or at the time of any solicitation for money, the total number of contestants anticipated based on prior experience and the average percentage of contestants correctly solving the initial puzzle and all succeeding tiebreaker puzzles in respondent's three most recently completed contests; and

(b) Send to all persons upon specific request, the actual number and percentage of contestants correctly solving each puzzle in respondent's most recently completed contest; or misrepresenting in any manner the odds of winning any prize.

4. Failing to clearly and conspicuously disclose with all promotional literature and in immediate conjunction with all puzzles: (1) the maximum number of tiebreaker puzzles that may be necessary to complete the contest and determine winners, (2) successive tiebreaker puzzles will become significantly more difficult and (3) the method of determination of all prize winners if a tie remains after the last tiebreaker puzzle is completed.

5. Representing, directly or by implication, orally or in writing, that contestants may pay money to become eligible for extra prizes only at the time they submit the first tiebreaker puzzle unless such is the fact; or misrepresenting in any manner when payments of money may be made by contestants.

6. Representing, directly or by implication, orally or in writing, that extra cash prizes apply to other than first prize, unless such is the fact.

It is further ordered, That the respondent clearly and conspicuously disclose in respondent's initial contest promotional literature the deadline for submission of the original puzzle, the minimum time contestants will be allotted to solve and submit each tiebreaker puzzle and the approximate date on which the contest will terminate.

It is further ordered, That the respondent clearly and conspicuously disclose with all tiebreaker puzzles and on all entry blanks the deadline for submission of that puzzle, and the approximate date on which the contest will terminate.

It is further ordered, That the respondent refund all money or other consideration to contestants requesting such refund in writing within one year of payment who are unable to participate in any aspect of any contest through no fault of the contestant.

It is further ordered, That the respondent cease and desist from failing to clearly and conspicuously disclose with all entry blanks and contracts, all rules, terms and conditions of the puzzle or contest or of the offer for sale or sale of any product or service sold by respondent, including all obligations imposed upon members of the public by respondent; or misrepresenting in any manner all such rules, terms, conditions and obligations.

It is further ordered, That the respondent at the conclusion of the contest send to all entrants upon their request the names of all winners, the correct or winning solution to each puzzle, and the number of points scored by the first prize winner on each puzzle.

It is further ordered, That the respondent maintain for no less than two (2) years after all prizes are awarded adequate records which disclose the names and addresses of all contestants, the approximate date each contestant is sent a tiebreaker puzzle by respondent, all tiebreaker puzzles and correspondence sent by a contestant, and copies of replies thereto.

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

It is further ordered, That the respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employ-

ment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

IN THE MATTER OF

BROWN AUTO STABILIZER CO., ET AL.

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

Docket 8863. Complaint, Sept. 21, 1971—Decision Nov. 3, 1972

Order requiring an Orlando, Florida, retailer and distributor of "Dynamic Absorbers," among other things to cease misrepresenting the qualities and properties of its products; using the word "stabilizer" as part of its corporate or trade name; and misrepresenting the extent, kind, character, or results of any scientific tests performed on any of its products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Brown Auto Stabilizer Co., a corporation, and Charles R. Brown, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Brown Auto Stabilizer Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 5503 South Orange Blossom Trail, Orlando, Florida.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of Brown "Dynamic Absorbers" to distributors and to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused, and now cause, their said "Dynamic Absorbers" to be shipped from their place of business in the State of Florida to purchasers thereof located in various other States of the United States. Respondents, therefore, maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of the Brown "Dynamic Absorbers," the respondents have made, and are now making, numerous statements and representations in newspaper advertisements, in brochures and pamphlets, and in oral promotional presentations with respect to the performance of the Brown "Dynamic Absorber."

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

The Brown Dynamic Absorber takes over where your shocks leave off. * * * The Brown Absorber dampens the lateral or side sway motion of your car keeping the rear wheels tracking the front to give you utmost control of your car under all driving conditions.

We know and our customers agree that any car equipped with a Brown Dynamic Absorber is a safer car to drive under all conditions than a car not similarly equipped.

* * * the Brown Dynamic Absorber to augment conventional controls on automobiles to give drivers better control of their cars under all driving conditions.

Blow outs can cause serious accidents under the best driving conditions. The Brown Dynamic Absorber could provide the extra margin of safety that could save your life.

You can have a Brown Dynamic Absorber installed in your car to augment the conventional controls and get automatic, mechanical help when you need it to prevent many needless auto accidents from happening.

It helps drivers stop cars faster and straighter.

Does a Brown Auto Stabilizer help on slippery surfaces? Yes. * * *

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, and by and through the use of the word "Stabilizer" in their corporate and trade name or to describe or refer to their Dynamic Absorber in any other manner, separately and in connection with the oral statements to prospective purchasers and purchasers, respondents have represented, and are now representing, directly and by implication:

1. That the Brown Dynamic Absorber is an effective safety device.
2. That the Brown Dynamic Absorber is an anti-skid device which

will help prevent skidding, spin-outs, unwanted motion, and accidents.

3. That the Brown Dynamic Absorber will help save lives.

4. That the Brown Dynamic Absorber will keep the rear wheels of an automobile tracking the front wheels, give the driver added control, and help keep a skidding automobile going straight.

5. That the Brown Dynamic Absorber will help control automobiles during panic stops or sudden turns.

6. That the Brown Dynamic Absorber will help control automobiles on wet or sandy road surfaces.

7. That the Brown Dynamic Absorber performance representations have been substantiated by competent scientific tests or by authenticated, controlled and duly recorded tests.

PAR. 6. In truth and in fact:

1. The Brown Dynamic Absorber is not an effective safety device.

2. The Brown Dynamic Absorber is not an anti-skid device which will help prevent skidding, spin-outs, unwanted motion, and accidents.

3. The Brown Dynamic Absorber will not help save lives.

4. The Brown Dynamic Absorber will not keep the rear wheels of an automobile tracking the front wheels, give the driver added control, and help keep a skidding automobile going straight.

