

Complaint

IN THE MATTER OF
BELL & HOWELL COMPANY, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9099. Complaint, May 27, 1977—Decision, May 8, 1980

This consent order requires, among other things, a Lincolnwood, Ill. seller of home study courses and its subsidiary to cease misrepresenting admission criteria, potential earnings, employment opportunities, and the need or demand for their graduates. The firms are further prohibited from misrepresenting the effectiveness of their job placement service; that experience is not necessary or advantageous in obtaining employment; that their courses are endorsed by a governmental agency; and that students are provided with instructional assistance. The order also requires respondents to make prescribed disclosures regarding the job success of previous students; the manner in which contracts can be cancelled; and the method used to calculate tuition obligations should a student drop out of a course. Additionally, Bell & Howell is required to deposit in an escrow account the sum of \$1.2 million to provide refunds for former eligible students.

Appearances

For the Commission: *Brian Hennigan, Carlton Lowe, and David Marx, Jr.*

For the respondents: *Samuel Weisbard, Bruce Schoumacher and William A. Cerillo, McDermott, Will & Emery, Chicago, Ill.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bell & Howell Company, a corporation, and Bell & Howell Schools, Inc., a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bell & Howell Company, (hereinafter sometimes referred to as BHC), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 7100 McCormick Ave., Lincolnwood, Illinois.

Respondent Bell & Howell Schools, Inc., (hereinafter sometimes

referred to as BHS), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4141 West Belmont Ave., Chicago, Illinois. Respondent BHS is a wholly-owned subsidiary of respondent BHC.

The aforementioned respondents have cooperated, and acted together in carrying out the acts and practices hereinafter set forth. Respondents BHC has known of, condoned and approved, expressly or tacitly, the acts and practices of respondent BHS hereinafter set forth. Respondent BHC is materially and financially interested in and responsible for respondent BHS. BHC has received monies from BHS flowing from the acts and practices set forth herein.

PAR. 2. Respondents have been engaged for some time last past in the advertising, promotion, formulation, offering for sale, sale and distribution of resident training and home study courses to the public purported to prepare completing students thereof for employment, advancement or increased earnings in the fields of accounting, television repair, electronics, and other related career fields. The home study courses consist of a series of home study lessons pursued by correspondence through the U.S. mails. The resident training programs consist of a series of lessons similar in content and purpose to the home study courses. The violations alleged in this complaint relate to the acts and practices of respondents in connection with their home study program.

Further, for the purpose of enabling students to finance respondents' home study courses, respondents have arranged or assisted in the arrangement of credit and deferred payment terms and in the application for benefits under the Veterans Educational Assistance Act, 38 U.S.C. 1651, et seq. ("VEAA"), and federally insured student loans under the Higher Education Resources and Student Assistance Act, 20 U.S.C. 1071, et seq. ("FISLP"). Respondents have accepted the revenues and proceeds flowing therefrom.

Further, respondents have engaged in recruitment of employees by means of advertisements in printed media of general circulation, and through other means, whereby members of the general public are induced to accept employment under written agreements and compensation schedules as members of respondents' sales force.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated, and caused to be disseminated, by means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, certain advertisements concerning the home study courses including, but not limited to, advertisements inserted in newspapers and magazines of general interstate circulation,

and by means of brochures, pamphlets and other promotional materials disseminated through the United States mails, and by other means, for the purpose of obtaining leads or prospects for the sale of such home study courses, for the purpose of inducing the purchase of such home study courses, and for the purpose of recruiting and inducing the acceptance of employment by sales force members. Respondents' sales force members have visited prospective purchasers throughout the various states to induce the purchase of respondents' home study courses. Respondents have transmitted and received, and caused to be transmitted and received, in the course of advertising, offering for sale, sale and distribution of such home study courses, and in the course of advertising, recruiting, and inducing employment of sales force members, lessons and equipment from the home study courses, advertising and promotional materials, sales contracts, invoices, billing statements, checks, monies, and other business papers and documents, to and from prospective students, students, prospective sales force members, and sales force members, located in various States of the United States, other than the state of origination.

Respondents, at all times mentioned herein, have maintained a substantial course of trade in said home study courses and recruitment of sales force members in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PART I

PAR. 4. In the course and conduct of their aforesaid business, for the purpose of obtaining leads or prospects for the sale of their home study courses and inducing the purchase of such home study courses, respondents have made numerous statements and representations in magazines, newspapers, and other media, regarding opportunities for employment or advancement, occupational demand, earnings potentials, the placement assistance furnished to students completing respondents' home study courses, the instruction and assistance available to students, and other matters.

In the further course and conduct of their aforesaid business, respondents have caused persons who respond to their advertisements to be visited by respondents' sales force members in the homes of such persons. For the purpose of inducing the sale of respondents' home study courses, such sales force members have made to prospective purchasers many statements or representations, directly or by implication, as enumerated above in this paragraph. In addition, such sales force members have made representations, directly or by implication, regarding entry level wages and salary potentials, content and degree

of difficulty of home study courses, contract terms and financing arrangements, VEAA benefits and FISLP loans, and other matters. Some of the aforesaid statements and representations have appeared in brochures and other printed materials furnished by respondents to sales force members, and other statements and representations have been made orally by such sales force members to prospective purchasers.

PAR. 5. By and through the use of the aforesaid statements and representations respondents have represented, directly or by implication that:

1. There is an urgent need or demand for students who complete respondents' home study courses in the positions and career fields for which respondents train such students.

2. Students completing respondents' home study courses receive high wages or salaries from employment in the positions or career fields for which respondents train such students.

3. A substantial proportion of students completing respondents' home study courses obtain employment through respondents' placement service.

4. Respondents are selective in enrollment.

5. A high school education or its equivalent is sufficient for admission and successful completion of respondents' home study courses.

6. Help sessions are available to respondents' home study students at regular and frequent intervals and provide personalized instruction and assistance.

7. Instruction and assistance from instructors are readily available to home study students through telephone services provided by respondents.

8. Respondents' home study electronics courses are simple and involve primarily manual skills.

PAR. 6. In truth and in fact:

1. In many instances there is not an urgent need or demand for students completing respondents' home study courses in the positions or career fields for which respondents train such students.

2. In many instances students completing respondents' home study courses do not receive high wages or salaries from employment in positions for which respondents train such students.

3. A substantial proportion of students completing respondents' home study courses do not obtain employment through the placement service offered by respondents.

4. Respondents are not selective in enrollment; to the contrary, respondents require few qualifications of prospective students and accept all or most persons for enrollment in such courses who are willing to execute a contract to pay for such home study courses.

5. In many instances a high school education or its equivalent is not sufficient for successful completion of respondents' home study courses.

6. In many instances help sessions are not available to respondents' home study students at regular and frequent intervals and do not provide personalized instruction and assistance.

7. In many instances instruction and assistance from instructors are not readily available to home study students through telephone services provided by respondents.

8. Respondents' home study electronics courses are not simple and do not involve primarily manual skills.

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

PAR. 7. Respondents have offered for sale home study courses and have accepted students for enrollment on the basis of a high school education or its equivalent, without disclosing to prospective students:

1. That certain aptitudes or background are requisite for successful completion of such home study courses;
2. That a high school education or its equivalent does not necessarily insure that the prospective student has such requisite aptitudes or background; and
3. That respondents do not test or screen home study students to determine whether such students actually have the requisite aptitudes or background.

Disclosure of such facts to home study students would indicate to such students the significance of respondents' admission requirements and the probability of their completing such home study courses. Thus, respondents have failed to disclose material facts which, if known to certain prospective students, would be likely to affect their consideration of whether to purchase such home study courses.

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

PAR. 8. In the course of offering for sale and selling home study electronics courses, respondents have emphasized fun, simplicity and manual training, while understating, obscuring and failing to disclose the significance, nature and extent of written lessons and instructional

material involved in such courses. The aforesaid representations and non-disclosures have deceived students with respect to the content and nature of home study electronics courses. Therefore, the aforesaid acts and practices were and are false, misleading, deceptive or unfair acts or practices.

PAR. 9. Through the use of the aforesaid advertisements, materials, oral presentations and otherwise, and for the purpose of inducing the purchase of home study courses, respondents have degraded, debased or disparaged the present or potential career opportunities, education and training, self-image or other personal characteristics of prospective students. Further, respondents have represented, directly or by implication, that such prospective students can alter or improve such personal characteristics through respondents' home study courses.

The effect of the aforesaid disparagements and representations has been to aggravate and continue the unfair and deceptive effect of the acts and practices set forth herein. Therefore, the aforesaid acts and practices of respondents were and are unfair acts or practices.

PAR. 10. In the further course and conduct of their aforesaid business, respondents have assisted prospective students in making application or contracts for enrollment, deferred payment financing, benefits under VEAA, and loans under FISLP. In many instances respondents have made false, misleading or deceptive representations, directly or by implication, relating to the information, terms, conditions and obligations contained in such contracts, applications and agreements or remaining thereunder upon termination of enrollment. In many instances respondents have failed to fully explain and disclose material facts regarding the terms and conditions of such forms and agreements.

The aforesaid acts of respondents have deceived students with respect to the nature, terms and conditions of contractual obligations, veterans educational benefits, Federally Insured Student Loans, and other consequences of the contracts, applications and agreements.

The deceptions resulting from the acts or practices described in this Paragraph Ten are continuing, in many instances, through the period of the students' enrollment and concomitant deferred payment obligations.

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

PAR. 11. In the further course of their aforesaid business, and at all times mentioned herein, respondents have offered for sale home study courses intended to train students for employment in certain positions or career fields without disclosing in their advertising and printed material or through their sales force members:

1. the percentages of students recently completing the home study courses who were able to secure employment in the positions or career fields for which they were trained;
2. the initial salary received by such completing students; and
3. the percentage of recent students for each home study course offered that have failed to complete their courses of instruction.

Knowledge of such facts by prospective students of respondents' home study courses would indicate that a significant number of students have not completed such courses and not secured employment. Thus, respondents have failed to disclose material facts which, if known to certain prospective students, would be likely to affect their consideration of whether to purchase such home study courses.

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

PAR. 12. In the further course and conduct of their aforesaid business, and in furtherance of their purpose of inducing prospective students to execute enrollment contracts for the purchase of their home study courses, respondents and their employees, sales force members, and representatives, through the use of the false, misleading and deceptive statements, representations and practices set forth herein in this complaint, have induced prospective students to execute enrollment contracts and deferred payment financing agreements upon initial contact without affording such students sufficient time to carefully consider the purchase of the home study course or the financing thereof. Therefore, the aforesaid acts and practices were and are unfair acts or practices.

PAR. 13. In the further course and conduct of their aforesaid business, respondents have made representations and entered into contracts with home study students whereby respondents are obligated to provide and deliver, and such students are entitled to receive, in accord with their progress through the course, lessons and examinations, laboratory materials and equipment, tuition refunds upon cancellation, and certain services including, but not limited to, grading of lessons and examinations, and instruction or assistance through help sessions and telephone services. In many instances respondents have failed to provide or deliver such lessons, examinations, laboratory materials, equipment, tuition refunds and other services to home study students in a timely manner and in accord with the terms of the aforesaid contracts and representations. Such failures and delays on the part of respondents have impeded such students in their efforts to derive benefit from and progress through such home study courses and have resulted in inconvenience, expense and financial detriment to

such students. Therefore, the aforesaid acts and practices of respondents were and are unfair acts or practices.

PAR. 14. Through the false, misleading, deceptive, and unfair acts or practices herein set forth in this complaint, respondents have induced students and other persons or entities to pay, or contract to pay, to respondents substantial sums of money to purchase or pay for respondents' home study courses. In many instances such monies were paid to and received by respondents although such courses were of little value to students. Respondents have received the aforesaid monies and have failed to offer or refund such sums to, or to rescind the contractual obligations of, many students and other persons or entities participating in the financing of such home study courses.

By inducing students and other persons or entities to pay, or contract to pay, to respondents substantial sums of money for respondents' home study courses where such home study courses are of little value to students and by failing to offer or refund such sums to, or to rescind the contractual obligations of many students and other persons or entities where such courses are of little value, respondents have engaged in unfair acts and practices.

Therefore, the said acts or practices constitute unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

PART II

PAR. 15. In the further course and conduct of their business as aforesaid, respondents have recruited and induced members of the general public to accept employment under written agreements and to sell respondents' home study courses. In the course of such recruitment respondents have published or caused to be published advertisements in newspapers of general and interstate circulation throughout the United States and have made oral presentations through their agents, representatives, and employees. Through such publications, advertisements, oral presentations and otherwise, respondents have made statements and representations, directly or by implication, respecting earnings potential, sales territory, job security, sales quotas, company-generated leads and other terms of the employment relationship in order to induce individuals to accept employment in respondents' sales force and to sell home study courses on behalf of respondents.

PAR. 16. Furthermore, respondents have, through the acts and practices described herein, recruited and induced persons to accept employment in respondents' sales force and to enter into, as a condition

of such employment, written agreements and compensation schedules, which include the following termination provisions, in substance:

1. Employment under this schedule may be terminated by either party at any time.
2. Termination of the representatives' employment with the company will cause this (compensation) schedule to be cancelled and no amounts will be considered earned or accrued after the last day of active employment, as shown by the company records, unless termination is for one of the following reasons: death, retirement (as defined by the Bell & Howell profit sharing trust), or permanent total disability (as defined by the Bell & Howell group insurance master policy).

Through such contracts respondents have retained and exercised the power to unilaterally and substantially alter the terms of the employment relationship and the compensation received by sales force members. Included among such unilateral powers and practices, but not all inclusive thereof, are the following:

1. Respondents have arbitrarily and without cause denied, altered or periodically withheld sales leads from sales force members, thereby hindering such sales force members in obtaining enrollments and fulfilling the sales quotas or other performance requirements set by respondents.
2. Respondents have arbitrarily and unilaterally altered or increased the sales quotas and performance requirements.
3. Respondents have arbitrarily and unilaterally altered and reformed the commission schedule and other payment schedules, for the purpose of inducing or coercing such sales force members to fulfill increasingly higher sales quotas and other performance requirements.
4. Respondents have used various threats and forms of coercion against their sales force members, including but not limited to probation, termination, and restriction of sales leads, to coerce sales force members to comply with sales quotas and performance requirements.

As a result of the aforesaid powers and practices, respondents have, in many instances, induced or coerced sales force members to terminate employment; and respondents have thereby caused such terminated sales force members to forfeit earned compensation in accordance with the terms and conditions of the written agreements and compensation schedules.

The failure of respondents to make payment of earned compensation

to sales force members at termination does unjustly enrich respondents and is unfair.

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

PAR. 17. At the time of the false, misleading, deceptive, and unfair acts or practices set forth in this complaint, and as a result thereof, respondents have received certain complaints, reports and information from their home study students, sales force members and other persons, and from surveys and studies conducted by or on behalf of respondents, which indicated or reported the occurrence, causes, or results of such acts or practices. At the time of such complaints, reports or information respondents were engaged in the courses of conduct and business behavior herein set forth in Paragraphs Fifteen and Sixteen of this complaint.

Respondents have received the aforesaid complaints, reports and information and have continued to engage in the aforesaid courses of conduct and business behavior and have continued to enroll large numbers of home study students.

PAR. 18. The effect of the courses of conduct and business behavior set forth in Paragraph Fifteen through Seventeen herein, and the continuation of such conduct and business behavior, has been to aggravate and continue the unfair and deceptive effect of the acts and practices of respondents as alleged in Parts I and III of this complaint.

Therefore, engaging and continuing in such courses of conduct and business behavior is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act.

PART III

PAR. 19. In the further course and conduct of their aforesaid business, respondents have advertised and promoted the availability of educational benefits under the Veterans Educational Assistance Act, 38 U.S.C. 1651, et seq. ("VEAA"), as an inducement to veterans to purchase and pay for respondents' home study courses. Said Act allows each eligible veteran to "select a program of education to assist him in attaining an educational, professional or vocational objective at any educational institution (approved in accordance with the terms of the Act) selected by him." 38 U.S.C. 1670. Rules promulgated by the Veterans Administration to carry out the policy and purposes of the VEAA further provide that programs of education will be approved for veterans educational benefits where "the veteran is not already

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qualified for the objective for which the program of education is offered." 38 C.F.R. 21.4230.

In their advertisements, materials, oral presentations and otherwise, respondents have stressed non-vocational themes or benefits and have emphasized monetary benefits available through VEAA from enrollment in respondents' home study courses.

Respondents have made such representations and have assisted veterans in making application for VEAA benefits, while misrepresenting or failing to disclose to such veterans the vocational objectives and requirements for use of such benefits. Respondents have thereby induced veterans to enroll and to use their VEAA benefits for respondents' home study courses.

The effect of the aforesaid acts or practices has been to aggravate and continue the unfair and deceptive effect of the acts and practices of respondents set forth in Part I of this complaint. Such acts or practices violate the spirit and purpose of the VEAA and rules promulgated thereunder, are contrary to public policy, and were and are unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

PAR. 20. Through the false, misleading and deceptive acts or practices, and the unfair acts and practices herein set forth in this complaint, respondents have induced or arranged the application and use of monies available under VEAA to purchase or pay for respondents' home study courses. In many instances monies available under VEAA were paid over and received by respondents in contradiction of the vocational policies, purposes or requirements of said Act or rules thereunder. As a result, the eligibility of such students for VEAA benefits was diminished, depleted or expired; and such students lost the opportunity to attain an educational, professional or vocational objective from use of their VEAA benefits, as contemplated by said Act.

The use by respondents of the aforesaid acts and practices, their continued retention of VEAA funds where the policies, purposes or requirements of the VEAA or rules thereunder are contradicted, does unjustly enrich respondents.