5. The Brown Dynamic Absorber will not help control automobiles during panic stops or sudden turns.

6. The Brown Dynamic Absorber will not help control automobiles on wet or sandy road surfaces.

7. The Brown Dynamic Absorber performance representations have not been substantiated by competent scientific tests or by authenticated, controlled and duly recorded tests.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals engaged in the business of selling stabilizer, traction, and other safety devices and equipment.

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 the purchase of substantial quantities of respondents' product 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 Commision Act.

Mr. C. Powers Dorsett and *Mr. William E. Mumford* supporting the complaint.

Mr. William L. Eagan, Arnold, Matheny & Eagan, Orlando, Florida for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

APRIL 24, 1972

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this proceeding on September 21, 1971, charging respondents Brown Auto Stabilizer Co., a corporation, and Charles R. Brown, individually and as an officer of the corporation, with violations of Section 5 of the Federal Trade Commission Act. It was alleged that the respondents had represented that a mechanical device when attached to an automobile would make it safer to operate by helping to prevent skidding, spin-outs, unwanted motion, and accidents. It was also alleged that respondents had represented that the performance claimed for the device had been substantiated by competent scientific tests or by authenticated, controlled, and duly recorded tests. It was further alleged that these advertising claims for the product were false and that the performance of the device had not been substantiated by competent scientific tests or by authenticated, controlled, and duly recorded tests.

A prehearing conference was held in advance of the hearings at which a clarification of the pleadings and some admissions of minor allegations were made. It was later agreed between counsel that the only issue to be tried was "whether or not the Brown Dynamic Absorber is effective for its intended purpose." (Tr. 30) [1] Hearings were held for 3 days in Orlando, Florida. Following the close of the presentation of evidence in support of the complaint, the respondents moved for dismissal of the complaint. Ruling was reserved on this motion until this time and the motion is now denied.

[1] The abbreviations used herein are "Tr." for transcript of prehearing conference and testimony, and "CX" for Commission Exhibit.

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence, and proposed findings of fact and conclusions filed by the parties. As stated above, the only contested issue is the effectiveness of respondents' device as claimed in their advertising. Consideration has been given to the proposed findings of fact and briefs, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected; and the hearing examiner, having considered the entire record herein, makes the following findings of fact and conclusions drawn therefrom and issues the following order:

FINDINGS OF FACT

1. Brown Auto Stabilizer Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 5503 South Orange Blossom Trail, Orlando, Florida (Tr. 6).

2. Respondent Charles R. Brown is an individual and an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent including those hereinafter set forth. His address is the same as that of the corporate respondent. (Tr. 6)

3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of Brown "Dynamic Absorbers" to distributors and to the public (Tr. 32–33, 40).

4. In the course and conduct of their business as aforesaid, respondents have caused and now cause their said "Dynamic Absorbers" to be shipped from their place of business in the State of Florida to purchasers thereof located in various other States of the United States. Respondents, therefore, maintained and at all times mentioned herein have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. (Tr. 6–7)

5. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of the Brown "Dynamic Absorbers," the respondents have made and are now making numerous statements and representations in newspaper advertisements, in brochures and pamphlets, and in oral promotional presentations with respect to the performance of the Brown "Dynamic Absorber" (Tr. 7–8; CXs 7, 8, 9, 14).

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

The Brown Dynamic Absorber takes over where your shock absorbers leave off. * * * The Brown Absorber dampens the lateral or side sway motion of your car keeping the rear wheels tracking the front to give you utmost control of your car under all driving conditions.

We know and our customers agree that any car equipped with a Brown Dynamic Absorber is a safer car to drive under all conditions than a car not similarly equipped.

* * * the Brown Dynamic Absorber to augment conventional controls on automobiles to give drivers better control of their cars under all driving conditions.

Blow outs can cause serious accidents under the best driving conditions. The Brown Dynamic Absorber could provide the extra margin of safety that could save your life.

You can have a Brown Dynamic Absorber installed in your car to augment the conventional controls and get automatic, mechanical help when you need it to prevent many needless auto accidents from happening.

Q. What does it do?

A. It helps drivers stop cars faster and straighter.

* * * * * * *

Q. Does a Brown Auto Stabilizer help on slippery surfaces?

A. Yes, * * *

6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, and by and through the use of the word "Stabilizer" in their corporate and trade name or to describe or to refer to their Dynamic Absorber, separately and in connection with oral statements to prospective purchasers, and purchasers, respondents have represented and are now representing, directly and by implication:

That the Brown Dynamic Absorber is an effective safety device.

That the Brown Dynamic Absorber is an anti-skid device which will help prevent skidding, spin-outs, unwanted motion, and accidents.

That the Brown Dynamic Absorber will help save lives.

That the Brown Dynamic Absorber will keep the rear wheels of an automobile tracking the front wheels, will give the driver added control, and will help keep a skidding automobile going straight.

That the Brown Dynamic Absorber will help control automobiles during panic stops or sudden turns.

That the Brown Dynamic Absorber will help control automobiles on wet or sandy road surfaces.

That the performance representations for the Brown Dynamic Absorber have been substantiated by competent scientific tests or by authenticated, controlled, and duly recorded tests.

None of the facts found in Findings 1 through 6 above are contested by respondents.