Therefore, the said acts or practices constitute unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

PAR. 21. By and through the use of the aforesaid acts and practices, respondents have placed in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner hereinabove alleged.

PAR. 22. The use by respondents of the aforesaid false, misleading,

unfair or deceptive statements, representations, acts and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of members of the general public in the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and to induce a substantial number thereof to purchase respondents' courses or to accept employment under written agreements and to sell home study courses for the benefit of respondents by reason of said erroneous and mistaken beliefs.

PAR. 23. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Bell & Howell Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 7100 McCormick Ave., Lincolnwood, Illinois.

Respondent Bell & Howell Schools, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Illinois, with its principal office and place of business located at 2201 West Howard, Evanston, Illinois.

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

ORDER

I

It is ordered, That respondents Bell & Howell Company, a corporation, and Bell & Howell Schools, Inc., a corporation, their successors and assigns and their agents, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device in connection with the advertising, promoting, offering for sale, sale or distribution of home study courses, home study training or home study instruction in the fields of accounting, television repair, electronics, or any other subject, trade or vocation in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, orally, visually, in writing or in any other manner, directly or by implication, that:

(a) There is a significant or substantial need or demand for persons completing any of respondents' courses offered in the fields of accounting, television repair, electronics, or any other field or otherwise representing that significant or substantial opportunities for employment, or significant or substantial opportunities of any other type, are available to such persons, or that persons completing said courses will or may earn a specified amount of money, or otherwise representing by any means the prospective earnings of such persons, unless such representations are accompanied by a written disclosure form which contains the following information under the heading "Placement Record" in the format prescribed in Appendix A and for the most recently completed base period designated as described in Appendix B:

(1) the number and percentage of graduates who, within four months of leaving the course, obtained employment in jobs for which the course prepared them;

(2) the number of these graduates by their yearly gross salary, in increments of two thousand dollars (\$2,000);

(3) the percentage of these graduates within each salary increment to the total number of graduates;

(4) at its option, the number and percentage of these graduates who refused to provide salary information.

Provided, however, that this subparagraph (a) shall be inapplicable to any course newly introduced by respondents until such time as the new course has been in operation for the base period established pursuant to Appendix B as prescribed in this paragraph. However, during such period the following statement, and no other, shall be made in lieu of the Appendix A Disclosure Form required by this paragraph:

DISCLOSURE NOTICE

Because this course is new, we can't tell you how our previous students did or about your chances of getting a job when you finish.

All we can talk about is the general demand for people in the field we train you for. But this demand may be higher or lower in the area where you live, and it can change in the future. Or you may need some past experience in the field. We suggest you speak to a counselor or state employment office about these things.

(b) Experience is not required or advantageous for employment in the field of accounting, television repair, electronics, or any other field, or misrepresenting in any manner the qualifications or requirements necessary to obtain employment in the fields of accounting, television repair, electronics or any other field.

2. Misrepresenting orally, visually, in writing or in any other manner, directly or by implication:

(a) The employment prospects of respondents' graduates or the ease with which respondents' graduates will obtain employment.

(b) The types of jobs available to respondents' graduates, or that there will be job security or steady employment for respondents' graduates in positions for which respondents train such persons.

(c) The effectiveness or the success of the placement service offered by respondents in placing their graduates in positions in the fields of accounting, television repair, electronics, or any other field.

(d) That the placement service offered by respondents has names of employers seeking respondents' graduates in the fields of accounting, television repair, electronics, or any other field; or misrepresenting in any manner the capabilities, functions or service offered by respondents' placement service.

3. Representing orally, visually, in writing or in any other manner, directly or by implication, that:

(a) Help sessions are available or personalized instruction and

assistance are provided to respondents' home study students, unless, regarding help sessions, any representation is accompanied by a statement which clearly and fully discloses the time, dates, and locations of help sessions scheduled for the location in which such representation is made for the 12-month period immediately following such representation; *provided, however*, that if any changes are made in the time or location of help sessions, all students shall be notified of such changes within 30 days.

(b) Instruction or assistance is available to home study students through telephone services provided by respondents, unless any representation regarding telephone services is accompanied by a statement which clearly and fully discloses the time of operation of such telephone services, discloses whether use of such telephone service is at the student's expense, and informs the student that incoming telephone lines might be busy.

4. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee in any course of instruction offered by respondents, the admission criteria, if any, required for enrollment in the school, the number of written lessons required to be submitted by the student, the educational or occupational background needed for successful completion of the course, and if a representation is made that equipment will be furnished in the course, the number of written lessons that must be completed before the student receives any equipment furnished in the course.

5. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee in any accounting course offered by respondents, the following information in the following form:

(a) The title "IMPORTANT INFORMATION" printed in ten (10) point bold face type across the top of the form.

(b) Paragraphs providing the following information:

(1) Many employers of accountants require accountant-applicants to have a college degree or prior work experience in the field of accounting.

(2) Many employers of accountants give preferential consideration in hiring to accountant-applicants who are Certified Public Accountants (CPAs). Each of the 50 states has different requirements for the CPA examination. Before you enroll in this course, be sure to check with the Secretary of the State Board of Accountancy of your state to determine whether, after you've graduated from this course, you will be qualified to take the CPA examination.

6. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee in any television repair or electronics course offered by respondents, the following information in the following form:

(a) The title "IMPORTANT INFORMATION" printed in ten (10) point bold face type across the top of the form.

(b) Paragraphs providing the following information:

(1) Many employers of television repairmen or electronics technicians require applicants to have additional educational experience and/or previous occupational experience in the field of electronics.

(2) If you intend to open your own television or electronics entertainment equipment repair shop, you may need more training and experience than this course will give you.

7. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice which substantiate the data and information required to be disclosed by Part I, Paragraphs 1(a) and 8 of this order and prescribed in Appendix A.

8. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee in any course of instruction in the fields of accounting, television repair, electronics or any other subject, trade or vocation offered by respondents, the following information in the format prescribed in Appendix A and for a base period designated as described in Appendix B:

(a) the number of students who enrolled in that period;

(b) the number and percentage of such students who were graduated during that period;

(c) the number and percentage of such students whose course of study was terminated during that period; and

(d) The number and percentage of such students who remained actively enrolled at the end of that period.

9. (a) Contracting for the sale of any course of instruction in the field of accounting, television repair, electronics or any other subject, trade or vocation in the form of a sales contract or any other agreement which does not contain on the front page of the contract in bold face type of a minimum size of ten (10) points, a statement in the following form:

If You Change Your Mind

After you sign this contract, we will send you a Disclosure Form that will tell you how many of our students graduate and get jobs. At the same time, we will mail you another disclosure form headed "If You Change Your Mind." You should know that if we mail

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you this disclosure form this means that we have accepted you as a student. If we don't send you both of these forms in the mail, this contract is automatically cancelled and you don't owe us anything.

If you have changed your mind, you have fourteen days to get out of this contract. The fourteen days start on the day that we mail you the disclosure forms, but you can cancel before then. All you have to do is sign the cancellation notice on the bottom of this page or the disclosure form, put a date on it, and mail it to us by midnight of the fourteenth day after the disclosure form is mailed to you. The disclosure form will tell you when your fourteen days are up.

If you want, you can also send a letter of your own during this fourteen day period that says you want to get out of this contract. Be sure that you sign and date the letter. If possible, keep a copy. Your contract will be cancelled the day you mail us the written notice.

If you decide not to take this course during this fourteen day period, we will send you a full refund of any money that you have paid. Once we know that you have decided not to take the course, we will return your money within two weeks from the day we receive notice of your cancellation.

(b) Failing to place at the bottom of the first page of the enrollment contract the following detachable cancellation notice:

I've changed my mind and am getting out of the contract.

Date

(Student's Signature)

(c) Failing to mail to the student, after the school has accepted the enrollment contract, the disclosure of the school's graduation and placement rate, as required by Part I, Paragraph 8 herein, and, on a separate sheet of paper, the following dated notice, as required by Part I, Paragraph 9(a).

If You Change Your Mind

If you have changed your mind, you have fourteen days to get out of this contract. These fourteen days will end at midnight on [14 days from the day notice is mailed]. All you have to do is sign this paper on the bottom, put a date on it, and mail it back to us by this date. Your contract will be cancelled the day you mail this notice back to us.

If you decide not to take this course during this fourteen day period, we will send you a full refund of any money that you have paid. Once we know that you have decided not to take the course we will return your money within two weeks from the time we receive notice of your cancellation.

If you change your mind and want to get out of this contract after you have started the course, you will owe the school some money. See the part of the contract called "Refund In the Event of Termination After You Start the Course" for an explanation of your rights to cancel after the course has started.

I've changed my mind and am getting out of the contract.

Date

(Student's signature)

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(d) Failing to orally inform each prospective enrollee that he/she has a right to cancel at the time he/she signs a contract or agreement for the sale of any course of instruction.

(e) Misrepresenting in any manner the prospective enrollee's right to cancel.

(f) Failing or refusing to refund all payments made under the contract or sale and cancel and return any negotiable instrument executed by the prospective enrollee in connection with the contract or sale, to the prospective enrollee within fourteen (14) business days after receipt of such notice of cancellation.

10. (a) Contracting for the sale of any course of instruction in the field of accounting, television repair, electronics or any other subject, trade or vocation in the form of a sales contract or any other agreement which does not contain on the front page of the enrollment contract, immediately following the disclosure notice required by Part I, Paragraph 9(a) herein, the following statement:

Refund In the Event of Termination After You Start the Course

If you change your mind after this fourteen day period, you can still drop this course any time. All you have to do is send or give us a letter signed and dated by you that says you want to drop the course.

If possible, you should keep a copy of the letter. The day you send us this letter, you've dropped the course.

If you do drop out, you still will have to pay for the lessons you sent in. We'll figure the amount you owe us like this. The price per lesson is \$ _____. We multiply this by the number of lessons you sent in. We add \$ _____ registration fee. The total is what you owe us.

If you've already paid more, we'll refund you the difference within 28 days after we receive the letter.

(b) Receiving, demanding or retaining more than a pro rata portion of the total contract price plus a registration fee in an amount not to exceed \$75 in the event a student cancels his course in accordance with the terms of this paragraph, and such pro rata portion will be calculated in the following manner:

(1) the school must calculate the number of lessons received from the student before the student's cancellation;

(2) this number must be divided by the total number of lessons required to complete the course; and

(3) the resulting number shall be multiplied by the total contract price.

(c) Failing to provide the student with the correct refund payment, if any, or to cancel that portion of the student's indebtedness that

exceeds the amount due the school, within twenty-one (21) days of the receipt of cancellation pursuant to this paragraph.

(d) Failing to orally inform each prospective enrollee that there is a refund policy in the event the student cancels his course of instruction prior to completion of the course of instruction.

(e) Misrepresenting in any manner the nature of the prospective enrollee's tuition obligation and right to a refund upon cancellation.

11. Misrepresenting, orally, visually, in writing or in any other manner, directly or by implication that respondents' courses are endorsed by the Veteran's Administration, HEW or any Government Agency or Department; or misrepresenting in any manner the extent or nature of any approval or other form of government action taken with respect to any school or course of instruction.

12. In the event the Commission promulgates a final Trade Regulation Rule on Advertising, Disclosure, Cooling-Off and Refund Requirements Concerning Proprietary Vocational and Home Study Schools, then, so long as and to the extent that such Rule shall be in effect, such Trade Regulation Rule shall completely supersede and replace the provisions of this order set forth in Part I, Paragraphs 1(a), 7, 8, 9 and 10, provided that if no provision of the Trade Regulation Rule relates in whole or in part to any matter covered by provisions of one of the aforesaid Paragraphs of this order, then said provisions of said Paragraph shall remain in full force and effect.

II

It is further ordered, That:

1. Respondents deliver a copy of this decision and order to each of its present and future employees, salesmen, agents, solicitors, independent contractors or to any other person or entity who promotes, offers for sale, sells or distributes (hereinafter referred to as "sells") any course of home study instruction included within the scope of this order.

2. Respondents provide each person or entity described in Part II, Paragraph 1 of this order with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this order; retain said statement during the period said person or entity is so employed and for a period of five (5) years thereafter; and make said statement available to the Commission's staff for inspection and copying upon request.

3. Respondents inform each person or entity described in Part II,

Paragraph 1 of this order that the respondent will not employ or will terminate the employment of any such person or entity in selling such home study courses, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this order.

4. If a person or entity described in Part II, Paragraph 1 of this order will not agree to file with respondents the notice set forth in Part II, Paragraph 2 of this order and be bound by the provisions of the order, respondents shall not employ or continue the employment of, such person or entity to sell any course of instruction covered by this order.

5. Respondents inform the persons or entities described in Part II, Paragraph 1 of this order that respondents are obligated by this order to discontinue dealing with or to terminate the employment in selling their courses of persons or entities who continue on their own the acts or practices prohibited by this order.

6. Respondents discontinue dealing with or terminate the employment in selling the courses of any person or entity described in Part II, Paragraph 1 of this order, who continues on his or her own any act or practice prohibited by this order.

7. Respondents shall forthwith distribute a copy of this order to each of its divisions or subsidiary corporations which is involved in the advertising, promotion or sale of any home study course of instruction included within the scope of this order.

III

It is further ordered, That:

1. Respondents shall not issue any instructions or directions respecting the Escrow Account to the Federal Trade Commission or its designee, or the Escrow Agent in the performance of their duties pursuant to this Agreement and the Escrow Instructions attached hereto as Appendix C and incorporated herein, including but not limited to, investment of the Property held by the Escrow Agent, determination of purchasers pursuant to Part IV of this order and the written directions of the Federal Trade Commission or its designee, or disbursement of the Property by the Escrow Agent. Respondents shall not exercise any control over the property in the Escrow Account.

2. Respondents shall provide the Federal Trade Commission or its designee access on respondents' premises to any student file folders maintained by respondents, provided the Federal Trade Commission has the consent of the students whose files are sought for inspection.

IV

It is further ordered, That:

1. For the purposes of Part IV of this order, the following definitions shall apply:

(a) The term "Purchasers" shall mean those students who paid all or some portion of their own tuition to respondents and who did not have their tuition paid in full or their payments fully reimbursed, by any federal, state or local government agency or department, or any private business organization, other than one that he/she owns;

(b) The term "Relevant Period" shall mean the period commencing May 27, 1974 to the present.

(c) A purchaser shall be deemed to be covered by the relevant period if such purchaser:

(1) enrolled in a Bell & Howell Schools, Inc. electronics or accounting home study course during the relevant period; or

(2) enrolled in a Bell & Howell Schools, Inc. electronics or accounting home study course after January 1, 1971 and made any tuition payment during the relevant period to Bell & Howell Schools, Inc. or to any person or entity on account of any such course.

2. Respondents shall submit to the Chicago Regional Office of the Federal Trade Commission, within thirty (30) days after the date this order is served on respondents, a notarized affidavit executed by a duly authorized officer of respondents, to the effect that respondents have made a good faith search of documents that pertain to purchasers of respondents' accounting, television repair, and electronics courses of instruction, and that respondents, to the best of their knowledge, have previously or simultaneously with said affidavit submitted to the Chicago Regional Office of the Federal Trade Commission the names and most current known addresses of all such purchasers who enrolled in said courses after January 1, 1971.

3. The Federal Trade Commission has determined that purchasers who may be eligible to receive refunds from the Escrow Account are those purchasers who in the relevant period:

(a) (1) Enrolled in the course for the purpose of obtaining employment in their fields of instruction; and

(2) Successfully completed 100% of the lessons in the course; and

(3) Sought employment in their fields of instructions; and

(4) Did not obtain employment in their fields of instruction.

(b) (1) Terminated, or were terminated, from their course of instruction prior to completion of 100% of the lessons because:

(a) They were unable to successfully assimilate the subject matter of the course because they lacked adequate education or background; or

(b) They were unable to successfully assimilate the subject matter of the course because they could not obtain instructional assistance through help sessions, or telephone services, or requests for technical consultation and they indicate that such assistance was necessary to progress through the course; or

(c) They were unable to devote sufficient time to study for the course.

(c) (1) Enrolled in an accounting course with the expectation that they would be qualified by graduation from the course to take the state licensing examination to become a Certified Public Accountant in the state in which the purchasers resided; and

(2) Later determined that they were not thereby qualified to take the state licensing examination to become a Certified Public Accountant in the state in which they resided as of the date of the sales presentation, and

(3) Indicate that they terminated from the course of instruction because, or determined after graduation that, they were not thereby qualified to take the state licensing examination to become a Certified Public Accountant.

(d) (1) Were misled as to the cost of the course of instruction which would have to be borne by the purchasers or as to the refund policy of Bell & Howell Schools, Inc. in the event such purchasers terminated their enrollment in such course; and

(2) Terminated, or were terminated, from the course of instruction prior to completion of 100% of the lessons of the course.

(e) (1) Were terminated from their courses of instruction because the purchasers failed to submit lessons in a timely manner to Bell & Howell Schools, Inc.; and

(2) Indicated that the reason for their delay was that Bell & Howell Schools, Inc. failed to supply equipment or lessons to the purchasers as represented in its advertisements, sales presentation, or enrollment contracts.

(f) (1) Enrolled in the course for the purpose of obtaining employment in their fields of instruction; and

(2) Terminated from the course of instruction because they were informed that such course was not adequate to prepare them for employment in the fields for which such course offered training.

4. The fact that a purchaser is canvassed does not itself mean that such purchaser will receive a refund. The Federal Trade Commission or its designee shall determine which purchasers shall be entitled to a

refund and the amount to be paid such purchasers; *provided, however*, that such refund shall be based upon no more than the amount of the purchaser's tuition obligation not paid or reimbursed by any federal, state or local government agency or department, or any private business organization, other than one that he/she owns. In no event shall any purchaser receive an amount greater than his/her tuition obligation less his/her reimbursement or other payment from the aforementioned agencies, departments or organizations. Such refunds shall be paid out of the Escrow Account established pursuant to Paragraphs 9 through 13 and Part III of this order.