7. In order to support their contention that the device is without merit beyond its value as a deadweight in stabilizing a vehicle, com-

plaint counsel offered testimony and written results of testing of respondents' device by Dr. Andrew A. Frank, a highly qualified engineer and an expert in testing vehicular behavior, who, together with Professor A. H. Easton, another such expert, conducted carefully controlled tests. These tests were made with the device installed in an automobile, and then the same tests were made with the equivalent weight of lead in an affixed box in the same position at the rear of the trunk of the car. The opinion of this expert witness and the results of the tests were to the effect that the device was of no value for the purpose for which it was intended and for which it was advertised. Respondents have contended that because the device used in these tests was first affixed to a plywood board before being bolted to the floor of the trunk, the results were invalid. It was, however, the opinion of this expert witness that the presence of the plywood board had no effect upon the results obtained. (Tr. 49–114, 123–156, 178–220)

8. Respondents offered testimony of another well-qualified engineer to the effect that the theory of the design of the device was based upon a standard, mechanical engineering vibration theory. His explanation of this theory was:

> Well, it's not a new idea. It's been, let's say, in the field of mechanical vibrations for some years. The idea is that if there is a—let's say a mass spring system oscillating at a natural frequency, that the amplitude of a vibration can be decreased by tuning a second mass spring system to the vibrating mass, with the idea that the subsystem will oscillate out of phase with the prime system, and in so doing will reduce the vibration effort. (Tr. 158)

It was also his view that the tests which had been performed by the previously mentioned expert who had performed the testing at the request of the Federal Trade Commission did, in fact, show some measurable effectivenes of the device (Tr. 163–64).

9. Respondents also offered testimony of another engineer who had designed the device. He explained the theory of a dynamic absorber as follows:

> A dynamic absorber, by definition, is a mass suspended within another mass with the same resident frequency, or the same natural frequency, so that when one mass moves the other one tries to resist it, but it's being excited by the same force, and so, when they each complete its cycle they're at other ends of the stroke, and the other one's trying to come back and this one's trying to go this way. That's the whole purpose of the dynamic absorber, so that one can oppose the other so that the secondary mass can help to dissipate the first one, and that's where the dampening effect is; and that's what it's because of. (Tr. 279)

He also stated that he had conducted some practical tests of the device in automobiles and had observed that it was effective for the purposes

claimed for it, but he did not record any findings or results of such tests. (Tr. 284–89)

10. About one hundred of these units was supplied to the Florida Highway Patrol for use in its vehicles, and evidence was offered by complaint counsel and respondents' counsel that expressed the views of the various patrolmen to the effect that the device was useful; that it was not useful; or that they couldn't be sure what the effect of the device was. It is concluded that all of the evidence from the users of the device is inconclusive and cannot be relied upon.

11. Although there is a dispute regarding the theory of the manner in which the device may, or could, operate, it is unnecesary to decide whether this is a valid mechanical theory because it is found that the tests conducted by the expert whose testimony was offered by complaint counsel show that the device did not produce the results which were claimed for it. The facts must be found on the basis of what appears to be the most carefully controlled and competent tests shown to have been conducted, and here it is believed they were the tests conducted by Dr. Frank and Professor Easton (Tr. 51, *et seq.*). It is found that the device, which weighs about 53 pounds, has no value in stabilizing a vehicle beyond its value as an added weight. It is therefore found that, in truth and in fact,

The Brown Dynamic Absorber is not an effective safety device.

The Brown Dynamic Absorber is not an anti-skid device which will help prevent skidding, spin-outs, unwanted motion, and accidents.

The Brown Dynamic Absorber will not help save lives.

The Brown Dynamic Absorber will not keep the rear wheels of an automobile tracking the front wheels, will not give the driver added control, and will not help a skidding automobile going straight.

The Brown Dynamic Absorber will not help control automobiles during panic stops or sudden turns.

The Brown Dynamic Absorber will not help control automobiles on wet or sandy road surfaces.

The performance representations for the Brown Dynamic Absorber have not been substantiated by competent scientific tests or by authenticated, controlled and duly recorded tests.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, 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.

ORDER

It is ordered, That the respondents Brown Auto Stabilizer Co., a corporation, its successors and assigns, and its officers, and Charles R. Brown, individually, and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of "Dynamic Absorbers" or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' "Dynamic Absorber" or any similar device when installed or used in any manner in the operation of a motor vehicle:

(a) Is an effective safety device, or

(b) Is an anti-skid device, will help prevent skidding, spin-outs, unwanted motion, or accidents, or

(c) Will help save lives, or

(d) Will help keep the rear wheels tracking the front wheels, will give the driver added control, or will help keep a skidding motor vehicle going straight, or

(e) Will help control motor vehicles during panic stops or sudden turns, or

(f) Will have any value in helping to control motor vehicles on wet or sandy road surfaces, beyond its value as added weight.

2. Using the word "Stabilizer" or any other word, term, or phrase of similar import or meaning, as part of the corporate or trade name or in any other manner to describe or refer to respondents' device or any similar device.

3. Representing, directly or by implication, that the performance representations for respondents' "Dynamic Absorber" have been substantiated by competent scientific tests or by authenticated, controlled, and duly recorded tests; or falsely representing, in any manner, the extent, kind, character, or results of any scientific tests performed on any of respondents' products.

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 the 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 that may affect compliance obligations arising out of this order.

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

to cease and desist to all present and future distributors, salesmen, or personnel of respondents engaged in the offering for sale, or sale, of respondents' "Dynamic Absorber" or any other products, or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify and advise each present and future distributor or sales representative to abide by the terms of this order and that the failure to comply with the order will result in cancellation of its distributorship or other selling agreement with respondents.

Opinion of the Commission

By Dennison, *Commissioner:*

This is an appeal by respondents from an initial decision in which the administrative law judge found that respondents had falsely advertised performance qualities of their product, the Brown "Dynamic Absorber."

The "Dynamic Absorber" is a self-contained device designed to fit in the trunk of a car. It is enclosed in a long box and weighs about 53 pounds. Within the box is a weight which can pivot back and forth in response to lateral (sideway) movements of the car. The claim of the respondents is that the device is so designed that it will provide inertial reserve and substantially dampen lateral movements and vibrations. The device has been advertised for sale at $79.50. (Some of respondents' advertisements claim that to show the company's interest in public safety the $79.50 is a reduced price from a previous price of $149.50.)

In their advertisement, respondents claim great safety virtues for this product. For instance, they assert:

> Stop Worrying about you Auto's Safety and Do Something About It Now. Install a Brown Dynamic Absorber for that Extra Margin of Safety.
>
> Are you Really Interested in Protecting Your Loved Ones * * *
>
> We know and our customers agree that any car equipped with a Brown Dynamic Absorber is a safer car to drive under all conditions than a car not similarly equipped.
>
> * * * the Brown Dynamic Absorber to augment conventional controls on automobiles to give drivers better control of their cars under all driving conditions.
>
> Blow outs can cause serious accidents under the best driving conditions. The Brown Dynamic Absorber could provide the extra margin of safety that could save your life.

You can have a Brown Dynamic Absorber installed in your car to augment the conventional controls and get automatic, mechanical help when you need it to prevent many needless auto accidents from happening.

Q. What does it do?

A. It helps drivers stop cars faster and straighter.

* * * * * * *

Q. Does a Brown Auto Stabilizer help on slippery surfaces?

A. Yes, * * *

The parties are in agreement that through these and other advertisements respondents have made the following representations:

1. That the Brown Dynamic Absorber is an effective safety device.

2. That the Brown Dynamic Absorber is an anti-skid device which will help prevent skidding, spin-outs, unwanted motion, and accidents.

3. That the Brown Dynamic Asborber will help save lives.

4. That the Brown Dynamic Absorber will keep the rear wheels of an automobile tracking the front wheels, will give the driver added control, and will help keep a skidding automobile going straight.

5. That the Brown Dynamic Absorber will help control automobiles during panic stops or sudden turns.

6. That the Brown Dynamic Absorber will help control automobiles on wet or sandy road surfaces.

7. That the performance representations for the Brown Dynamic Absorber have been substantiated by competent scientific tests or by authenticated, controlled, and duly recorded tests.

The only issue in dispute during the hearings was whether the device is in fact effective for the above intended purposes. Complaint counsel submitted detailed test data and supporting expert testimony comparing the results of use of the device in a car with use of an equivalent deadweight in the same car.[1] This evidence supports the view that the device does not perform as claimed in respondents' advertisements. Respondents submitted no test data but relied on evidence from drivers who have used the device and believe that it improves stabilization of their car. They also presented testimony by an engineering expert to the effect that the theory upon which the device is claimed to operate is a valid one and testimony by the inventor of the device to the effect that it performs as intended.

The administrative law judge found that whether or not the theory for the device relied upon by respondents is sound, the tests offered

[1] Although respondents dispute certain aspects of the tests and the weight to be given to the tests, they do not dispute the validity of comparing the behavior of a car with the device (properly installed) as compared to performance of the car with an equivalent deadweight substituted for it. Therefore there is no contention that the tests should have compared performance with device versus performance with the device removed and no deadweight substituted.

by complaint counsel show that the device does not in fact produce the results claimed for it. He also concluded that the evidence from users of the device was inconclusive and could not be relied upon. He issued an order prohibiting respondents from making the above-described representations and from using the word "stabilizer" or similar term in their trade name. In their appeal, respondents challenge his acceptance of the tests and claim error in the initial decision in other respects. Before taking up these points, a description of the tests submitted by complaint counsel would be appropriate.

Tests Performed by A. H. Easton & Associates

Complaint counsel introduced analyses of road tests using the Brown "Dynamic Absorber" through Dr. Andrew A. Frank, an associate in the firm of A. H. Easton & Associates, which is in the business of testing the behavior of automobile vehicles under various driving conditions.[2] Dr. Frank explained that he and his associate, Professor A. H. Easton,[3] performed a series of tests on a Brown "Dynamic Absorber." He explained that using testing equipment which they had designed they ran a series of road tests designed to measure the efficacy of the device under common kinds of conditions that could be encountered by drivers.

The test car used was a 1968 Oldsmobile. Since respondents claim that the device is effective for any make of car, no contention has been raised that more than one type of car should have been used. The test equipment consisted of an accelerometer package in which there were three accelerometers to measure lateral and other motions of the car and a set of two gyros—a directional gyro and a pitch-roll gyro—to measure the angles of the body of the car as the car was maneuvered.

The accelerometers gave off electrical signals proportional to the accelerations in each of their axes, and the gyros provided electrical signals providing an indication of the angles that the car was expe-

[2] Dr. Frank has a bachelor's degree in mechanical engineering, automotive option, from the University of California at Berkeley; a master's degree in mechanical engineering in automotive control systems; a Ph. D. in systems electrical engineering from the University of Southern California in 1966; and has written a number of articles on vehicle behavior. He is presently a professor at the University of Wisconsin, Engineering College and he has worked for North American Aviation from 1955–1966 on vehicular problems involved in the aerospace industry, including dynamic simulation, design of control systems for dynamic control of vehicles.

[3] A. H. Easton is also a professor of mechanical engineering at the University of Wisconsin. He teaches courses in vehicle dynamics, vehicle testing, and has had 18 years in the business of automobile testing. He has authored a number of articles on methods and results of automobile testing. In addition, he is a member of the National Safety Council and past chairman of a section of the Council on winter hazards.

riencing. The information was recorded on a special tape recorder which was then taken to a computer laboratory and put onto strip charts from which the data could be compared and interpreted. These strip charts are in the record (CX 21a=f). Tables prepared by Dr. Frank summarizing the more salient data, such as maximum lateral acceleration of the car during the tests, are attached to this opinion as Appendices. The following road tests were conducted by Dr. Frank and Professor Easton.