5. No purchasers shall be deemed by respondents to have waived any claim that they may have, or may hereafter have, against respondents, their successors and assigns, arising in any manner whatsoever from enrollment in any of respondents' home study courses prior to January 21, 1976, unless such purchasers accept a refund pursuant to Part IV of this order. Acceptance of a refund pursuant to Part IV of this order will be a bar to assertion of any such claim.

V

It is further ordered, That respondents maintain for a period of ten (10) years, records which shall show the manner and form of respondents' continuing compliance with the above terms and provisions of this order.

VI

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 or corporations, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order; *provided, however*, that if respondents do not have thirty (30) days lead time between proposal of such change and its consummation, respondents shall notify the Commission thereof at the earliest feasible time before consummation and any entity which may succeed to any part of the business covered by this order will have been advised of every provision of this order and will have agreed to be bound thereby.

VII

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.

APPENDIX A

ABC SCHOOL - Drafting Course

Jobs and Earnings Record for students enrolled between January 1, 1974 and January 1976I. Graduation Record

100 students enrolled.

50 students graduated. That's 50% of the class.

30 students didn't finish the course. That's 30% of the class.*

20 students are still enrolled. That's 20% of the class.

II. Placement Record

36 graduates have told us that they got jobs in drafting within four months of leaving school.** That's 72% of those who graduated.

Here's what they earned:

9 earned \$6000-\$7999. (18% of all graduates)

11 earned \$8000-\$9999. (22% of all graduates)

7 earned \$10,000-\$11,999. (14% of all graduates)

7 earned \$12,000-\$13,999. (14% of all graduates)

2 refused to tell us what their salary was. (4% of all graduates)

APPENDIX B

The first Base Period shall be the two (2) year period ending three (3) months prior to the effective date of this Order. Subsequent base periods shall be of two (2) year duration commencing on the next day following the termination of the prior base period. Base Periods shall be numbered consecutively beginning with the first base period (i.e. Base Period #1) as defined above.

The three (3) month period immediately following the close of a base period shall be used by respondents to record and compile the information required by Part I, Paragraph 1(a) 8 and Appendix A. In addition, respondents may not include in the computation of students for the base period any person whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the subsequent base period.

On the first business day falling more than three (3) months after the termination of the base period, respondents shall begin dissemination of that base period's statistics as

* Students may drop out of a course for any of several reasons, such as dissatisfaction with the course, inability to do the work, or personal reasons.

** [Optional] Some (many) of our students don't take this course to get a job, and we were unable to reach some of our graduates to find out whether they got jobs.

required by this Order. Respondents shall continue to distribute said statistics until the first business day falling three (3) months after the termination of the next base period, at which time dissemination of the next set of base period statistics must begin.

The following example describes how the two (2) year base period and three (3) month recordation period will be utilized by the respondents:

Base Period 1 will cover that period which begins two (2) years and 90 days prior to the effective date of the Order. If the Order is effective October 1, 1978, the base period will encompass the period June 1, to June 30, 1978. Respondents will then have from July 1 to September 30, 1978 to compile the data required by the Order. Respondents will disseminate the gathered data on October 1.

Base Period 2 would begin on July 1, 1978 and end July 30, 1980. From August 1 to October 31 respondents would compile the data required by the Order. This data is to be disseminated on the first business day after November 1.

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In addition, you shall execute such documents regarding administration of the Escrow Account as the FTC or its designee directs. In the event the FTC or its designee does not direct you to disburse all or any of the Property within three and one-half (3 1/2) years of the date hereof, you shall return any of the Property remaining to the Company, less your fees, costs and expenses, within ten days of the end of the three and one-half (3 1/2) year period. Subject to this paragraph and paragraph 10 hereof, this escrow will terminate upon the disbursement of all the Property pursuant to the written direction of the FTC or its designee.

- B. In the event the FTC or its designee notifies you that it has determined not to accept the Agreement Containing Consent Order to Cease and Desist and to issue a Decision and Order as provided in Paragraph A, this escrow will terminate and the Property will be returned by you to the Company not later than ten days after receipt of written notice from the FTC or its designee that the Agreement was not accepted.
- C. Upon receipt of the Property you will invest the proceeds in either certificates of deposit or obligations of the United States Government or its agencies. You will invest the Property with the aim of securing principal, while maximizing interest income. In the exercise of your sound discretion, if you determine it necessary to sell any or all of the Property prior to maturity and invest the proceeds in either other certificates of deposit or obligations of the United States Government or its agencies, you may do so.
- D. Upon maturity of any of the Property you will invest the proceeds in either additional certificates of deposit or obligations of the United States Government or its agencies.

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You will invest the proceeds with the aim of securing principal, while maximizing interest income. In the exercise of your sound discretion, if you determine it necessary to sell any or all of the Property prior to maturity and invest the proceeds in either other certificates of deposit or obligations of the United States Government or its agencies, you may do so

- E. You will send the Company, the attorneys for the Company, and the FTC or its designee, monthly cash and asset statements of this escrow account.
- F. In the event the FTC directs you to make checks payable to individual purchasers of Bell & Howell Schools, Inc. home study courses each check shall bear the following inscription on the back of its face:

"If you cash, sign or deposit this check, it means that you are giving up forever any legal right you may have to assert any claim against or to sue Bell & Howell Schools, Inc. and Bell & Howell Company, or their successors or assigns, regarding anything that arose due to your enrollment prior to January 21, 1976 in any home study course of Bell & Howell Schools, Inc."
- G. These escrow instructions may be amended any time by a document duly executed by the Company and the FTC or its designee entitled "Amendment to Escrow Instructions" to which you acknowledge receipt.
- H. If the FTC decides to use a designee, you will not act pursuant to such designee's orders, until you receive a certified copy of the order of the FTC naming such designee.

Decision and Order

Terms and Conditions

1. Your duties and responsibilities shall be limited to those expressly set forth in these escrow instructions, and you shall not be subject to, nor obliged to recognize, any other agreement between, or direction or instruction of any or all of the parties hereto even though reference thereto may be made herein. Provided, however, that your written consent, these escrow instructions may be amended at any time or times by an instrument or writing signed by all the then parties in interest.
2. You are authorized, in your sole discretion, to disregard any and all notices or instructions given by any of the undersigned or by any other person, firm or corporation, except only such notices or instructions as are hereinabove provided for and orders or process of any court entered or issued with or without jurisdiction. If any property subject herein is at any time attached, garnished, or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any of such events you are authorized, in your sole discretion, to rely upon and comply with any such order, writ, judgment or decree which you are advised by legal counsel of your own choosing is binding upon you; and if you comply with any such order, writ, judgment or decree you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.
3. You shall not be personally liable for any omissions or errors hereunder if taken or omitted by you in good faith and in the exercise of your own best judgment. You shall also be fully protected in relying upon any written notice, demand, certificate or document which you in good faith believe to be genuine.
4. Unless otherwise specifically indicated herein you shall proceed as soon as practicable to collect any checks or other collection items at any time deposited hereunder. All such collections shall be subject to the usual collection agreement regarding items received by your commercial banking department for deposit or collection. You shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any check, note or security deposited hereunder. You shall have no liability to pay interest on any money deposited or received hereunder.
5. You shall not be responsible for the sufficiency or accuracy of the form, execution, validity or genuineness of documents or securities now or hereafter deposited hereunder, or of any endorsement thereon, or for any lack of endorsement thereon, or for any defective terms, nor shall you be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or these escrow instructions.
6. Any notices which you are required or desire to give hereunder to any of the undersigned shall be in writing and may be given by mailing the same to the address indicated below opposite the signature of such undersigned (or to such other address as said undersigned may have herebefore substituted herefor by written notification to you), by United States mail, postage prepaid. For all purposes hereof any notice so mailed shall be as effectual as though served upon the person of the undersigned to whom it was mailed at the time it is deposited in the United States mail by you whether or not such undersigned thereafter actually receives such notice. Notice to you shall be in writing and shall not be deemed to be given until actually received by your trust department employee or officer who administers this escrow. Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

Decision and Order



CONTINENTAL BANK

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO - 221 SOUTH LA SALLE STREET, CHICAGO, ILLINOIS 60601

SCHEDULE OF FEES FOR OPERATING SERVICES AS ESCROW AGENT

As Escrow Agent, Continental Bank prepares and mails checks to participants or claimants, maintains a record of each participant or claimant, and prepares the necessary IRS tax forms.

Distributions:

For issuance by check of payments to participants or claimants.

First 5,000 checks	each	\$0.30
Next 5,000 checks	each	.25
Over 10,000 checks	each	.20
Minimum charge:	Number of Checks	Per Distribution
	1-5	\$10
	6-49	\$25
	50 or Greater	\$50

Maintenance of Records for Participants or Claimants:

For opening and maintaining a record for each participant or claimant and posting subsequent changes.

1 - 10 Accounts	\$25 minimum
11 - 50 Accounts	\$50 minimum
51 - 1,000 Accounts	each \$1.25
Excess over 1,000 Accounts	each \$.75
Applies Over 50 Accounts:	
(minimum annual charges \$100)	

Preparing and Filing Taxpayer Reports:

For obtaining employer identification numbers, using IRS Form 14135 (postage billed separately) Each \$.20

For reporting interest paid to holders on IRS Form 1099 (postage billed separately) (minimum annual charge: \$10) Each \$.25

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Addressing and Enclosing:

For addressing envelopes, per name	\$.10
For enclosing materials, manually, in standard envelope:	
First Enclosure	\$.05
Additional Enclosures	\$.015
Manual Folding Additional (minimum charge: \$25 per mailing)	\$.025

Expenses and Other Charges: The fees quoted in this schedule apply to services ordinarily rendered in administering an Escrow, and are subject to reasonable adjustment where the Agent is called upon to undertake unusual duties or responsibilities, or if changes in laws, procedures, or cost of doing business demand. The cost of all stationery and supplies, telephone, postage, printing, taxes, mail insurance premiums, and other out-of-pocket expenses will be added to our regular service charges. Fees are ordinarily billed annually.

Effective 1-1-77

Decision and Order



CONTINENTAL BANK

FEES FOR SERVICES AS INVESTMENT

The following rates are applicable for ordinary services to handling an escrow, subject to a minimum initial charge of \$150 and a maximum annual charge of \$150.

ACCEPTANCE FEE:

\$2.50 per \$1,000 on first \$ 100,000 valuation	= \$250.00
1.50 per \$1,000 on next 100,000 valuation	= 150.00
.50 per \$1,000 on next 100,000 valuation	= 50.00
.25 per \$1,000 on next 1,000,000 valuation	= 25.00
.02 per \$1,000 on excess above \$1,100,000 valuation	

ANNUAL FEE:

\$1.50 per \$1,000 on first \$ 100,000 valuation	= \$150.00
1.10 per \$1,000 on next 100,000 valuation	= 110.00
.50 per \$1,000 on next 100,000 valuation	= 50.00
.25 per \$1,000 on next 1,000,000 valuation	= 25.00
.02 per \$1,000 on excess above \$1,100,000 valuation	

TERMINATION:

There are no termination charges. When an escrow terminates within an annual fee period, the annual fee will be prorated to the date of termination; provided, however, that when an escrow terminates within six months from date of execution, a full re-annual fee will be charged.

If the escrow requires the investment of funds, an additional \$15.00 charge will be made for each transaction. When an escrow requires extra unusual services or provides for extraordinary activities or responsibilities, an additional reasonable charge will be made depending on the services performed and responsibilities involved.

In cases where the only services consist of the preparation of documents, the escrow fee shall be \$150.00 plus the cost of the documents and the cost of the escrow agent's services.

Complaint

95 F.T.C.

IN THE MATTER OF
HAYOUN COSMETIQUE, INC., ET AL.

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

Docket C-3019. Complaint, May 9, 1980—Decision, May 9, 1980

This consent order requires, among other things, a New York City marketer and advertiser of products known as Hayoun Miracle Lotion, Hayoun Drying Lotion, Hayoun Lemon Moisturizer and Hayoun Black Mask, and its corporate president, to cease disseminating advertising representing that the use of these products, alone or as part of the Hayoun Cosmetique Kit, will cure acne; eliminate acne scars and pockmarks; and result in a skin free of acne blemishes. Respondents are required to have a reasonable basis for representations relating to product characteristics, performance and efficacy; and maintain substantiating evidence for a period of three years. The order additionally requires that respondents conspicuously disclose that no product cures acne in every advertisement for the first six months of actual advertising of an acne preparation.

Appearances

For the Commission: *Mark A. Heller, Ira Nerken and Ross D. Petty.*

For the respondents: *Norman R. Grutman, Grutman & Schafarina,*
New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Hayoun Cosmetique, Inc., (hereafter "Cosmetique") a corporation and Edouard Hayoun, (hereafter "Hayoun") as an individual and corporate officer, at times referred to as respondents, having 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. Cosmetique is a corporation organized existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 212 E. 68 St., New York, New York.

PAR. 2. Hayoun is an individual and corporate president of Cosmetique. He formulates, directs and controls the acts and practices of said corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

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

PAR. 3. Respondents are now and for some time have been engaged in the business of marketing and advertising health-related products including but not limited to products known as Hayoun Miracle Lotion, Hayoun Drying Lotion, Hayoun Lemon Moisturizer and Hayoun Black Mask. The aforesaid products are and were offered alone and as part of a program for the treatment of acne known as the Hayoun Cosmetique Kit (sometimes hereafter "Kit"). In connection with the manufacture and marketing of said products, respondents have disseminated, published and distributed, and now disseminate, publish and distribute, advertisements and promotional material for the purpose of promoting the sale of said products for human use. These products, as advertised, are "drugs" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said businesses, the respondents have disseminated and caused the dissemination of certain advertisements concerning the Kit and/or any of the individual components thereof through the United States mails and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to the insertion of advertisements in magazines and newspapers with national circulations for the purpose of inducing and which were likely to induce, directly, or indirectly, the purchase of said products in commerce.

PAR. 5. Typical of the statements and representations in said advertisements, disseminated as previously described, but not necessarily inclusive thereof are the following:

Complaint

BANISH ACNE FOREVER

One of the world's foremost authorities on beauty and skin care, Esquire magazine, has perfected a unique, non-surgical, answer to the physiologically and psychologically destructive nature of common acne. This remedy featured editorially in *Vive* magazine, has an unerring history of success with all of the many men, women and children Hayoun has personally treated over more than two and one-half decades.

Now, this extraordinary treatment has been

Scientifically reconstituted for optimum effectiveness in home use. It comes complete in a hand-carried, easily transportable 5 1/2" X 7" X 2 1/2" kit with four boxed preparations and full directions as to their simple application and use. By devoting approximately twenty minutes per day, the treatment will normally take from four to six weeks. The treatment is unconditionally guaranteed to immediately arrest, reduce, or ultimately banish even the most virulent and tenacious acne condition—including the scars and pockmarks normally left behind.



PAR. 6. Through the use of said advertisements and others referred to in Paragraphs Four and Five, respondents represented, and now represent, directly or by implication that:

- a. Use of the Hayoun Cosmetique Kit will cure acne.
- b. Use of the Hayoun Cosmetique Kit will eliminate the scars and pockmarks caused by acne regardless of the severity of the condition.

PAR. 7. In truth and in fact:

- a. Use of the Hayoun Cosmetique Kit or any of its components either alone or as part of said Kit will not cure acne.
- b. Use of the Hayoun Cosmetique Kit or any of its components either alone or as part of said Kit will not eliminate the scars and pockmarks which may result from acne.

Therefore, the advertisements referred to in Paragraphs Four and Five were and are misleading in material respects and constituted, and now constitute, false advertisements and the statements and representations set forth in Paragraph Six were and are false, misleading or deceptive.

PAR. 8. Furthermore, through the use of the advertisements referred to in Paragraphs Four and Five, respondents represented, and now represent that use of the Hayoun Cosmetique Kit will be effective in the treatment of acne.

PAR. 9. In truth and in fact, there existed at the time of the first dissemination of the representations in Paragraphs Six and Eight no reasonable basis for making them in that respondent lacked competent and reliable scientific evidence to support each such representation. Therefore, the making and dissemination of said representations as alleged constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce.

PAR. 10. In the course and conduct of their aforesaid business, and at all times mentioned herein, the respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals representing or engaged in the over-the-counter and prescription drug industries.

PAR. 11. The use by respondents of the aforesaid unfair or deceptive representations 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 representations were and are true.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of the aforesaid false advertis-

ments, 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 or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Hayoun Cosmetique, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 212 E. 68 St., New York, New York.

2. Respondent Edouard Hayoun is an individual and corporate officer of Hayoun Cosmetique, Inc., and maintains an office at 212 E. 68 St., New York, New York.

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

Decision and Order

ORDER

I

It is ordered. That respondents, Hayoun Cosmetique, Inc., a corporation, its successors and assigns, and its officers, and Edouard Hayoun, individually and as a corporate officer, and the respondents' agents, representatives, and employees, directly or through any corporation, division or other device, in connection with the advertising, offering for sale, sale or distribution of all products do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisements by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of products known as Hayoun Miracle Lotion, Hayoun Drying Lotions, Hayoun Lemon Moisturizer and Hayoun Black Mask either alone or as part of the Hayoun Cosmetique Kit (hereinafter "Kit") or any other acne product or regimen will cure acne or any skin condition associated with acne.
2. Represents use of Kit or any of its components either alone or as part of Kit or any other acne product or regimen will eliminate the scars and/or pockmarks which result from acne or any other associated condition.