1. Four-Wheel Locked Braking Tests.

The first series of tests were designed to measure the effect of the "Dynamic Absorber" in a panic stop situation. After affixing the device in the trunk of a test car, Professor Easton took the car up to a given speed (40 mph) and applied the brakes suddenly. The electronic calibration equipment in the car measured various responses of the car, including the amount of acceleration of lateral movement. Also the final degree of "yaw" (lateral movement) of the stopped car from the original line of direction was recorded. The same maneuver was made with the Brown device removed and a deadweight substituted. Each type of test was repeated more than once. On their face the results might seem to indicate that there was somewhat *greater* yawing and lateral acceleration using the Brown device. Thus, the lateral acceleration using the Brown device reached a peak of .36 G's and a degree of yaw of 17, whereas the deadweight tests did not exceed .22 G's and 8 degrees, respectively. See Appendix I.[4] However, Dr. Frank explained that the range of difference was not statistically significant and that the results should be interpreted to mean that the Brown device had about the same effect as the deadweight substitute.

2. Three-Wheel Locked Braking Tests.

A second series of tests involved blocking (disconnecting) the right front brake of the automobile and applying the brakes suddenly, causing the car to go into a violent spin-out or skidding condition and changing its direction 140–145 degrees. The results are summarized in Appendix II. Again, Dr. Frank stated that based on his experience the data shows there was no significant difference in the behavior of the car, whether the Brown device was used or a deadweight was used.

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[4] The test runs marked "#1" under Column B in the Appendices indicate use of the Brown device. Tests marked "#1 wt." indicate the deadweight tests. (Subsequent runs involving stabilizers not involved in this case have been deleted from the exhibits.)

3. Constant Oscillatory Steering Tests.

A third series of tests involved using a mechanical steering wheel oscillator to rotate the steering wheel back and forth, causing the car to go in an "S" direction at a constant speed, at approximately 45-to-50 mph. A summary of peak-to-peak lateral acceleration and roll angle is shown on Appendices III and IV. Appendix III shows the comparative results with tire pressure equal in all four tires. Appendix IV shows the results when the pressure in the rear tires was significantly reduced. The rear tires were softened, Dr. Frank explained, to cause the car to go into what automobile testers call an "oversteer condition," giving the car a greater tendency to spin or skid.

The data in Appendix III shows somewhat lower measurements for lateral acceleration in the test using the Brown device (Appendix III). Respondents contend that this indicates the stabilizing effect of the Brown device. However, it should be noted that in these runs the speed of the test vehicle was somewhat lower than the speed of the vehicle in the runs when the deadweight was installed. In subsequent runs shown in Appendix IV where speeds were more comparable, no significant difference appeared between the effects of the Brown device and the deadweight. Dr. Frank testified that the difference was within the normal tolerance of measurements and that in his opinion both sets of tests showed that the "Dynamic Absorber" would not help control automobiles on sudden turns or skids (Tr. 87–93).

4. Another series of tests involved placing instruments on the moving element within the Brown "Dynamic Absorber" and then measuring the motion of this element with respect to the automobile's movements. According to the underlying theory of mechanics attributed to the device by its inventor, for effective performance the device should at least be so constructed that it would vibrate approximately 180 degrees out of phase with the automobile's lateral oscillatory frequency. The test automobile was driven at different speeds and the steering wheel oscillated to cause lateral sway that would occur in avoidance situations. Also, the car was shaken while in a stationary position. Normal left-turn and right-turn tests were also made. Finally, what is called a "nibbling" test was run, which involved driving along a raised ledge in the road causing the car to constantly swerve back and forth.

The results of these tests show that the phase lag between the automobile and the Brown "Dynamic Absorber" was about 10 degrees when the vehicle was shaken while standing still, rather than the 180 degrees if the device was to operate according to theory. Dr. Frank

stated that this amount of phase lag indicates that the device is practically insignificant in its effect on the vehicle (Tr. 126). In the moving tests the phase lag was even less, going down to zero in a number of maneuvers. See Appendix V.

As a result of these tests and his knowledge and experience in the testing and behavior of automobiles under such conditions, Dr. Frank stated that it was his opinion that the device was not an effective safety aid, would not help prevent skids, accidents, or unwanted motion, nor would it increase controllability of a car.

Respondents' Contentions on Appeal

Respondents challenge the above tests on the ground that the testers did not mount the Brown "Dynamic Absorber" properly in the test car. In this connection, Dr. Frank had explained that he and Dr. Easton bolted the device on a piece of three-eighths inch plywood instead of bolting it directly to the body of the car. Respondents' counsel during oral argument suggested there was no evidence that the plywood board was then fixed to the bottom of the car trunk. However, examination of the testimony shows that Dr. Frank on several occasions stated that the plywood mounting was in turn bolted securely to the trunk floor (Tr. 57, 58, 75). The plywood mounting was used to facilitate installation and removal during the series of tests. Dr. Frank stated that mounting of the device on the board could not have had any material effect on its performance (Tr. 195). Respondents presented no evidence that such installation was contrary to or inconsistent with the manufacturer's instructions. Nor have they suggested how use of the plywood mounting might have interferred with the tests. Accordingly, no basis for attacking the test results on this ground is found.

Respondents presented as expert witnesses, Dr. J. Walter Harrington, a professor of mechanical engineering at Villanova University, and Dr. Gary Tolley, inventor of the Brown "Dynamic Absorber." These witnesses testified that a dynamic absorber is not a new concept; that it is recognized that if there is "a mass spring system oscillating at a natural frequency, * * * the amplitude of a vibration can be decreased by tuning a second mass spring system to the vibrating mass, with the idea that the sub-system will oscillate out of phase with the prime system, and in so doing will reduce the vibration effort." (Tr. 158; see also Tr. 279.) However, it is clear that whether a particular absorber will work on a given piece of machinery de-

pends on a number of variables. Dr. Harrington stated that whether the Brown device works "basically centers upon the amount of the mass and the way it is pivoted. And the stiffness of the rubber element which serves as a basic storing device [for the energy absorbed]" (Tr. 159).