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

1. Represents that use of the Kit or any of its components or any other product or regimen will result in skin free of pimples, blackheads, whiteheads or other acne blemishes or will be efficacious in the treatment of acne;
2. Represents that use of the Kit or any of its components or any other product or regimen will reduce or eliminate scars or pockmarks.

unless, at the time of each dissemination of such representation(s) respondents possess and rely upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). "Competent and reliable scientific or medical evidence" shall be defined as evidence in the form of at least two well-controlled double-blind clinical studies which are conducted by different persons, independently of each other. Such persons shall be dermatologists who

are qualified by scientific training and experience to treat acne and conduct the aforementioned studies.

C. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly makes representations referring or relating to the performance or efficacy of any product, unless, at the time of each dissemination of such representation(s) respondents possess and rely upon a reasonable basis for each such representation(s).

II

It is further ordered, That within sixty (60) days of the acceptance of this order, respondents shall cease and desist from disseminating or causing the dissemination of advertisements for the Kit or any of its components or any other acne product or regimen, unless, during their first six (6) months of actual advertising beginning sixty (60) days after this order becomes final, respondents clearly and conspicuously disclose in every advertisement the corrective message that no product can cure acne. Nothing in any part of each such advertisement shall in any way obscure or contradict the clear meaning of this disclosure. The obligation to run corrective advertisements shall not in any way alleviate other order obligations. Furthermore such advertisements shall not represent, directly or indirectly, that the Federal Trade Commission approves, recommends or in any manner endorses the advertised product or product advertising.

III

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

It is further ordered, That each respondent shall, within sixty (60) days after this order becomes final, and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this order.

It is further ordered, That each respondent shall maintain files and

records of all substantiation related to the requirements of Parts IB and IC of this order for a period of three (3) years after the dissemination of any advertisement which relates to that portion of the order. Additionally, such materials shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a written request for such materials.

Modifying Order

IN THE MATTER OF

CADENCE INDUSTRIES CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1918. Decision, May 13, 1971—Modifying Order, May 12, 1980*

This order reopening and modifying an order to cease and desist issued on May 13, 1971, 36 FR 11912, 78 F.T.C. 990, substitutes the name Cadence Industries Corporation for Perfect Film & Chemical Corporation and replaces paragraph 21 of the order with a new paragraph in keeping with orders issued against their competitors and the fact that some magazine publishers do not accept short-term subscriptions transferred from the lists of discontinued publications.

ORDER MODIFYING CEASE AND DESIST ORDER

In their request filed on January 22, 1980, the respondents petitioned the Commission, pursuant to Section 2.51 of its Rules of Practice, to reopen the proceedings and modify the order of May 13, 1971, entered in Docket Number C-1918. Respondents ask that the name Cadence Industries Corporation be substituted for Perfect Film & Chemical Corporation and that numbered paragraph 21 of the order be modified. The paragraph in question reads as follows:

21. Substituting, requesting substitution or permitting substitution, except at the request of the customer, at any time during the collection period of the contract, of any magazine or publication for any magazine or publication covered by the contract without first providing the subscriber an option in writing, as stated in the subscription contract, to reduce his future payments by the pro rata portion of the remaining payments due on the cancelled magazine or other publication; provided, that respondents may offer to those subscribers with paid-in-full contracts an option to either lengthen already existing subscriptions or to select from among all of respondents' then currently offered magazines or publications, a magazine or publication as a substitute for the remaining period of the subscription.

In support of their request, respondents state that the name of Perfect Film & Chemical Corporation was duly changed to Cadence Industries Corporation on October 22, 1970, by filing said change with the Secretary of State of Delaware. Respondents have also advanced a number of considerations intended to show changed conditions of fact since the order was issued and to show that the public interest will best be served by granting their request. They allege that they cannot fully comply with paragraph 21 of the order because certain magazine publishers will not accept short term subscriptions transferred from the lists of discontinued publications. They point out that the proviso in paragraph 21 requires that they offer to subscribers with paid-in-ful

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contracts the option to choose any magazine from among all their currently offered magazines or publications, and that, therefore, they are unable to execute a subscriber's choice, if it happens to be a magazine of a publisher that does not accept short term subscriptions. They also point out that no similar proviso is to be found in the orders the Commission has issued against their competitors and they cite that as a competitive disadvantage. Finally, they claim that the requested modification will serve the public interest by enabling them to better serve their subscribers in offering them as possible substitutions, only magazines of publishers that accept short term subscriptions.

Having considered the request, the Commission has concluded that it should be granted and that the modification will safeguard the public interest. Therefore,

It is ordered, That (1) the name Cadence Industries Corporation be substituted for Perfect Film & Chemical Corporation in the style of this docket and throughout the order, where it appears; and that (2) numbered paragraph 21 of the order quoted above, be replaced by the following new paragraph:

21. Cancelling a subscription contract for any reason other than a breach by the subscriber without either arranging for the delivery of publications already paid for or promptly refunding money on a pro rata basis for all undelivered issues of publications for which payment has been made in advance; and in the event of the discontinuance of publication, or other unavailability, of any magazines subscribed for, at any time during the life of the contract, failing to offer the subscriber the right to substitute one or more magazines or other publications, or the extension of subscription periods of magazines already selected.

It is further ordered, That the foregoing modifications shall become effective upon service of this order.

Dismissal Order

IN THE MATTER OF

BOC INTERNATIONAL LIMITED

formerly known as

THE BRITISH OXYGEN COMPANY LIMITED, ET AL.

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

Docket 8955. Complaint, Feb. 26, 1974—Dismissal Order, May 14, 1980*

This order reopens the proceeding and dismisses the complaint issued on February 26, 1974 charging a London, England manufacturer of industrial gases with violating the Federal Trade Commission Act, and Section 7 of the Clayton Act.

ORDER REOPENING PROCEEDING AND DISMISSING COMPLAINT

Upon the joint motion of the parties, this matter was withdrawn from adjudication for settlement purposes by an order of the Commission issued on March 21, 1980. Having considered the proposed settlement reached between the staff of the Commission and the respondents, the Commission determined not to accept the settlement and to dismiss the Complaint. Accordingly,

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the Complaint in Docket No. 8955 be, and it hereby is, dismissed.

* For order issued in disposition of this proceeding, see 86 F.T.C. 1241.

FEDERAL TRADE COMMISSION DECISIONS

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IN THE MATTER OF

PORTER & DIETSCH, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9047. Decision, Dec. 20, 1977—Modifying Order, May 23, 1980*

This order amends a final order issued Dec. 20, 1977, 90 F.T.C. 770, 32 FR 9141, against a St. Paul, Minn. drug distributor by modifying the health risk disclosure requirement to include only those products containing phenylpropanolamine hydrochloride. Previously, the requirement included products containing methylcellulose as well. This modification brings the order into conformance with a Seventh Circuit Court of Appeals decision on review (605 F.2d 294, Aug. 8, 1979).

ORDER AMENDING ORDER TO CEASE AND DESIST

On December 20, 1977, following a complaint and proceeding thereon, the Commission issued its Decision and Order to Cease and Desist against the several named respondents in this matter. The respondents subsequently petitioned the United States Court of Appeals for the Seventh Circuit to review that Decision and Order, and that court issued its decision in the matter on August 8, 1979, requiring modification of the Order in certain respects. *Porter & Dietsch, Inc., et al. v. FTC*, 605 F.2d 294, 308-310. Respondents subsequently filed petitions for *certiorari* in the Supreme Court (79-731 and 79-1090), which were denied on March 31, 1980.

Accordingly, we hereby amend our order of December 20, 1977, in the following respects to conform to the mandate of the court of appeals:

First, we strike the existing paragraph I.E. and insert the following paragraphs I.E and I.F:

E. Disseminating or causing to be disseminated by the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement for any such product containing phenylpropanolamine hydrochloride or similar ingredients with similar properties, or methylcellulose (whether or not such products contain other ingredients as well) or any product held out as a diet remedy or other remedy for the reduction of human body weight unless such advertising "clearly and conspicuously" (in print at least as large as the largest print appearing in the advertising, or in an oral presentation, in speech as clear and distinct as that delivered in the rest of the presentation) discloses the following statement, with nothing to the contrary or in mitigation of this statement:

"DIETING IS REQUIRED"

F. Disseminating or causing to be disseminated by United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade

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Commission Act, any advertisement for any such product containing phenylpropanolamine hydrochloride or similar ingredients with similar properties and held out as a diet remedy or other remedy for the reduction of human body weight unless such advertising "clearly and conspicuously" (in print at least as large as the largest print appearing in the advertising or, in an oral presentation, in speech as clear and distinct as that delivered in the rest of the presentation) discloses the following statement, with nothing to the contrary or in mitigation of this statement:

WARNING: THIS PRODUCT POSES A SERIOUS HEALTH RISK FOR USERS WITH HIGH BLOOD PRESSURE, HEART DISEASE, DIABETES, OR THYROID DISEASE. READ THE LABEL CAREFULLY BEFORE USING.

Second, we strike the existing paragraph II and insert the following paragraphs II and III (renumbering existing paragraph III and subsequent paragraphs accordingly):

II

It is further ordered, That respondents Kelly Ketting Furth, Inc., a corporation, its successors and assigns, and its officers, and Joseph Furth, individually and as an officer of said corporation; and employees of the foregoing respondents, directly or through any corporation, subsidiary, division or other device, in connection with the advertising of any "food," "drug," "cosmetic," or "device" (as these terms are defined in the Federal Trade Commission Act) held out as a diet remedy or other remedy for the reduction of human body weight, shall forthwith cease and desist from disseminating or causing to be disseminated by United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains a representation or testimonial for such product prohibited by Paragraph I of this order, or which omits a disclosure for such product required by Paragraph I of this order.

III

It is further ordered, That respondent Pay'n Save Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising of any "food," "drug," "cosmetic," or "device" (as these terms are defined in the Federal Trade Commission Act) manufactured or distributed by Porter & Dietsch, Inc., and held out as a diet remedy or other remedy for the reduction of human body weight, shall forthwith cease and desist from disseminating or causing to be disseminated by United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains a representation or testimonial for such product prohibited by Paragraph I of this order, or which omits a disclosure for such product required by Paragraph I of this order.

IN THE MATTER OF
CENTURY 21 COMMODORE PLAZA, INC., ET AL.
 DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
 THE FEDERAL TRADE COMMISSION ACT

Docket 9088. Complaint, Aug. 11, 1976—Dismissal Order, June 9, 1980

This order affirms the initial decision of the administrative law judge and grants complaint counsel's motion for dismissal of a complaint alleging that a North Miami Beach, Fla. realtor illegally required buyers of its Florida condominiums to enter into long-term leases of recreation facilities.

Appearances

For the Commission: *Richard C. Donohue and David A. Eisenstein.*

For the respondents: *Gerald F. Richman, Frates, Floyd, Pearson, Stewart, Richman & Greer, Miami, Fla. and Warren L. Miller, Stein, Halpert & Miller, Washington, D.C. for respondents Century 21 Commodore Plaza, Inc. and Norman Cohen. Jerome S. Richman, Miami, Fla. for respondent Saul Morgan.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Century 21 Commodore Plaza, Inc. and Norman Cohen and Saul J. Morgan have violated the provisions of the Federal Trade Commission Act, and that a proceeding with respect to such violations would be in the public interest, hereby issues its complaint, setting forth its charges as follows:

Parties

1. Respondent Century 21 Commodore Plaza, Inc. is a Florida Corporation doing business at 18321 Biscayne Blvd., North Miami Beach, Florida.
2. The Corporate Respondent is the developer of certain real property in Dade County, Florida upon which is situated the condominium development known as Century 21 Commodore Plaza. Century 21 Commodore Plaza comprises 654 residential apartment units. In 1970, respondent filed a Declaration of Condominium submitting the property to condominium ownership and By-laws governing the operation of Commodore Plaza at Century 21 Condominium Association, Inc. (the Association) to be composed of condominium owners who would subsequently purchase units from the corporate respondent.

3. Respondent Norman Cohen is and at relevant times in the past has been an officer and shareholder of the corporate respondent, and has formulated, directed, and controlled the acts and practices of the corporate respondent, including those hereinafter set forth. Respondent Cohen is a trustee and lessor of the recreation lease under which the corporate respondent's buyers are obligated. Respondent Cohen has been at relevant times in the past an officer of the Association. Respondent Cohen is or has been an officer of Morgan's Bay Management Corporation, Inc. (the Management Company) which company is the manager named in the management agreement which the corporate respondent's buyers are required to execute.

4. Respondent Saul J. Morgan has been at relevant times in the past an officer and shareholder of the corporate respondent, and has formulated, directed, and controlled the acts and practices of the corporate respondent, including those hereinafter set forth. Respondent Morgan is or has been a trustee and lessor of the recreation lease under which the corporate respondent's buyers are obligated. Respondent Morgan has been an officer of the Association. Respondent Morgan has been an officer of the Management Company.

5. The Association is a corporation not for profit incorporated under the laws of the state of Florida on December 16, 1970 for the purpose of operating the then to be created condominium known as Commodore Plaza at Century 21. For approximately one year from that date, the Association was under the control of a three member board of directors composed of respondent Norman Cohen, respondent Saul J. Morgan, and David Morgan, a shareholder in the corporate respondent and the brother of respondent Saul J. Morgan. During the time that the Association was under the control of the respondents, the Association executed a long term recreation lease with the individual respondents and a management agreement with the Management Company to which subsequent buyers were bound.

Jurisdiction

6. Respondents are, or at relevant times in the past have been, in the business of selling or offering for sale condominium apartment units for residential purposes to the general public. Respondents have also, through various wholly or partially-owned subsidiaries, been engaged in the construction, management and servicing of the condominium units and of the related common areas, in the leasing of recreation facilities and in the providing of other services related to the above.

7. In the course and conduct of the aforesaid, respondents cause

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and have caused their promotional materials, contracts, and various business papers to be transmitted through the U.S. mails and other interstate instrumentalities from their place of business in Florida to customers and prospective customers in various other States and Territories of the United States. Respondents have held promotional parties in Boston, Massachusetts, and New York, New York, and have otherwise contacted persons residing in those areas in order to obtain buyers for respondents' condominium units.

8. Respondents thus maintain and at all times mentioned herein have maintained a substantial course of trade in condominium units and related facilities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

VIOLATIONS

9. To purchase one of respondents' condominium units, a purchaser must:

- (a) acquire an individual fee simple interest in a particular apartment unit;
- (b) acquire a fee simple interest in common with owners of other units in certain common areas of the structure and in underlying and surrounding land;
- (c) ratify a long-term lease of certain actual or proposed recreational facilities, entered into on the buyer's behalf by the respondent, and the rent for which is subject to increase based on an escalator clause tied to the Food Index of the Consumer Price Index;
- (d) execute an agreement pledging the purchaser's ownership interests as security for payment of rent under the aforementioned lease; and
- (e) ratify a management agreement entered into on the buyer's behalf by the respondent.

10. Consummation of the purchase of one of respondents' condominium units requires execution or ratification of approximately eight separate documents containing over 100 pages. The documents are prepared by respondents, and most or all of them contain technical legal language and are difficult for a layman or a lawyer not expert in condominium law to interpret.

11. The condominium form of ownership is a recent innovation in the law of real property in the United States and in the State of Florida. The obligations attendant thereto and the documents described in paragraphs 9 and 10, above, are not associated with other types of real property transactions.

12. A substantial number of purchasers of respondents' condominium units were and are persons: (1) having no previous experience with condominiums; (2) not residents of the State of Florida; and/or (3) who have retired and who, as a consequence of their retirement status, do not expect substantial increases in their incomes.

13. The facts set forth in paragraphs 9, 10, 11, and 12, above, were known or should have been known to respondents.

I

14. In print advertising and elsewhere, respondents, directly or by implication, make and have made numerous representations to prospective purchasers with respect to the facilities and services associated with the purchase of respondents' condominium units, including but not limited to representations that:

a. The water of Morgan Bay was safe and healthy for swimming at the time that such representations were made.

b. A golf course was planned for the immediate future.

c. Other facilities and services including but not limited to a shopping plaza; a medical center; a chapel; tram service and other transportation; bowling lanes; a restaurant; and adequate protective security were planned for the immediate future.

d. Other facilities and services promised and provided would be owned in common by the unit owners as a part of their condominium purchase, or would be leased to the unit owners at a fixed monthly rate, and would not entail expense beyond that rate to unit owners.

15. In truth and in fact:

a. Respondents knew or had reason to know that Morgan Bay was not safe and healthy for swimming.

b. A golf course was never built.

c. The facilities and services set forth in paragraph 14(c), above, were never provided.

d. Some other services and facilities promised were never provided; those provided have entailed substantial additional expense to unit owners.

The representations made by respondents as alleged in paragraph 14, above, are unfair and deceptive within the meaning of Section Five of the Federal Trade Commission Act.

16. In print advertising and elsewhere, respondents made statements and representations, directly or by implication, concerning the present and future economic value of respondents' condominium units,

including representations concerning the facilities and services to be provided, the marketability of the units, the present value of the units, and the costs and charges associated with ownership of the units.