Although Mr. Tolley claimed to have tested the Brown device with instruments and that it performed successfully, no records of these tests were kept or produced, nor were the resulting measurements ever specifically described on the witness stand. Lacking any probative proof as to the degree to which the Brown device was observed "to work," we fail to see how this testimony refutes complaint counsel's test data or demonstrates that respondents had adequate test data to substantiate their advertising claims.[5]

Respondents also rely on evidence which they submitted that certain users of the Brown device have vouched for its effectiveness. In this connection, respondents showed that they had provided the Florida State Highway Patrol with over 100 Brown "Dynamic Absorbers" to use in patrol cars. They submitted survey questionnaires that of the 102 units which were used, 76 patrolmen reported the device to be a "definite aid" in the control of the vehicle and 26 found it to be of "some value" but "not conclusive." None appeared to give a completely negative report on the questionnaire, although some did orally when called as witnesses by complaint counsel. Three representatives from the Highway Patrol and two Florida County sheriffs appeared as witnesses at respondents' request and testified to having favorable experiences with the device.

Complaint counsel, on the other hand, called eight Florida Highway Patrolmen and former patrolmen as witnesses. The thrust of their testimony was that the device did not substantially aid in the control of their patrol cars. At least three believed that the device made driving control more difficult in some situations.

We believe the administrative law judge was correct in giving inconclusive weight to user endorsements. Not only were these opinions in conflict but this type of evidence inherently lacks probative value

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[5] Dr. Harrington suggested that the data shown on one set of the Frank-Easton "constant oscillatory steering" tests (Appendix III) indicate some measurable effectiveness. However, as previously noted, *supra* p. 7, Dr. Frank stated that the variance was within normal tolerances. Also, as noted, subsequent runs of similar tests of the test vehicle showed no such differences. Considering *all* tests that were performed by Dr. Frank and his associate, we think the evidence clearly demonstrates that the device does not significantly aid in the control of vehicles as advertised.

where a product's efficacy is not readily apparent and can be measured by more objective means. Here, rigorous scientific tests, performed under conditions that would minimize subjective influences, were placed in the record. We think the scientific tests override any reliance on user testimonials. *Cf. Vacu-Matic Carburetor Co.* v. *Federal Trade Commission*. 157 F. 2d 711 (7th Cir. 1946).

Our view of this matter does not conflict with *Evis Mfg. Co.* v. *Federal Trade Commission*, 287 F. 2d 831 (9th Cir. 1961). In that case the court held that the Government's experts' tests had been successfully impeached. Evis had presented detailed evidence showing that the manufacturers' explicit instructions had not been followed and suggested why it was necessary to follow them. The experts were not familiar with the theory of Evis' invention and the court found error in not following the instructions. In the present case, respondents introduced no installation instructions into the record and no evidence suggesting that mounting the device first on a piece of three-eighths inch plywood would or might affect operation of the Brown device. Dr. Frank showed that he was fully familiar with the scientific principles which the Brown device is supposed to incorporate and no attempt was made to discredit his testimony that the plywood mounting could not have affected the results.

Respondents also rely on *Gelb.* v. *Federal Trade Commission*, 144 F.2d 580 (2d Cir. 1944). But that case is also distinguishable. There a chemist's opinion as to the results of using a hair conditioner was held not to constitute reliable evidence where it was predicated upon an erroneous statement as to chemical analysis. Other uncontradicted expert testimony based on a correct analysis of the product corroborated user testimony that the product worked in the manner advertised. No similar circumstance exists here.

A number of other challanges, mostly procedural in nature, are raised in respondents' briefs. We find no error in the administrative law judge's rulings on these points. Since they do not involve material issues, extended discussion of these issues is not necessary.

We find no error in the administrative law judge's findings that respondents' advertisements were false and deceptive in the manner set forth in the complaint. We find no error in any other respect. Accordingly, the initial decision is affirmed and adopted. An appropriate order accompanies this opinion.

Commissioner MacIntyre concurred in the result.

APPENDIX I

TABLE I

INERTIA . . . SKID STABILIZER TESTS 12-15-70 1:25 p.m

Clear, dry. Temperature 52°

Tire Pressures: RF 25 PSI, RR 26 PSI, LR 25 PSI, LF 25 PSI

BRAKING TESTS

A RUN NO.	B UNIT NO.	C COUNTS	D SPEED MPH	E DIST. FEET	F CORRECTED DISTANCE	G DECEL. G'S	H PITCH DEG.	I ROLL DEG.	J YAW DEG.	K LAT. ACC. G'S (PEAK)	L VERT. ACC. G'S (PEAK-PEAK)	M TIME SEC
1	#1	177	40.0	75.9	75.9	.72	2.7	2.0	11	.32	.55	2.6
2	#1	171	39.5	73.2	75.0	.72	3.6	1.6	17	.36	.58	2.6
3	#1	172	40.0	73.8	73.8	.72	3.42	1.4	11	.25	.60	2.6
4	#1wt	176	40.0	75.4	75.4	.73	2.9	1.2	8	.20	.61	2.6
5	#1wt	174	40.0	74.6	74.6	.73	3.1	1.2	8	.22	.59	2.6

#1wt - Dead weight equivalent of unit #1

#2wt - Dead weight equivalent of unit #2

#3wt - Dead weight equivalent of unit #3

TABLE IV

INERTIA ANTI-SKID STABILIZER TESTS 10-15-70. 4:20 p.m.

Clear, Dry Temperature 50°

Tire Pressures: RF 25, RR 25, LF 25, LR 25

THREE-WHEEL-BRAKE TESTS

A RUN NO.	B UNIT NO.	C SPEED MPH	D FINAL ANGLE TAN.	E LAT. ACC. (PEAK) G'S	F LAT. ACC. RATE G'S/SEC.	G ROLL ANGLE DEG.	H YAW ANGLE DEG.	I MEAS. DEG.
16	#1 wt	30		1.10	.71	8.6		
17	#1 wt	30		1.04	.71	8.9		
18	1	30	.719	1.08	.71	8.9		144
19	1	30		1.04	.71	9.6		

* Tire pressure reduced to 10 PSI by tests

#1 wt - Dead weight equivalent of unit #1

#2 wt - Dead weight equivalent of unit #2

#3 wt - Dead weight equivalent of unit #3

APPENDIX II

TABLE II

INERTIA ANTI-SKID STABILIZER TESTS 10-15-70 1:38 p.m.