17. In making the statements and representations alleged in paragraph 16, above, respondents failed to disclose material facts concerning the effect of the documents described in paragraphs 9 and 10, above, on the present and future value and marketability of the condominium units, and the costs and charges associated with ownership of one of the units, including but not limited to the facts that said documents provided that:

a. Respondents had no express contractual obligation which required them to provide the facilities described in paragraph 14, above, on the terms and conditions represented.

b. Buyers are required through the Association to pay rent under the recreation lease for a period of 99 years.

c. The amount buyers will be required to pay over the term of the lease will be substantially higher than the amount originally imposed by the rent obligation as a result of the Cost of Living Adjustment to Rental also provided for in the lease. The adjustment provision states that the amount of rent due under the lease will be increased annually in accordance with increases in the Food Index of the Consumer Price Index, but that once increased, the rent shall not decrease over the term of the lease.

d. In addition to the rent provided for under the lease agreement, buyers are required to assume all costs associated with the maintenance of the recreation facilities, including but not limited to all costs of taxes, insurance, utilities, and repair and replacement of facilities. As a result of the said requirement, respondents' buyers must pay substantial amounts over and above the rent provided for in the recreation lease toward the maintenance of the leased facilities.

e. Buyers are required to return the leased facilities to the developer at the end of the 99 year lease term in as good a condition as the facilities were received at the beginning of the lease term.

f. The base rent and the adjustments thereto provided for under the recreation lease will require respondents' buyers to pay an amount in excess of the purchase price of their units over the term of the lease.

g. The recreation lease requires the buyers to pay the respondents' attorneys' fees and other costs including the amount of any judgment associated with any attempt on the part of the buyers or any other person to invalidate or modify any aspect of the lease, to make any claim against respondents' interest in the lease, or to enforce the respondents' obligations as lessor under the lease.

h. The terms of the Pledge Agreement require the unit owner to subject all of his right, title, and interest in his condominium unit and the common element appurtenant thereto to a lien held by the developer. The effect of the said Pledge Agreement is to permit respondents to threaten and to effect foreclosure against a unit owner's home in the event of any default in payment due under the lease agreement.

i. The management agreement provides that the Management Company's fee for its services shall be 5% of the amount of the costs assessed against the Association without regard to the actual value of the services provided by the Management Company in connection with such assessments. The management agreement provides that the Management Company may incur many of the costs to be assessed against the Association in the Management Company's sole discretion. The said provision described provides the Management Company with no incentive to preserve the assets of the Association since the greater the costs assessed against the Association, the higher is the Management Company's fee.

j. The management contract provides that money collected from the Association shall be applied by the Management Company in the following order: to the payment of insurance premiums; to the payment of the Management Company's fee, determined as described in i., above; to the payment of rent and other obligations under the recreation lease, as described in b.-f., above; and to the payment of utilities and other costs.

k. The effect of the provision described in j., above, is to compel the Association to pay the rent provided for under the recreation lease and to pay the fee to the Management Company before the Association may pay its costs for utilities and other necessary expenses.

l. The management agreement provides that the agreement between the Management Company and the Association continue for a minimum period of 15 years, and be renewable for successive ten year periods thereafter.

m. The unit owners ratified actions taken by respondents in their capacity as officers and directors of the unit owners association.

n. The unit owners undertook other duties and obligations not known to them.

Said failure to disclose material facts is unfair and deceptive within the meaning of Section Five of the Federal Trade Commission Act.

18. The use by respondents of the aforesaid false, misleading, and deceptive statements and representations and the failure by respondents to disclose material facts have had the tendency and capacity to

mislead members of the purchasing public into erroneous and mistaken beliefs concerning respondents' condominium units and to induce the purchase of respondents' condominium units and to induce the execution of the pledge agreement and of the documents binding purchasers to the recreation lease and management agreement by reason of said erroneous and mistaken beliefs, and constitute unfair and deceptive acts or practices within the meaning of Section Five of the Federal Trade Commission Act.

II

19. In the course of the condominium sale transaction as described in paragraphs 9-18 above, buyers of respondents' condominium units executed the documents described in paragraph nine. Under the circumstances of the said transaction:

a. The imposition or enforcement of the requirement that charges be assessed against the unit owners under the provisions of the recreation lease described in 17b. to 17f., above, is an unfair act or practice.

b. The imposition or enforcement of the requirement that the unit owners pay respondents' costs of litigation, as described in 17g., above, deters the raising of valid claims and defenses, and imposes unreasonable costs on the unit owners, and is an unfair act or practice.

c. The taking or enforcement of a security interest in the unit owners' homes under the provisions of the pledge agreement described in 17h., above, is an unfair act or practice.

d. The imposition or enforcement of the provisions of the management agreement described in 17j., above, is an unfair act or practice.

e. The imposition or enforcement of the requirement under the management agreement that the Association pay the costs imposed on it by respondents described in 17j. to 17k., above, before it may pay its necessary expenses is unfair to the Association and to the individual unit owners.

f. The term of the management agreement as described in 17l., above, denied the Association the right to cancel or amend for at least 15 years an agreement the provisions of which impose excessive and unfairly determined costs on the unit owners who make up the Association and the imposition or enforcement of said term is an unfair act or practice.

III

20. Respondents' continued enforcement of or attempt to enforce

the Recreation Lease, the Pledge Agreement, and the Management Agreement, or any of these, executed under the circumstances described herein and containing the terms and conditions described herein constitutes an unfair act or practice.

IV

21. The aforementioned acts and practices, as herein alleged, both separately and in the aggregate, were and are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section Five of the Federal Trade Commission Act.

INITIAL DECISION BY LEWIS F. PARKER,
ADMINISTRATIVE LAW JUDGE

FEBRUARY 7, 1980

A. FINDINGS OF FACT

1. Respondent Century 21 Commodore Plaza, Inc. is a Florida Corporation doing business at 18321 Biscayne Blvd., North Miami Beach, Florida.

2. The Corporate Respondent is the developer of certain real property in Dade County, Florida upon which is situated the condominium development known as Century 21 Commodore Plaza.

3. Respondent Norman Cohen is and at relevant times in the past has been an officer and shareholder of the corporate respondent and was a trustee and lessor of the recreation lease under which the corporate respondent's buyers were obligated.

4. Respondent Saul J. Morgan was an officer and shareholder of the corporate respondent, and was a trustee and lessor of the recreation lease under which the corporate respondent's buyers were obligated.

5. On April 10, 1979, on motion by complaint counsel, I amended the complaint in this case, with the result that the only issue remaining is whether the use by Mr. Cohen of the long term recreation lease is per se unfair or deceptive. Complaint counsel have now filed a motion asking me to dismiss the amended complaint.

B. CONCLUSIONS OF LAW

Complaint counsel recommend dismissal because changes made after this complaint issued—in the applicable law by statute, regulation and the courts make it unlikely that the problems addressed in th

case will occur in the future (p. 2 of their motion). I agree. Furthermore, the unit owners at Commodore Plaza who were affected by the recreation lease have purchased it from Mr. Cohen. In my opinion, these developments remove any need for a decision on the merits in this case, and further proceedings would not be in the public interest.

C. ORDER

It is ordered, That the complaint be, and it hereby is, dismissed as to all respondents.

ORDER AFFIRMING THE INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE GRANTING COMPLAINT COUNSEL'S MOTION FOR DISMISSAL

The administrative law judge in the above-captioned case issued an Initial Decision on February 7, 1980 dismissing those portions of the original complaint charging that enforcement of allegedly unfair provisions of a condominium lease agreement violated Section 5 of the Federal Trade Commission Act. The ALJ recommends dismissal because of changes in Florida condominium law, the state of location of the property, and because respondents have signed a settlement agreement with the condominium association.

After considering the record before us, the Commission has determined to affirm the dismissal of this complaint. However, we reverse the ALJ's decision to amend the complaint by deleting certain allegations under Rule 3.15 of the Commission's Rules of Practice and emphasize that only the Commission has authority to eliminate complaint allegations under the circumstances presented here.

Our original complaint issued in August of 1976 charged not only that enforcement by respondents of the lease provisions constituted an unfair practice under Section 5, but also that respondents had deceptively misrepresented the attributes of the condominium arrangement and its leased facilities. In February 1978, we denied a motion by complaint counsel to dismiss or stay the entire complaint. That motion was based upon the changes in Florida law and pending litigation in that state involving operation of the lease provisions. One of the main reasons we denied the dismissal request was because the complaint's misrepresentation charges would not be resolved by either the changes in Florida law or the pending litigation.

On April 10, 1979, the ALJ, upon motion of complaint counsel, deleted the charges in the complaint pertaining to the advertising representations and several, but not all, of the charges pertaining to the failure to disclose material facts. The misrepresentation charges

that remained dealt with respondents' failure to disclose to purchasers the existence and operation of the same provisions which formed the basis of charges concerning enforcement of the lease. The ALJ, without certifying the motion to the Commission, stated that the deletions were justified whether treated as an amendment to the complaint under Section 3.15 of the Rules of Practice, or a dismissal of charges under Section 3.22 of our Rules.

The ALJ's failure to seek Commission approval of the deletion of these charges was in error whether viewed as a dismissal or an amendment.

Under Section 3.15, an ALJ has a limited power to amend without seeking Commission approval. This power extends *only* to matters that facilitate the determination of the merits of a controversy, and has been held to apply to changes that merely clarify the details of existing charges. *Capitol Record Distributing Corp.*, 58 F.T.C. 1170 (1961). ". . . (T)he Commission reserves to itself the discretionary determination of when there is reason to believe the law has been violated and when the public interest requires the institution of proceedings, as well as the authority to frame charges. . . ." *Id.* at 1173. The implementation of any amendment that substantively changes prior Commission action has not been delegated to the ALJ and must be certified to the Commission for approval. *Id.* at 1174.

The limitations on the authority of an ALJ apply with equal force whether the proposed alteration will add to or delete from charges in the complaint. In *Crush International Limited, et al.*, 80 F.T.C. 1023 (1972), the Commission discussed an ALJ's authority to allow an amendment proposing deletion of certain parties from the complaint. We stated that the ALJ had no authority to amend "except to the extent that his ruling deals with matters of procedure rather than substance, such as deletion of an individual respondent who has deceased or the substitution of respondents improperly named. . . ." *Id.* at 1024. Conversely, it follows that if a party were to be deleted for other than these merely technical reasons, such as for example to focus the litigation on a more blatant offender, the amendment is inherently substantive; it would go to the heart of the Commission's initial discretionary determination of violation and must be certified to the Commission for approval.

Similarly, the deletion of the charges in the instant case cannot be considered a procedural technicality. Under no circumstances can a deletion of charges be said to facilitate a determination of the merits because the merits of the deleted charges will never be reached. In addition, the deletion substantively changes both the Commission's prior actions in initially issuing the complaint and its denial of

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complaint counsel's first motion to dismiss, which was based in part on the failure of Florida law to resolve the misrepresentation issues.

The same result obtains if this procedure is considered as a dismissal. The same boundaries between procedural and substantive actions limit an ALJ's authority in this regard. *Crush International, supra*. If a dismissal is based on a determination that the public interest is no longer affected—a proposition that was explicitly stated by the ALJ in the instant case—the action must be certified for Commission approval.

This decision should not be read to affect any of an ALJ's independent powers under the Rules of Practice. Under Section 3.15, an ALJ may consolidate similar charges of a Commission complaint in order that trial of issues will be easier for the parties or follow a more logical litigation pattern. Such a situation falls comfortably within an ALJ's power under Section 3.15 to alter a complaint "to facilitate a determination of the merits." The instant case, however, involved a wholesale deletion of substantive charges; an action which mandates certification to the Commission. In addition, our clarification of the Rules in no way affects an ALJ's power to dismiss without certification if complaint counsel have not met their burden of proof on an issue or the power to grant summary decision under Section 3.24. Considering the ALJ's action in light of complaint counsel's motion, however, it is apparent that these powers were not presented as a basis for the ALJ's independent action of deleting the misrepresentation charges.

Despite the error that has been committed, we have decided that it does not justify sending this matter back for further litigation on the deleted charges. A review of the record indicates that dismissal of these charges was warranted, although the procedure followed was incorrect. However, after a review of the record, we are in agreement with the ALJ's decision to dismiss and, therefore, the error was harmless.

The changes resulting from the new Florida laws dealing with the conscionability of recreation leases and the settlement agreement alleviate many of the concerns expressed in our original complaint. The Florida law establishes a presumption against the conscionability of recreation leases that contain nine specific provisions, all of which are present in the instant case. Fla. Stat. Sec. 718.122. This law should protect Florida consumers in the future from many of the flagrant abuses associated with recreational leases.

The changes in Florida law, however, do not go as far as a potential Commission order could have under Section 5. Under the Florida condominium law, all of the nine provisions must be present in order to trigger the presumption. Arguably, a lessor could include seven of the

nine provisions contained in the law, and avoid operation of the presumption. In addition, while Florida law requires an aggregate of provisions, the Commission's initial complaint charged that the inclusion of particular provisions alone may constitute an unfair act. Finally, the Florida courts have held that the new laws cannot be applied retroactively. Thus, lease agreements consummated prior to the adoption of the Florida legislation will be judged under the less stringent common law standards.

Although these differences between Florida law and possible applications for Section 5 underscore important long run considerations for protection of the consumer and may merit future Commission investigation, a review of the present posture of the instant adjudication convinces us that this case is not the appropriate vehicle for the establishment of Commission precedent.

Respondents and the condominium association have negotiated a settlement whereby the latter have purchased the lease. Part of that agreement prohibits the association from benefitting from FTC action. Any attempt to fashion consumer redress under Section 19 would therefore be difficult and may interfere with or jeopardize the benefits the condominium association has obtained under the settlement.

Similar considerations militate against a potential cease and desist order against respondents. The association now owns the lease and is in a position to cure any injury that may have resulted from respondents' allegedly unfair practices. Since the practices that would be the basis of such an order are no longer within the control of respondents, an order could arguably verge on being frivolous. Although a cease and desist order could be fashioned to prohibit respondents from engaging in similar practices in other lease arrangements, we have no evidence that respondents have such lease arrangements or that consumers are being adversely affected by any practices by respondents. Such an order would go beyond the scope of the adjudication before us. Thus, we are unable to determine if such an order is necessary to preserve the public interest.

Finally, the new Florida laws may act as a substantial deterrent to the practices that we expressed concern about in our complaint. Because the laws are relatively new, we have no way of determining whether their operation will be an effective means of consumer protection or whether consumers are still being injured despite the existence of the laws. Out of deference to state actions and because it is impossible, at this point, to gauge the public interest, we feel that the prudent course is to stay Commission action for the present.

We have also determined that continued litigation over the misrepresentation charges would not, at this point, result in a long range

benefit to the public interest. Many of the misrepresentation charges were included in the complaint to illustrate the context in which unfair or deceptive practices may have occurred with respect to the lease agreement. Further, the new Florida law contains provisions requiring pre-disclosure of material facts concerning condominium sales and concerning advertising the availability of facilities not as yet completed. Fla. Stat. Sec. 718.501. Thus, the law prospectively deters the same abuses that a potential Commission cease and desist order could cover.

Considering all of the circumstances that have changed the status of this litigation since the issuance of the complaint, we agree with the ALJ that, on balance, the case should no longer be pursued. Accordingly,

It is ordered, That the Initial Decision granting dismissal be affirmed.

Modifying Order

IN THE MATTER OF

TIME INCORPORATED, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1919. Decision, May 13, 1971—Modifying Order, June 9, 1980*

This order reopens proceeding and modifies a consent order issued on May 13, 1971, 78 F.T.C. 1004, 36 FR 11916, against a major New York City magazine publisher and its wholly-owned subsidiary, Family Publications Services, Inc., by adding to subparagraph (g) of the "It is further ordered" paragraph of the order a modification which deals with the matter of confidential treatment of the material terms of any contract between Time Incorporated and the "paid-during-service" companies.

ORDER REOPENING THE PROCEEDING AND MODIFYING CEASE AND
DESIST ORDER

Time Incorporated (Time Inc.) filed a request that the proceeding be reopened pursuant to Rule 2.51 of the Commission's Rules of Practice on October 17, 1979. In its request, Time Inc. stated that prior to the issuance of the consent order, Time Inc. had been engaged through its wholly-owned subsidiary, Family Publications Service, Inc. (Family) in door-to-door and telephone sales of magazine subscriptions to the public at a fixed contract price paid in monthly installments for a term of years [This sale method is still in use and is referred to in the industry as the "Paid-During-Service" (PDS) plan]; and that three months prior to issuance of the order, Family ceased PDS sales, and Time Inc. has not directly engaged in PDS sales since that time.

Time Inc. also stated that it is at a competitive disadvantage vis-a-vis other magazine publishers, because it had been unable to use the service of independent PDS companies due to the order which requires that the sale and collection practices of any company retained by Time Inc. to sell its magazines under a PDS plan, must conform to the provisions of the order, and that Time Inc. must discontinue dealing with those companies whose practices violate the order and must institute a monitoring program adequate to reveal whether the retained companies are complying with the requirements of the order.

Time Inc. requested that it be relieved from these requirements of the order because all the PDS companies have refused to sell its magazines and to be bound by the order.

The Commission informed Time Inc. by letter dated December 19, 1979 that it had determined to deny the October 17, 1979 request, but that it was willing to reopen the proceeding and modify the order as

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set forth in that letter. Time Inc. filed another request to reopen on March 20, 1980, accepting the modification proposed by the Commission with a suggested addition to paragraph (1)(a), which addition deals with the matter of confidential treatment of the material terms of any contract between Time Inc. and the PDS companies. By letter dated April 7, 1980, Time Inc. informed staff that it accepts the substitute addition to paragraph (1)(a) herein, as proposed by the Commission's counsel. Thereafter the Commission issued an order to show cause why the proceeding should not be reopened and the order should not be modified.

Time Inc. has not filed an answer to the order to show cause within thirty days after date of service of that order, and it has, thus, consented to the proposed modification. The Commission has determined that it is in the public interest to reopen the proceeding and to modify the final order in Docket C-1919.

Therefore, it is ordered, That the proceeding is hereby reopened and the Decision and Order issued on May 13, 1971, is hereby modified by adding the following language after subparagraph (g) of the *It is further ordered* paragraph of the order:

Provided, however, That the provisions of this order shall not be applicable to Time Inc. if Time Inc. can establish that Time Inc. (either directly or through any subsidiary or other entity in which the Company shall have a substantial financial or stock interest or over which it shall exercise control) is not engaged in the business of advertising, selling, offering for sale or the distribution of magazines by subscriptions to purchase any such magazines through a "paid-during-service" plan¹ ("PDS") or through a "cash sale" plan (as "cash sale" is defined in the order in C-1919), and provided that:

(1) In the event Time Inc. or any of its Subsidiaries and/or Affiliates shall authorize any third party to offer for sale any subscription to a Time Inc. publication through a "PDS" type plan or through a "cash sale" plan:

(a) Time Inc. shall promptly furnish the Federal Trade Commission with the name and address of such third party together with a copy of the contract when executed, provided that Time Inc. may request that the material terms of such contract be accorded confidential treatment in accordance with Section 4.10 of the Commission's Rules of Practice, 16 CFR 4.10; and

(b) the agreement with such third party will provide that the third party must disclose, in writing, to its customer the cost of each publication sold and the terms and conditions of payment for same and provide the customer in a clear and conspicuous manner a three business day right of cancellation or a right to cancel the subscription order at any time after receipt of the written disclosure; and

(c) if Time Inc. obtains information that the third party is not furnishing the customer with the written disclosures and/or not providing the three day right of cancellation, Time Inc. shall remind the third party of its obligations under the agreement and if the third party refuses to abide by the agreement Time Inc. shall cancel the agreement.

(d) Time Inc. shall preserve, for a period of three years after receipt, each complaint

¹ This would include any paid-during-service business obtained through door-to-door or telephone solicitation.

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received by Time Inc. about the sale of a subscription to a Time Inc. magazine sold through a "PDS" plan or "cash sale" plan, and shall make them available during such period to the Federal Trade Commission at its request, together with the identity of the "PDS" agency which sold such subscription; and

(e) Time Inc. will, upon notice of any customer's request, made either to the third party seller or to Time Inc., cancel any subscription to a Time Inc. publication and provide a pro-rata refund of the subscription price of the publication(s) to the customer when the request for cancellation alleges or indicates that the seller engaged in any practices prohibited by the order in Docket C-1919.

(2) In the event Time Inc. or any of its Subsidiaries and/or Affiliates or any other entity in which the Company shall have a substantial financial or stock interest or over which it shall exercise control shall engage in "PDS" business or "cash sale" business it shall give the Federal Trade Commission at least sixty days prior notice of its intention to engage in such business.

Commissioner Pitofsky did not participate.

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IN THE MATTER OF

SEARS, ROEBUCK AND CO., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9104. Decision, April 28, 1980—Modifying Order, June 10, 1980*

This order modifies a previous order to cease and desist issued April 28, 1980, 95 F.T.C. 414, 45 FR 36372, against a Chicago, Ill. department store chain, by adding the terms "dehumidifiers" and "freezers" to the definition of "major home appliances" contained in order Paragraph I(1).

ORDER CORRECTING INADVERTENT OMISSION FROM FINAL ORDER

By motion filed May 21, 1980, complaint counsel have requested that the Commission modify its final order in this matter to add the terms "dehumidifiers" and "freezers" to the definition of "major home appliances" contained in the order.

Complaint counsel are correct in their suggestion that the omission of these two terms from the order was inadvertent. At page 18 of the Commission's decision it indicated its desire to adopt the definition proposed by Judge Hanscom, with the omission of the catch-all provision ("and any other product that falls into the category of major home appliances") and with the addition of the terms "stoves" and "ovens". The final order appended to the decision omits mention of dehumidifiers and freezers, even though these were contained in Judge Hanscom's order as recited on page 17 of the Commission's decision. To correct this inadvertent omission, the final order will be modified. Therefore,

It is ordered, That Paragraph I(1) of the Final Order in this matter be modified to read:

"Major home appliance" means air conditioning units (room or built-in), clothes washers, clothes dryers, disposers, dishwashers, trash compactors, refrigerators, refrigerator/freezers, freezers, ranges, stoves, ovens (including microwave ovens), humidifiers, and dehumidifiers.

Complaint

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9074. Complaint, Feb. 10, 1976—Decision, June 11, 1980*

This consent order requires, among other things, a Detroit, Mich. motor vehicle manufacturer (GM) to change its official accounting procedures for dealers, to include specified procedures for determining surpluses realized on repossessed vehicles; and stipulate to its dealers that such procedures must be observed. The order requires GM and its subsidiary, General Motors Acceptance Corporation (GMAC), to institute extensive training programs to familiarize dealers with their obligations in handling repossessed vehicles. Following such training, GM is required to conduct a series of field audits to ensure that surpluses are being calculated and paid in a prescribed manner. GMAC is further required to pay \$2 million to eligible consumers whose vehicles were repossessed by the company since May 1, 1974. Additionally, GMAC's post-repossession notices and other relevant documents must include accurate and complete information concerning the nature and duration of customers' rights to redemption and surpluses; and that bulletins be sent to dealers whose arrangements with the company did not call for "title clearance," advising them of their obligations to pay surpluses on repossessed vehicles.

Appearances

For the Commission: *Randall H. Brook, Dean A. Fournier, Ivan Orton, Sharon S. Armstrong, Gregory Colvin and Sarah Jane Hughes.*

For the respondents: *Otis M. Smith, Robert C. Weinbaum and Stephen P. Ormond, Detroit, Mich. and Patrick Leach, Weil, Gotshal & Manges, New York City, for respondent General Motors Corporation. Nancy L. Buc, Weil, Gotshal & Manges, Washington D.C., Carl D. Lobell, Weil, Gotshal & Manges, New York City and John J. Higgins, New York City, for respondent General Motors Acceptance Corporation. Robert C. St. Louis, Aiken, St. Louis & Siljeg, Seattle, Wash., for respondent Chuck Olson Chevrolet, Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that General Motors Corporation, General Motors Acceptance Corporation, and Chuck Olson Chevrolet, Inc., corporations, have violated the provisions of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint.

Complaint

PARAGRAPH 1. *Respondents.* Respondent General Motors Corporation ("GM") is a Delaware corporation with its office and principal place of business at 3044 West Grand Boulevard, Detroit, Michigan. Respondent General Motors Acceptance Corporation ("GMAC") is a Delaware corporation with its office and principal place of business at 761 Fifth Ave., New York, New York. It is a wholly-owned subsidiary of GM.

Respondent Chuck Olson Chevrolet, Inc. ("Olson") is a Washington corporation with its office and principal place of business at 17545 Aurora Ave. North, Seattle, Washington.

Allegations stated below in the present tense include the past tense.

PAR. 2. *Respondents' Business.* GM manufactures, distributes and sells motor vehicles, including automobiles and trucks. It also owns all or part of the voting stock of various retail dealers of its vehicles, whose business operations and policies it controls. It is responsible for the acts and practices of its wholly- or partially-owned dealers, as described below.

Wholly- or partially-owned as well as independent retail GM dealers are referred to below as "GM dealers."

GMAC is a finance company, wholly-owned by GM, which provides retail financing to customers of GM dealers for their retail installment contract purchases of new and used motor vehicles. It also provides wholesale financing for inventories held by GM dealers.

Olson is an independent GM dealer selling new and used motor vehicles.

PAR. 3. *Commerce.* Each of respondents participates in some or all phases of the sale, distribution and repossession of motor vehicles, and in the transmission across state lines of contracts, monies, and other business papers related to the extension and enforcement of credit obligations. Respondents each maintain a substantial course of trade in motor vehicles and motor vehicle credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. *Retail Installment Contract Sales.* Olson and most other GM dealers arrange financing through GMAC or other lenders for retail sales of motor vehicles to their customers. Most of the sales to be financed by GMAC are executed on a printed "retail installment contract" form provided by GMAC, naming the customer as buyer and the dealer as seller. This "retail installment contract" form indicates that the contract will be assigned to GMAC for value, that the buyer is to be indebted to the dealer or its assignee, and that the dealer or its assignee is to be a secured party holding security interest in the vehicle sold. In the event the buyer defaults, GMAC and Olson and other GM

dealers have also expressly undertaken the obligation, by express or implied representations contained in their retail installment contracts, to make a proper disposition of the repossessed collateral and to account to the defaulting buyer for any surplus arising therefrom. These representations have the tendency and capacity to lead buyers to a reasonable expectation that GMAC or the dealer will properly dispose of the vehicle and refund any surplus.

PAR. 5. *Statutory Duty to Account for Surplus.* The respective rights and duties of the defaulting buyer and secured party after repossession are defined by state commercial law, derived by almost every state from Article Nine of the Uniform Commercial Code, and the retail installment contract. State law requires the secured party, after repossessing and disposing of the collateral, to account to the defaulting buyer for any surplus of proceeds from the sale or disposition in excess of the amount needed to satisfy all secured indebtedness, reasonable expenses of retaking, holding, preparing for sale, selling, and the like, and allowable legal costs and fees.

PAR. 6. *Post-Default Procedures Determined by Master Agreement.* In instances where GMAC as secured party declares a default, it usually repossesses or causes repossession of the vehicle. The procedures followed by GMAC and the dealer after repossession are determined by a master "GMAC Retail Plan" between GMAC and the dealer, as well as by the terms of the assignment of each retail installment contract to GMAC, and by additional terms and conditions specified from time to time. A substantial majority of the agreements executed between GMAC and GM dealers in the United States are recourse, repurchase, guaranty or similar agreements (hereinafter "recourse" agreements).

PAR. 7. *Recourse Transfer and Payoff.* Pursuant to the agreements described in Paragraph Six, GMAC in most cases returns the repossessed vehicle to the recourse dealer within a specified time, and receives from the dealer a payoff consisting of the unpaid balance of the retail installment contract adjusted by applicable charges and credits. The dealer then resells the vehicle to a third party.

PAR. 8. *Recourse "Title Clearance".* Before returning the vehicle to the recourse dealer, GMAC claims to offer the vehicle for sale, purporting to comply with the public (or private) sale method of disposition of collateral authorized by the Uniform Commercial Code and other state laws. GMAC claims that this procedure "clears title" to the vehicle, extinguishing the defaulting buyer's equity interest in the vehicle, cutting off the buyer's redemption rights, and establishing the amount of deficiency or surplus. In truth and in fact:

A. GMAC does not make reasonable efforts to procure the attendance of competing bidders or buyers at such sales. Hardly anyone ever appears to bid or buy at the "title clearance" sale except a representative of GMAC. GMAC routinely purchases the vehicle from itself, and no money transfer or accounting entry is made.

B. GMAC almost always declares a substantial deficiency based on the "sale," and surpluses are almost never produced.

C. After the vehicle is returned to the recourse dealer, the dealer's payoff compensates GMAC for the entire debt owed by the defaulting buyer, including the deficiency.

D. The subsequent resale by the dealer is almost always made at a higher price than the GMAC "title clearance" sale. Thus, any loss produced by the dealer's resale is much less than the deficiency declared by GMAC, and in a substantial number of instances a surplus is realized.

This "title clearance" method of disposition is a sham, an improper performance of the repossessing secured party's duty, as a fiduciary and trustee, to respect the defaulting buyer's equity interest in the vehicle. As a method of disposition, GMAC's sale procedure is not commercially reasonable, not conducted in good faith, and is therefore violative of the Uniform Commercial Code. The recourse dealer's subsequent resale is the actual disposition of collateral, not GMAC's intervening sale to itself.

Therefore, the method of disposition of repossessed motor vehicles described above is unfair and deceptive.

PAR. 9. *Non-Recourse "Title Clearance"*. In a number of cases GMAC does not return the repossessed vehicle to the original selling dealer, including but not limited to cases where there is no recourse agreement in effect or where the conditions for enforcing the recourse obligation are not met. In many of these instances, GMAC sells the vehicle to itself, using the same "title clearance" method described in Paragraph Eight, and then resells the vehicle to a third party shortly thereafter, usually well within any applicable period specified by state law for a proper disposition. Again, GMAC declares a substantial deficiency based on the "title clearance" sale. The subsequent, third-party sale is frequently made at a higher price than the "title clearance" sale. When it is, the loss produced by the subsequent sale is less than the deficiency declared by GMAC, and in some cases a surplus may be realized.

The sale to a third party is the actual disposition and, applying the same standards of fiduciary duty, commercial reasonableness and good faith set forth in Paragraph Eight, GMAC's "title clearance" sale to itself is unfair and deceptive.

PAR. 10. *Other Surpluses Paid to Dealers.* GMAC has had a procedure by which it may, under certain circumstances, elect not to return a vehicle to a recourse dealer but to sell the vehicle to a third party, with or without an intervening "title clearance" sale, while still holding the dealership to its recourse obligation. If a surplus results from such a disposition, GMAC's procedures call for paying or crediting the surplus amount to the dealer, not to the defaulting buyer. This practice violates the Uniform Commercial Code and is unfair and deceptive.

PAR. 11. *Joint Liability.* Under applicable state law, a recourse dealer who receives a transfer of collateral from a secured party has a duty to properly dispose of the collateral and to account to the defaulting buyer for any surplus. The dealer has this obligation when the transfer is direct, but also when GMAC holds a "title clearance" sale prior to the transfer, as it does in the vast majority of recourse repossessions. GMAC also is obligated to ensure that a proper disposition of the collateral is made and that a proper accounting for any surplus is given to the defaulting buyer. GMAC shares this obligation jointly with the dealer because (1) it continues to be the secured party and continues to be a fiduciary with respect to the defaulting buyer's equity interest; (2) GMAC, as assignor of the contractual duties of a secured party, continues to be liable for the performance of those duties; (3) GMAC has dictated, controlled and acted jointly with the recourse dealer in executing relevant aspects of the credit transaction; and (4) GMAC has made representations to buyers, as set forth in Paragraph Four, that these duties would be properly performed.

PAR. 12. *Failure to Account for Surpluses.* With reference to the surpluses realized on the dealer's disposition as described in Paragraph Eight, and on GMAC's own resale as described in Paragraphs Nine and Ten, GMAC, Olson and other GM recourse dealers have in a substantial number of instances (1) failed to institute or follow correct procedures for determining the existence or amounts of these surpluses, (2) failed to disclose the existence of these surpluses to defaulting buyers, and (3) wrongfully retained such surpluses in violation of the defaulting buyers' statutory and contractual rights. The failure to identify and disclose surpluses has concealed their existence from these consumers and consequently few have asserted their rights under applicable state law. The failure to remit surpluses has deprived numerous consumers of substantial amounts of money rightfully theirs and has unjustly enriched GMAC and its recourse dealers. These practices are therefore unfair and deceptive.

PAR. 13. *Pursuit of Excessive Deficiencies.* GMAC collects c attempts to collect from defaulting buyers many of the deficiencies

declares based on the "title clearance" procedure described in Paragraphs Eight and Nine. Some of the deficiencies are assigned to recourse dealers or others for collection. Whether GMAC or the dealer pursues the deficiency, the amount collected may be shared between them. Such collection efforts have the tendency and capacity to induce defaulting buyers to pay sums to which GMAC or its assigns are not entitled or to otherwise change their positions to their detriment. To the extent that deficiency amounts collected from defaulting buyers exceed the deficiency produced by the recourse dealers' resale, or exceed the deficiency produced by GMAC's subsequent resale (either of which may have in fact produced a surplus), these buyers have been deprived of substantial sums of money, unjustly enriching GMAC and its dealers. This practice is therefore unfair and deceptive.

PAR. 14. *Misrepresentation of Right to Deficiency.* GMAC represents to defaulting buyers that they may be liable for deficiencies on repossessed motor vehicles in instances where state law limits or denies this liability. These representations have the tendency and capacity to induce defaulting buyers to pay sums to which the dealer, GMAC, or its assigns are not entitled or otherwise to change their position to their detriment. Therefore, use of these misleading contracts is unfair and deceptive.

PAR. 15. *Failure to Disclose Material Facts Concerning Redemption.* GMAC and its recourse dealers fail, in some instances, to inform defaulting buyers of facts necessary to their exercise of the right of redemption granted by state law, including but not limited to (1) the nature and duration of the right to redeem, and (2) the amount required to redeem. This failure to disclose material facts has the tendency and capacity to hinder defaulting buyers in exercising the right to redeem and is therefore an unfair and deceptive act or practice.

PAR. 16. *Owned GM Dealers Using Non-GMAC Financing.* A number of wholly- or partially-owned GM dealers engage in the acts and practices ascribed to dealers in Paragraphs Twelve through fifteen, in instances where retail installment financing for their customers is obtained from finance institutions other than GMAC. These acts and practices, for the reasons stated above, are unfair and deceptive.

PAR. 17. *Conclusion.* The acts and practices of respondents set forth Paragraphs Eight through Ten, and Twelve through Sixteen are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission has issued its complaint charging the respondents with violation of Section 5 of the Federal Trade Commission Act, as amended. The respondents have been served with a copy of that complaint, together with a notice of contemplated relief.

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

The Secretary of the Commission has withdrawn this matter from adjudication in accordance with Section 3.25(e) of its Rules.

The Commission has considered the matter and has accepted the executed consent agreement and placed the agreement on the public record for a period of 60 days and has considered the comments filed pursuant to Section 3.25 of its Rules. In accordance with Section 3.25(f) of its Rules, the Commission makes the following jurisdictional findings and enters the following order:

1. Respondent General Motors Corporation is a Delaware corporation with its offices and principal place of business at 3044 West Grand Boulevard, Detroit, Michigan. Respondent General Motors Acceptance Corporation is a New York corporation with its offices and principal place of business at 767 Fifth Ave., New York, New York. General Motors Acceptance Corporation is a wholly-owned subsidiary of General Motors Corporation. General Motors Corporation and General Motors Acceptance Corporation are referred to as the "General Motors respondents."