Clear, Dry Temperature 52°

Tire Pressures: RF 25, RR 26, LF 25, LR 25

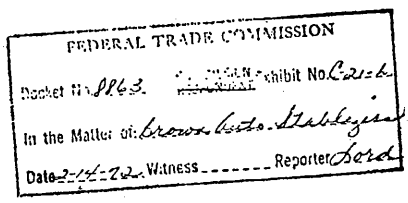
CONSTANT OSCILLATORY STEERING TESTS

A RUN NO.	B UNIT NO.	C SPEED MPH	D LAT. ACC. G'S (PEAK-PEAK)	E ROLL ANG. DEGREES (PEAK-PEAK)
7	#1 wt	45-50	.72	.33
8	#1 wt	48	.72	.34
18	1	44	.58	.29
19	1	45	.62	.33
20	1	45	.64	.32

#1 wt - Dead weight equivalent of unit #1

#2 wt - Dead weight equivalent of unit #2

#3 wt - Dead weight equivalent of unit #3



APPENDIX III

TABLE III

INERTIA ANTI-SKID STABILIZER TESTS 10-15-70 3:15 p.m.

Clear, Dry Temperature 52°

Tire Pressures: RF 25, RR 15, LF 25, LR 15

CONSTANT OSCILLATORY STEERING TESTS

A RUN NO.	B UNIT NO.	C SPEED MPH	D LAT. ACC. G'S (PEAK-PEAK)	E ROLL ANG. DEGREES (PEAK-PEAK)
1	1	45	.55	--
2	1	50	.70	--
3	#1 wt	45	.72	.30
4	#1 wt	45	.64	.28
5	1	40-45	.70	.26
6	1	45-50	.71	.25
7	1	43-45	.60	.28

#1 wt - Dead weight equivalent of unit #1

#2 wt - Dead weight equivalent of unit #2

#3 wt - Dead weight equivalent of unit #3

APPENDIX IV

APPENDIX A

TABLE V

INERTIA ANTI-SKID STABILIZER TESTS 10-20-70 5:30 p.m.

Clear, Dry Temperature 48°

INSTRUMENTED STABILIZER TESTS:
The accelerometers were located in the vicinity of the stabilizers.

A RUN NO.	B UNIT NO.	C TEST NAME	D LATERAL ACCEL. G'S	E PHASE LAG DEGREES	F FREQ. HERTZ	G COMMENTS
1	1	Calib.				Weight moved to car's right side
2	1	Calib.				Weight moved to car's left side
3	1	Shake	±.31	+10	1.91	The rear of the car is shaken by hand
4	1	Shake	±.13	+10	1.91	The rear of the car is shaken by hand
5	1	Rt. Turn	+.44	0	.15	
6	1	Left Turn	-.31	0	.15	
7	1	Steering	±.55	-5	.45	Speed 30 mph, steering wheel oscillated until noticeable tire squeal
8	1	Steering	±.56	+5	.45	Speed 30 mph, steering wheel oscillated until noticeable tire squeal
9						
10	1	Steering	±.50	0	.62	Speed 60 mph, steering wheel oscillated until noticeable tire squeal
11	1	Nibbling	±.18	0	.4	Speed 65 mph, nibbling on a one inch strip (note additional oscillation due to lack of damping in device)

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard by the Commission upon briefs and oral argument in support of and in opposition to the appeal of respondents from the initial decision finding a violation of Section 5 of the Federal Trade Commission Act; and the Commission for the reasons stated in the accompanying opinion, having concluded that the appeal should be denied:

It is ordered, That the initial decision, as supplemented by the Commission's opinion in this matter, and the order to cease and desist contained in said initial decision, be, and they hereby are, adopted as the decision and order of the Commission, and

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 the order to cease and desist.

Commissioner MacIntyre concurring in the result.

IN THE MATTER OF

DAVIS FELT AND CARPET COMPANY

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

Docket C-2313, Complaint, Nov. 6, 1972—Decision, Nov. 6, 1972

Consent order requiring a Philadelphia, Pennsylvania, manufacturer and retailer of carpets and rugs, among other things to cease selling and manufacturing carpeting which does not meet the acceptable criteria for carpeting under the Flammable Fabrics 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 Davis Felt and Carpet Company, a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 Davis Felt and Carpet Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania.

Respondent is engaged in the manufacture and sale of carpets and rugs, with its principal place of business located at Casmir and Miller Streets, Philadelphia, Pennsylvania.

PAR. 2. Respondent is now and for some time last past has been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has 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 carpets and rugs in style "Needletone, Color 201," subject to Department of Commerce Standard For the Surface Flammability of Carpets and Rugs (DOC FF 1–70).

PAR. 3. The aforesaid acts and practices of respondent 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs 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 Flammable Fabrics Act, as amended; 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 com-

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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 Davis Felt and Carpet Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania.

Respondent is engaged in the manufacture and sale of carpets and rugs, with its office and principal place of business located at Casmir and Miller Streets, Philadelphia, Pennsylvania.

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

ORDER

It is ordered, That respondent Davis Felt and Carpet Company, a corporation, its successors and assigns, and its officers and respondent's agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, 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 any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondent notify all of its 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 respondent 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 provisions of this order with respect to customer notification, recall and processing or destruction shall be applicable to carpets and rugs in style "Needletone, Color 201" as designated in subparagraph one of Paragraph Two of the complaint giving rise to this order, and any other colors determined to be in violation of the Flammable Fabrics Act, as amended, prior to the date of acceptance by the Commission of the final compliance report.