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

ORDER

I. Definitions

It is ordered, That for purposes of this order the following definitions shall apply:

A. "General Motors respondents" or "respondents" means General Motors Corporation ("General Motors") and General Motors Accep-

tance Corporation ("GMAC"), corporations. It shall not refer to Chuck Olson Chevrolet, Inc. References to either or both of the General Motors respondents shall include their successors, assignees, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or devices through which they act in the United States. However, references to General Motors shall not include GMAC and references to either or both of the General Motors respondents shall not include dealerships. The requirements imposed on the General Motors respondents shall apply only to transactions within the United States.

B. "Vehicle" means an automobile or truck with a gross vehicle weight rating less than 11,000 pounds (4,990 kilograms) or a motor home. The term includes all parts, accessories and appurtenances of the vehicle. A van is deemed a "truck."

C. "Dealership" or "dealer" means a corporation, partnership or proprietorship as to its operations within the United States pursuant to a Sales and Service Agreement with General Motors' Buick, Cadillac, Chevrolet, Oldsmobile, or Pontiac divisions, or the GMC Truck and Coach Division.

D. "Retail sale" means the sale of a vehicle by a dealer, other than for purposes of resale (e.g., sales to dealers or wholesalers), lease or rental, to a customer who is not a fleet purchaser.

E. "Recourse financing" means the financing of a retail sale subject to an agreement between a financing institution and a dealership (generally called a "repurchase," "recourse," or "guaranty" agreement) which provides that the dealership is obligated to pay off the outstanding obligation to the financing institution after receiving a transfer of the repossessed vehicle.

F. "Equity dealership" means a dealership in which General Motors holds 50 percent or more of the voting stock or is entitled to elect 50 percent or more of the board of directors.

G. "Financing customer" means a purchaser of a vehicle from a dealership by means of a retail installment contract.

H. "Disposition" or "dispose" means a dealership's sale or lease of a repossessed vehicle previously sold by that dealership and returned to it by or for a financing institution pursuant to a recourse agreement. Such sale or lease includes only transactions with an independent third party; i.e., it does not include a sale or lease to the financing institution, the dealership or a representative of either. Disposition or dispose shall not mean the transfer of a repossessed vehicle to a dealership pursuant to a recourse agreement, or to a person or firm liable under a guaranty, endorsement, or recourse agreement covering the repossessed vehicle, nor mean a sale subsequent to a judicial sale.

I. "Proceeds" means whatever is received for a repossessed vehicle upon its disposition, as proceeds are described in the Initial Compliance Report. Among other things, it does not include charges for separately priced warranties and service contracts itemized in the sales contract or lease.

J. "Allowable expenses" means only actual out-of-pocket expenses incurred as the result of a repossession. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for disposition and disposing of the vehicle, and not otherwise reimbursed to the dealership disposing of the vehicle. They are limited to the following charges (if permitted under applicable state law):

1. expenses paid to persons who are not employees of the dealership nor of the financing institution that financed the retail sale, for repossessing, towing or transporting the vehicle;

2. filing fees, court costs, cost of bonds, and fees and expenses paid to a sheriff or similar officer or to an attorney who is not an employee of the dealership nor of the financing institution, for obtaining possession of or title to the vehicle;

3. fees paid to others to obtain title to the vehicle, to obtain legally required inspection of the vehicle, or to register the vehicle;

4. amounts paid to others for storage (excluding a charge for storage at facilities operated by the dealership);

5. labor and associated parts and supplies furnished by the dealership for the repair, reconditioning or maintenance (including legally required inspections) of the vehicle in preparation for disposition, computed at dealer cost (as defined in the Initial Compliance Report) with appropriate adjustments for any insurance, service contract or warranty recovery;

6. amounts paid to others for labor and associated parts and supplies purchased for the repair, reconditioning or maintenance (including legally required inspections) of the vehicle in preparation for disposition;

7. cost of sales commissions paid for actual participation in the disposition of the particular vehicle, computed at a rate no higher than for the sale or lease, as applicable, of a similar, non-repossessed vehicle in similar circumstances, but excluding all portions of commissions attributable to the selling of service contracts, separately priced warranties, financing or insurance;

8. a proportionate share of expenditures for advertisements that specifically mention the particular vehicle;

9. fees and expenses paid to others for auctioning the vehicle;

10. amounts paid to others for communication (including telephone calls, postage and military locator fees) and photocopying necessary in arranging for the repossession, holding, transportation, reconditioning or disposition of the vehicle.

11. amounts paid to insure the particular vehicle while holding it.

K. "Contract balance" means (1) the unpaid balance as of the date of repossession, less any payments made thereafter and less applicable finance charge, insurance premium and service contract rebates deducted by the financing institution, plus (2) other charges authorized by contract or law and actually assessed or incurred prior to repossession. It may reflect a deduction for insurance, service contract and warranty payments received or to be received by the financing institution.

L. "Surplus" means:

+	proceeds
+	applicable insurance or warranty reimbursements received by the dealership or financing institution unless these reimbursements were deducted in computing the contract balance
+	any other applicable rebates or credits not deducted in computing the contract balance
-	contract balance
-	allowable expenses
-	amounts paid to discharge any security interest in the vehicle provided for by law
<hr/>	
=	Surplus. A negative (minus) amount produced by this calculation is referred to as a "deficiency"

M. "Pay" or "paid," in reference to payment of a surplus, means a diligent effort to pay in accordance with the standards set forth in the Initial Compliance Report.

II. Repossession Accounting Procedures

It is further ordered, That General Motors shall provide to all dealers within 10 days of service of this order, and to each new dealer within 30 days of entering into a Sales and Service Agreement, procedures for determining the existence of surpluses and for accounting for surpluses and for any deficiencies sought.

A. These procedures (the "repossession accounting procedures") shall, by physical insertion or as a supplement, be made a part of the

General Motors uniform accounting system referred to in the various dealer Sales and Service Agreements between General Motors and its dealers. These agreements provide that this system (currently called the "General Motors Dealers Standard Accounting System Manual") is to be followed in dealership operations. The requirement that the system be followed, insofar as it relates to the repossession accounting procedures, shall not be deleted from the Sales and Service Agreements, nor modified, without 60 days notice to the Commission. General Motors shall not implement the deletion or modification if the Commission, within that 60-day period, advises General Motors that it objects. The repossession accounting procedures shall also be incorporated into any subsequent set or compendium of comparable instructions.

B. The repossession accounting procedures shall include a standardized form ("dealer repossession accounting form") for dealers' use in determining for each vehicle the existence and amount of any surplus and of any deficiency sought, and in recording payment of each surplus, in accordance with the provisions of Paragraph C below.

C. The repossession accounting procedures shall provide that:

1. Each surplus is to be determined and paid to the recourse financing customer within 45 days of disposition in accordance with a method conforming to Paragraphs I.H through I.M of this order;

2. Expenses other than allowable expenses are not to be deducted in calculating surpluses and deficiencies sought;

3. Dispositions are to be commercially reasonable. The dealer should make the same efforts to obtain the best possible price for a repossessed vehicle as would be made for a comparable used vehicle, except that a dealer is not required to offer a warranty without extra charge even though such warranties are provided on other used vehicles. If state law sets forth particular requirements for the disposition of repossessed vehicles, the dealer should comply with those requirements but shall still attempt to obtain the best possible price consistent with those requirements.

4. If any rebate owed to the recourse financing customer's account has not been received at the time the dealer repossession accounting form is completed, such rebate is to be applied for promptly;

5. If any rebate is received after completion of the dealer repossession accounting form, any surplus or deficiency is to be redetermined and any remaining surplus paid within 45 days of disposition or within 10 days of receiving the rebate, whichever is later;

6. The dealer repossession accounting form is to be prepared by the dealer for each disposition of a repossessed vehicle and:

- a. is to set forth the calculation of each surplus and of each deficiency sought;
- b. is to identify the vehicle and the financing customer and be certified by a person authorized to sign retail installment contracts on behalf of the dealership;
- c. a copy of the form is to be sent with the surplus payment to each recourse financing customer to whom a surplus is paid and is to be sent to each recourse financing customer from whom a deficiency is sought; and
- d. is to be retained by the dealer, together with all relevant underlying documentation, for at least two years from the date of disposition.

7. Dealers are not to obtain or attempt to obtain waivers of surplus or redemption rights from recourse financing customers, except in the precise manner and under the precise circumstances contemplated by the applicable state law version of Section 9-505 of the Uniform Commercial Code. Under Section 9-505 a waiver of a customer's right to a surplus may not be sought unless the dealer intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business. If a waiver is sought, the dealer shall not represent that by proposing the waiver it proposes to forego its right to a deficiency judgment, unless it intends to seek such a judgment should the waiver not be given.

D. The repossession accounting procedures shall state that failure to adhere to the standards of subparagraphs C.1-7 above or to account properly to customers for surpluses may expose the dealer to legal action by the Federal Trade Commission and/or consumers.

E. General Motors shall give the Federal Trade Commission 30 days advance notice of any change in its manner and form of carrying out the requirements of Part II of this order.

F. The repossession accounting procedures shall not apply to the sale of a repossessed vehicle subsequent to a judicial sale.

G. The Federal Trade Commission has proposed a Trade Regulation Rule that defines duties involved in disposing of a repossessed vehicle differently from the method described in subparagraph C.3 above. For this reason, that subparagraph is not to be considered a ratification or acceptance by the Commission of that method of disposition, except for purposes of this order.

III. Training and Notification

A. *It is further ordered*, That General Motors shall develop detailed educational materials and training to carry out the purposes of Part II

of this order, and of Part VI (as related to reinstatement and redemption rights), as further described in the Initial Compliance Report. General Motors:

1. Shall provide the educational materials to every dealer within 10 days after service of this order.

2. Shall, commencing no later than 180 days after service of this order and in the normal course of providing seminars and other training, include detailed information on all pertinent aspects of Part II of this order and Part VI (as related to reinstatement and redemption rights) in all appropriate seminars and other training materials offered to dealers.

B. *It is further ordered*, That General Motors:

1. Shall, within 10 days after service of this order, send to each dealer a letter which contains information to the following effect:

a. State law requires that any surplus generated on the disposition of a repossessed vehicle must be paid to the defaulting customer.

b. The Federal Trade Commission has charged that secured parties' sales of repossessed vehicles to themselves are of no effect in computing a customer's deficiency or surplus. With regard to these charges, GMAC has been prohibited from purchasing a repossessed vehicle at any sale it conducts and has been ordered to make payments to some customers whose repossessed vehicles were purchased by GMAC at a sale which it conducted.

c. The duty to pay surpluses has existed for many years, and the company urges dealers to pay all surpluses on repossessed vehicles disposed of by them, except for past GMAC repossessions which were not subject to the reassignment option of the GMAC Retail Plan. This duty covers surpluses arising prior to the date of the letter, as well as those arising later.

d. As of the date of this letter, the law of virtually all states provides that if a dealer does not pay a surplus owed, the defaulting customer has the right to recover a penalty equal to "an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price".

e. If a customer to whom a surplus is owed has been reported by the dealer or its agent (including a collection agency) to a credit reporting agency as owing a deficiency, the dealer should promptly advise the credit reporting agency of the correct facts.

f. The Federal Trade Commission has issued complaints against three automobile dealers charging that their failure to pay past surpluses violated federal law.

2. Shall include in the above mailing a copy of the Commission's published Analysis of Consent Order.

3. Shall, within 90 days after service of this order, develop and provide to all Motors Holding branch personnel (other than clerical employees) educational materials and training to carry out the purposes of Parts II and V of this order, as further described in the Initial Compliance Report.

4. Shall, if certain acts or practices are found unlawful in Docket 9072, 9073 or 9074, mail a set of documents, to be provided by the Commission at a later date, for the purpose of notifying dealerships that those acts or practices have been found unlawful. The mailing shall be certified mail, return receipt requested, to each dealership president (or Dealer Operator, as that term is defined in General Motors Sales and Service Agreements). General Motors shall provide the Commission with a certification of mailing by a responsible official, including a statement that the mailing list used was complete at the time of mailing to the best of the certifier's knowledge. It shall maintain the receipts for at least three years after (1) the last audit summary is submitted pursuant to Paragraph IV.C of this order, or (2) the mailing is completed, whichever comes later. General Motors may include a covering letter or transmittal sheet in the mailing, with language subject to the approval of the Commission or its authorized representatives.

C. *It is further ordered*, That GMAC:

1. Shall, within 60 days after service of this order, send a letter explaining the duty to pay past surpluses to each dealer to which GMAC returned a repossessed vehicle between May 1, 1974 and service of this order where the dealer executed the reassignment option of the GMAC Retail Plan.

2. Shall, within 90 days after service of this order, develop and provide to all GMAC branch personnel involved in recourse financing transactions (other than clerical employees) educational materials and training to carry out the purposes of Parts II and VI of this order, as further described in the Initial Compliance Report.

D. *It is further ordered*, That General Motors shall issue no new materials or instructions to dealers inconsistent with this order and shall provide no materials or instructions to dealers inconsistent with this order after 180 days after service of this order.

IV. Dealer Audits

A. To determine whether dealers are correctly calculating and paying surpluses after implementation of Parts II and III of this order, General Motors shall conduct audits of dealers with respect to their disposition of repossessed vehicles. The audit process shall:

1. Consist of four successive twelve-month auditing periods, the first to begin approximately 190 days after service of this order.

2. Include 300 recourse dealers per twelve-month auditing period, selected pursuant to the method set forth in the Initial Compliance Report. In addition, each dealer found in the preceding auditing period to have had transactions in which the dealer failed to follow the repossession accounting procedures in calculating surpluses and deficiencies sought or in paying surpluses will be included, limited to one reaudit per dealer.

3. Consist of an audit of each dealer's repossession accounting forms, with resort to all necessary underlying records, as described in the Initial Compliance Report. The audit shall include for each dealer audited the preparation of a summary ("dealer summary report") which shall contain:

- a. the name and address of the dealership;
- b. the number of dispositions audited;
- c. the number and dollar value of surpluses properly calculated and paid;
- d. the number and dollar value of surpluses as to which attempts to pay were unsuccessful;
- e. the number of repossessed vehicles sold at wholesale;
- f. description of any failures to follow the repossession accounting procedures other than in calculating surpluses or deficiencies sought or in paying surpluses;
- g. the number of dispositions in which the dealer failed to follow the repossession accounting procedures in calculating surpluses and deficiencies sought or in paying surpluses, and, for each of these dispositions: (1) a statement of the nature of the failure; (2) a form, described in the Initial Compliance Report, on which the auditor will list all documents in the dealer's files which contain information which should be stated on the dealer repossession accounting form and set forth that information; and (3) any worksheet(s) the auditor prepares in connection with that disposition;
- h. a certification by the auditor that the dealer summary report is accurate to the best of the auditor's knowledge and that the auditor has informed the dealership in writing that it should retain for at least 2 years after the audit all documents relating to any disposition under subparagraph A.3.g.

4. Include, for each dealer audited, each recourse financing repossession disposed of by the dealer during a preceding twelve-month period (defined in the Initial Compliance Report). Dispositions in which the repossession occurs prior to 30 days after General Motors provides

dealers with the repossession accounting procedures need not be included.

B. Audit reports and documents prepared during an audit pursuant to Paragraph A shall be maintained by General Motors for three years following the end of the twelve-month auditing period for which they are prepared.

C. General Motors shall file with the Commission an audit summary for each twelve-month auditing period described in subparagraph A.1. Each summary shall be filed 90 days after the completion of the auditing period. These summaries shall contain the following information in aggregate form:

1. the number of dealers audited;
2. the number of dispositions audited;
3. the number and total dollar value of surpluses properly calculated and paid;
4. the number and total dollar value of surpluses as to which attempts to pay were unsuccessful;
5. the number of dispositions in which the repossessed vehicle was sold at wholesale;
6. the number of dispositions in which there was a failure to follow the repossession accounting procedures in calculating and in paying a surplus, the number of dealerships involved, and the total additional dollar amount the dealerships should have paid according to the repossession accounting procedures;
7. the number of dispositions in which a deficiency was sought, the number of those in which there was a failure to follow the repossession accounting procedures in calculating the deficiency and the number of dealerships involved in these failures; and
8. a statement describing the steps that General Motors took to contact dealerships which were discovered during an audit to have failed to follow the repossession accounting procedures in calculating surpluses or deficiencies sought or in paying surpluses.

D. The audits described in Paragraph A shall be conducted by General Motors' Sales Section or by other qualified representatives designated by General Motors, in accordance with procedures described in this order and in the Initial Compliance Report. The following procedures shall be followed:

1. The General Motors respondents shall not inform dealers or other third parties of the audit procedure or the identity of dealers selected for audit, except to the extent described in this Order.
2. No dealer selected for audit under this Part IV shall be given more than ten business days advance notice of the scheduled audit.

V. Equity Dealership Procedures and Monetary Payments

It is further ordered, That:

A. Within 60 days after service of this order, or within 60 days after issuance of stock in any new equity dealership, General Motors shall, as a shareholder in equity dealerships, present and support resolutions for consideration by the boards of directors of those dealerships, which provide that:

1. the dealership's accounting practices will be conformed to the repossession accounting procedures described in Part II above; and
2. surpluses and deficiencies will be calculated and surpluses paid according to the repossession accounting procedures.

B. Within 100 days after service of this order, General Motors shall advise the Federal Trade Commission in writing of the number of equity dealerships which did not adopt the resolutions described in Paragraph V.A.