It is further ordered, That respondent herein shall, within ten (10) days after service upon it of this order, file with the Commission a special report in writing setting forth the respondent's 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 identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) 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 the results thereof, (5) any disposition of said products since March 29, 1972, and (6) 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 to destroy said products, and the results of such action. Respondent will submit with its report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondent will forward to the Commission for testing a sample of any such carpet or rug.

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

IN THE MATTER OF

TUFTEX, INC., ET AL.

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

Docket C-2314. Complaint, Nov. 7, 1972—Decision, Nov. 7, 1972

Consent order requiring a Dalton, Georgia, manufacturer and retailer of carpets and rugs, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued or amended under the provisions of the Flammable Fabrics 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 Tuftex, Inc., a corporation, and Gordon C. Leonard, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Tuftex, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Gordon C. Leonard is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at 107 Brooker Drive, Dalton, Georgia.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, 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 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 carpets and rugs in style "Shockpruf, Color Stop Red," subject to Department of Commerce Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1–70).

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 Division of Textiles and Furs 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 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 Tuftex, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

Respondent Gordon C. Leonard is an officer of the said corporation. He formulates, directs and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with the office and principal place of business of respondents located at 107 Brooker Drive, Dalton, Georgia.

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 Tuftex, Inc., a corporation, its successors and assigns, and its officers, and respondent Gordon C. Leonard, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, 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 respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission 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 identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) 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 the results thereof, (5) any disposition of said products since

March 9, 1972 and (6) 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 to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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

It is further ordered, That the 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

LOCAL FINANCE CORPORATION

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

Docket C-2315. Complaint, Nov. 13, 1972—Decision, Nov. 13, 1972

Consent order requiring a Providence, Rhode Island, loan company, among other things to cease violating the Truth in Lending Act by failing to disclose to customers finance charges; the fact that insurance coverage is not required by the creditor; the annual percentage rate; and any other disclosures required by Regulation Z of the 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 Local Finance Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and of the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Local Finance Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations with its principal office and place of business located at 179 Wayland Avenue, Providence, Rhode Island.

Respondent Local Finance Corporation has established and operated a number of corporate subsidiaries for the purpose of engaging in the business of lending money to the public. Respondent Local Finance Corporation currently operates a substantial number of these subsidiaries which are located in the States of Rhode Island, Massachusetts, New Jersey, Pennsylvania and North Carolina. Respondent Local Finance Corporation, in the operation of certain of these subsidiaries uses various trade names, such as Provident Management Corporation, Local Consumer Discount Company and Local Acceptance Company.

Respondent Local Finance Corporation dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones and approves the acts and practices of its subsidiaries including the acts and practices hereinafter set forth. Moreover, respondent Local Finance Corporation directly or indirectly profits and benefits by and through the acts and practices hereinafter set forth.

PAR. 2. Respondent is now, and has for some time last past, through its various organizational divisions and subsidiaries, been engaged in the business of lending money to the public. Respondent Local Finance Corporation and its subsidiary organizations cooperate and act together in the carrying out of their business as hereinafter set forth. Their volume of business has been, and is, substantial.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends and for some time last past has regularly extended consumer credit as "consumer credit" is defined in

Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of its business and in connection with its extensions of consumer credit as "consumer credit" is defined in Regulation Z, has caused and is causing customers to execute a loan agreement hereinafter referred to as the "Small Loan Set" and consisting of fourteen pages, each separated by a carbon sheet. The thirteenth page of the loan set, which serves as the respondent's office copy and also as a receipt that the customer received a Statement of Disclosure, is entitled "Statement of Disclosure and Insurance Authorization."

By and through the use of the Small Loan Set respondent:

1. Failed, when the fact that insurance coverage was not required by the creditor was not clearly and conspicuously disclosed to the customer in writing, to include the amount of the charge for such insurance in the finance charge as required by Section 226.4(a)(5)(i) of Regulation Z, and thereby failed to state the finance charge accurately as required by Section 226.8(d)(3).

2. Fails to disclose to customers clearly, conspicuously in writing, and in meaningful sequence that insurance coverage is not required by the creditor, as required by Section 226.6(a) of Regulation Z.

3. Fails to furnish customers with a duplicate of the instrument containing the disclosures or a separate statement of disclosure on which all of the required disclosures are made clearly, conspicuously and legibly at the time those disclosures are made as required by Section 226.8(a) of Regulation Z.

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

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the Truth in Lending Act, and the respondent having been served with notice of said determina-

tion and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent Local Finance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 179 Wayland Avenue, Providence, Rhode Island.

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

ORDER

It is ordered, That respondent Local Finance Corporation, a corporation, doing business as Provident Management Corporation, Local Consumer Discount Company, Local Acceptance Company or any other name, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, affiliate, so-called Massachusetts business trust, division, or other device, in connection with any extension or arrangement for the extension of consumer credit as "consumer credit" is defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to include in the finance charge, for purposes of disclosure of the finance charge and computation of the annual percentage rate, any charge for credit life or disability insurance, unless the fact that such insurance is not required is clearly and conspicuously disclosed to the customer in writing as provided in Section 226.4(a)(5)(i).

2. Failing to disclose to customers clearly, conspicuously, in writing and in a meaningful sequence that insurance coverage is not required by the creditor, as required by Section 226.6 of Regulation Z.

3. Failing to furnish customers with a duplicate of the instrument containing the disclosures or a separate statement of disclosure on which all of the required disclosures are made clearly, conspicuously and legibly at the time those disclosures are made as required by Section 226.8 (a) of Regulation Z.

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

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

It is further ordered, That a copy of this order to cease and desist be delivered to all present and future personnel of respondent and its subsidiaries engaged in the consummation of any extension of consumer credit and that respondent secure from each such person a signed statement acknowledging receipt of the order.

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

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

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