C. General Motors shall, during each accounting systems examination ("systems exam") it conducts at an equity dealership, determine if the dealership has, since the last systems exam, calculated surpluses and deficiencies sought and paid surpluses according to the repossession accounting procedures. The systems examiner shall review all accounts in which the repossessed vehicle was disposed of during the period beginning 45 days prior to the preceeding systems exam and ending 45 days prior to the current systems exam. For these accounts the examiner shall review the dealer repossession accounting forms with resort to all necessary underlying records. Dispositions in which the repossession occurs prior to 30 days after General Motors has provided dealerships with the repossession accounting procedures need not be reviewed. Systems exams shall be conducted to examine repossession disposition(s) at least once each year for each equity dealership.

D. When a systems exam or other reliable information discloses the failure of an equity dealership to calculate surpluses or deficiencies sought or pay surpluses according to the repossession accounting procedures, General Motors shall, as a shareholder:

1. request the dealership's board of directors to review with the dealer operator the repossession accounting procedures;
2. send copies of the relevant portions of the systems exam, or the substance of the reliable information, to each of the dealership's board members; and
3. request the dealership's board members to take steps to insure

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that surpluses and deficiencies sought are calculated and surpluses paid in accordance with the repossession accounting procedures.

E. In the course of the first systems exam for a dealership following action taken by General Motors under Paragraph D above, GM shall determine whether all the failures have been corrected. If the failures have not been corrected, GM shall include those failures in an aggregate report compiled at the end of each calendar year. This report shall state the number of dealers with those uncorrected failures, the number and amount of surpluses involved, and the number and amount of excess deficiencies involved.

F. For each equity dealership which, during the report period defined in Paragraph G below, failed to calculate a surplus or deficiency sought, or to pay a surplus, in accordance with the repossession accounting procedures, General Motors shall prepare an examination summary. This summary shall be retained for a period of 3 years following the submission of the equity dealership report referred to in Paragraph G below. It shall contain:

1. the name and address of the dealership;
2. the number of dispositions examined;
3. the number and dollar value of surpluses properly calculated and paid;
4. the number and dollar value of surpluses as to which attempts to pay were unsuccessful;
5. the number of repossessed vehicles sold at wholesale;
6. description of any failures to follow the repossession accounting procedures other than in calculating surpluses or deficiencies sought or in paying surpluses;
7. the number of dispositions in which the dealer failed to follow the repossession accounting procedures in calculating surpluses or deficiencies sought or in paying surpluses, and, for each such disposition, the amount of surplus unpaid or excess deficiency sought, copies of the examiner's worksheets dealing with the disposition, a statement of the nature of the failure, and a certification by the examiner that the examination summary is correct to the best of his or her knowledge. In addition, the examiner shall attach photocopies of all records examined which are necessary to document each of these dispositions.

G. General Motors shall file with the Commission a report with respect to equity dealerships ("equity dealership report"), within 28 months after General Motors has provided dealers with the repossession accounting procedures. The equity dealership report shall cover systems exams completed within two years after the 30-day period

described in Paragraph C above. This two-year period is called the "report period." The equity dealership report shall state the total number of equity dealerships examined and shall contain the following information in aggregate form with respect to equity dealerships which failed during the report period to follow the repossession accounting procedures in calculating surpluses or deficiencies sought or in paying surpluses:

1. the number of dealers;
2. the number of dispositions examined;
3. the number and total dollar value of surpluses properly calculated and paid;
4. the number and total dollar value of surpluses as to which attempts to pay were unsuccessful;
5. the number of dispositions in which the repossessed vehicle was sold at wholesale;
6. the number of dispositions in which there was a failure to follow the repossession accounting procedures in calculating or paying a surplus, the number of dealerships involved and the total additional dollar amount the dealerships should have paid according to the repossession accounting procedures;
7. the number of dispositions in which a deficiency was sought, the number of those in which there was a failure to follow the repossession accounting procedures in calculating the deficiency and the number of dealerships involved in those failures.

H. In the event that more than 10 percent of the equity dealerships had dispositions during the report period which failed to follow the repossession accounting procedures in calculating surpluses or deficiencies sought or in paying surpluses, the Federal Trade Commission shall have the right to reopen this proceeding against General Motors solely with regard to the issue of General Motors' alleged responsibility for equity dealerships' failure properly to calculate surpluses and deficiencies sought or to pay surpluses on repossession dispositions. If this reopening occurs, no charges or evidence shall be based on any disposition where GMAC was the financing institution and the financing plan called for a prior sale (title clearance) by GMAC or where GMAC held a prior sale (title clearance) in connection with a recourse obligation.

I. General Motors shall, within 180 days of service of this order, with respect to all repossessed vehicles returned between May 1, 1974 and 40 days after service of this order (a) to dealerships which are equity dealerships as of the date of service of this order or (b) to dealerships which were equity dealerships at the time the vehicle was

returned to the dealership and were liquidated while equity dealerships between May 1, 1974 and December 31, 1978, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. all surpluses have been offered to financing customers and paid to those who have executed a release; and
2. in each instance where a customer entitled to receive a surplus had been previously reported by the dealership or its agent (including a collection agency) to a credit reporting agency as owing a deficiency, the credit reporting agency has been subsequently advised of the correct facts.

With respect to vehicles repossessed by GMAC, Paragraph I shall apply only to vehicles subject to the reassignment option of the GMAC Retail Plan.

VI. GMAC Retail Plan Changes, Deficiency Representations, Post-Repossession Notices

It is further ordered, That GMAC:

A. Shall, in connection with the extension and enforcement of retail credit obligations relating to the sale of vehicles by dealers, cease and desist from:

1. Purchasing a repossessed vehicle at or through any type of sale (title clearance) conducted by GMAC.
2. Misrepresenting, directly or indirectly, orally, in writing, or in any other manner, that the debtor may be liable to pay a deficiency where GMAC knows or should know that it is not entitled under state or federal law to collect a deficiency.
3. Collecting or attempting to collect a deficiency from a defaulting customer, or from his or her successors or assigns, where GMAC knows or should know that (a) it is not entitled under state or federal law to collect such deficiency, or (b) such deficiency is greater than the amount determined in accordance with the definitions set forth in Part I of this order. For purposes of this subparagraph the definitions of "proceeds" and "allowable expenses" will apply to GMAC's own dispositions.
4. Obtaining or attempting to obtain waivers of redemption or surplus rights from financing customers, except in the precise manner and under the precise circumstances contemplated by the applicable state law version of Section 9-505 of the Uniform Commercial Code. Under Section 9-505 a waiver of a customer's right to a surplus may

not be sought unless GMAC intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business or to return it to a dealer pursuant to a recourse agreement. If a waiver is sought, GMAC shall not represent that by proposing the waiver it proposes to forego its right to a deficiency judgment, unless it intends to seek such a judgment should the waiver not be given.

Subparagraph A.1 shall become effective 40 days after service of this order. Subparagraphs A.2-.3 shall not apply to dispositions involving repossessions occurring prior to service of this order.

B. Shall incorporate, by addendum or otherwise, provisions to the following effect into its Retail Plan as it relates to recourse financing within 60 days after service of this order, and into any subsequent edition or successor document:

1. dealers are to permit redemption by the customer whose vehicle has been repossessed, at any time until there is a binding agreement for disposition, except where the dealer has obtained a waiver under subparagraph II.C.7;
2. dealers are to permit redemption in accordance with the post-repossession notice sent by GMAC to the customer, except where the dealer has obtained a waiver under subparagraph II.C.7;
3. dealers are to determine whether a surplus exists on a recourse financing repossession according to the repossession accounting procedures described in Part II of this order;
4. in determining surpluses and deficiencies, dealers are not to deduct expenses other than allowable expenses;
5. dealers are to account for and pay each surplus within 45 days of disposition.

C. Shall develop revised retail installment contract forms which (except as modified as described in Paragraph D below) include a clear, concise statement in lay language that, in the event of repossession:

1. no expenses other than reasonable expenses incurred as a direct result of repossessing, holding, preparing for disposition and disposing of the vehicle may be deducted from the proceeds in determining a surplus or deficiency; and
2. any surplus realized on the resale or other disposition of the vehicle is to be paid to the customer.

D. Shall distribute the revised retail installment contract forms to all dealers who use GMAC forms within one year after the Commission issues a final rule or final adjudicated order not less restrictive than the Paragraph C statements of allowable expenses and the duty to pay

surpluses. If the final rule or final adjudicated order is less restrictive than the Paragraph C statements, GMAC shall complete the distribution within one year after the Commission has modified Paragraph C to render it consistent with the final rule or final adjudicated order. GMAC shall direct its branch offices that, commencing two weeks after the distribution to a dealership of the revised GMAC retail installment contract forms, they are not to purchase from that dealership GMAC forms of retail installment contracts that are not on the revised forms. For two years thereafter, GMAC shall periodically examine its branch office files, in accordance with its usual monitoring procedures, to determine whether GMAC's prior retail installment contract forms are being used, and if so, shall institute appropriate corrective action.

E. Shall, within 60 days after service of this order, establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to GMAC financing customers as soon as practicable after repossession.

1. GMAC shall periodically examine its branches' files, in accordance with its usual monitoring procedures to determine whether the post-repossession notices have been and are being sent and shall institute appropriate actions to assure that the procedure for sending post-repossession notices is adhered to.

2. The post-repossession notice shall have a GMAC heading and shall specify in clear, lay language:

a. the name and address of the place at which the vehicle is being stored and the address and telephone number of the GMAC branch office to be contacted;

b. the date or interval of time within which the customer may redeem by reinstating the contract in states where the creditor is required to permit reinstatement of the contract;

c. the amount necessary to redeem by reinstating the contract at the time the notice is dated, if the customer is entitled to or will be permitted to redeem by reinstatement;

d. the net amount necessary to redeem by discharging the customer's obligation at the time the notice is dated, except where the customer is entitled to or will be permitted reinstatement until the vehicle is disposed of;

e. the date or interval of time prior to which the vehicle will not be disposed of;

f. that the vehicle can be redeemed at any time prior to a binding agreement for its disposition;

g. that additional expenses may be incurred and may increase the

amount necessary to redeem the vehicle if redemption is delayed (as further described in the Initial Compliance Report);

h. that GMAC should be contacted for further information about getting the vehicle back;

i. that any surplus resulting from a sale or lease must be paid to the customer within 45 days after disposition (the notice may also state that an agreement between the dealer and GMAC provides that the dealer is to pay any surplus);

j. that failure to account for and pay a surplus may give the customer a right to sue for the amount of the surplus and for any penalties provided by law;

k. that the customer will be liable for a deficiency or that the deficiency cannot be collected (the notice is to include the applicable language only);

l. that the customer should call the insurance company or the dealer to make sure that any insurance or service contract has been cancelled and that the customer has a right to credit for any refunds.

F. Shall issue no new materials to dealers inconsistent with this order and, commencing three months and to be completed no later than twelve months after service of this order, shall review all pertinent GMAC forms, notices and internal written procedures and make them consistent with the provisions of this order.

G. In any action by the Commission seeking civil penalties for a violation of subparagraphs A.2-4 and Paragraph E, GMAC may not be held liable if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. In applying this paragraph, judicial interpretations of Section 130(c) of the Truth In Lending Act, 15 U.S.C. 1640(c) (1974), shall be used.

VII. Monetary Payments by GMAC

It is further ordered, That GMAC shall pay \$2 million to financing customers whose vehicles were repossessed by GMAC. The money will be distributed as follows:

A. For each financing customer whose account (1) was charted by Commission complaint counsel as an alleged surplus, which chart was provided to GMAC by May 31, 1978; and (2) involved a vehicle repossessed by GMAC which was not subject to the reassignment option of the GMAC Retail Plan, GMAC shall offer, within 60 days after service of this order, to pay the amount alleged as an unpaid surplus on the chart. The offering letter will be modelled on the letter

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described in subparagraph C.4 below. GMAC shall promptly pay the offered amount to each financing customer who properly signs and returns the release.

B. GMAC shall ascertain the public sale (title clearance) price and the contract balance as shown on its Bills Receivable card ("BR card") or, if the BR card can not be located, as shown in the repossession file, purchased by GMAC, where: (1) the vehicle was repossessed on or after May 1, 1974 and was returned to the dealer before GMAC implements subparagraph VI.A.1; (2) GMAC purchased the vehicle at a public sale (title clearance) which it conducted and returned the vehicle to the dealer pursuant to a recourse agreement; (3) the vehicle was not redeemed; (4) the contract balance is available as stated above; and (5) the financing customer was not covered by Paragraph VII.A. For repossessed vehicles where the public sale (title clearance) price is not available in the file, GMAC shall use as the public sale (title clearance) price an estimated value.

C. GMAC will pay to financing customers an amount (the "Fund") equal to \$2 million minus the sum actually distributed pursuant to Paragraph A, in the following manner:

1. This Paragraph will apply to financing customers whose vehicles fall within Paragraph B.
2. A calculated "difference" is the public sale (title clearance) price adjusted as described below less the customer's contract balance as determined in Paragraph B above. All prorating referred to below shall be based on calculated differences.
3. GMAC will generate a list of customers eligible for payments by increasing the public sale (title clearance) price of each vehicle by an equal percentage until the sum of all the differences greater than or equal to \$25 equals approximately twice the Fund. Those customers with positive differences greater than or equal to \$25 are the eligible customers. GMAC will then prorate the Fund among the eligible customers. In prorating the Fund, no eligible customer will be assigned less than \$25 or more than \$700.
4. GMAC will send a letter and release (Attachment A to this order) to each eligible customer, identified in subparagraph C.3 above. The letter will state that, pursuant to a consent agreement executed by GMAC and the Federal Trade Commission, GMAC is offering to pay that person at least the prorated sum computed pursuant to subparagraph C.3. The letter will also state that, in order to receive the payment, the customer must waive any claims the customer may have against GMAC, GM or any GM dealers, or their directors or employees,

with regard to the repossession, handling, storage and disposition of the vehicle by signing and returning the release attached to the letter. The customer will have 60 days from the date of the letter to return the signed release.

5. If GMAC has received properly signed and returned releases covering an aggregate of at least 50 percent of the Fund by the end of the 80th day after mailing the last letter pursuant to subparagraph C.4, GMAC will prorate the Fund among those customers who have properly signed and returned releases. Any difference which exceeds \$700 after proration will be deemed equal to \$700 and the excess shall be distributed as part of the remaining Fund. Any amount less than \$25 will be deemed equal to \$25 with the excess deducted from the Fund. GMAC shall, within 60 days after the end of the 80-day period, pay the total amount calculated under subparagraph C.3 and this subparagraph C.5 to these financing customers.

6. If GMAC has not received properly signed and returned releases covering at least 50 percent of the Fund by the end of the 80th day after mailing the last letter pursuant to subparagraph C.4, GMAC shall:

a. Delete from its subparagraph C.1 list the names of all financing customers who were sent releases but who failed to sign and return them.

b. Generate a new list of eligible customers and calculated differences from the now-reduced subparagraph C.1 list. This list will be created by further increasing the public sale (title clearance) price of each vehicle, again by an equal percentage. The procedure for generating the new list will take into account the rate of return of properly signed and returned releases experienced under subparagraph C.4.

c. Promptly pay the eligible customers in subparagraph C.6.b who properly signed and returned the subparagraph C.4 releases the differences recalculated under subparagraph C.6.b. Any amount which exceeds \$700 will be deemed equal to \$700, with the excess distributed as part of the remaining Fund. Any amount less than \$25 will be deemed equal to \$25 with the excess deducted from the Fund. Payments made will reduce the Fund accordingly.

d. The additional eligible customers (if any) in subparagraph C.6.b will be sent the form of letter and offer described in subparagraph C.4 within 60 days of the end of the 80 day period described in subparagraph C.5. The amount offered to each will be a prorated portion of the Fund remaining after the deductions for subparagraph C.6.c payments. At the end of 80 days after the last letter is mailed to

the additional eligible customers, GMAC shall prorate the remaining Fund among those additional eligible customers who have properly signed and returned releases and shall promptly pay those recalculated amounts. The same minimum and maximum amounts as in subparagraphs C.3 and C.5 will apply to offers and payments under this subparagraph.

D. If GMAC offers payment to a financing customer pursuant to Part VII, its obligation under this order to make payment to that customer shall terminate upon expiration of the 60 days provided in the offer. However, GMAC may pay financing customers on the basis of releases mailed subsequent to the expiration of the 60 day period and may deduct from the Fund any sums so distributed.

E. GMAC shall send the letters described in subparagraph C.4 as soon as practicable, but no later than one year after service of this order.

F. In performing its obligations under Part VII, GMAC may employ its records as found. GMAC shall not be required to collect data not presently available in its repossession files, nor to search files for accounts involving repossessed vehicles which were returned to dealers during periods in which the dealer had executed the reassignment option of the GMAC Retail Plan. A public sale (title clearance) shall be deemed to have been held in all cases where the vehicle was returned pursuant to a recourse obligation to a dealer who had not executed the reassignment option.

G. GMAC shall maintain procedures to verify the eligibility of any inquiring person for a monetary payment up to the expiration of all time periods for claiming payments. These procedures shall include providing the Commission with a single GMAC address to which all public inquiries regarding eligibility can be directed.

VIII. Effect of Inconsistent Rule or Order

It is further ordered, That:

A. In the event the Federal Trade Commission issues a final Trade Regulation Rule establishing standards less restrictive on automobile manufacturers, financing companies or dealerships than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less restrictive standards shall, on the effective

date of the Rule, supersede and replace the corresponding provision(s) of this order. The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive. However, the General Motors respondents shall advise the Commission of their intention to rely upon any provision of a Trade Regulation Rule as having superseded any provision of this order 30 days in advance of reliance thereon.

B. In the event any of the proceedings presently bearing Docket Nos. 9072, 9073 or 9074 result in a final adjudicated or consent order prescribing standards less restrictive (including deferral to state law) than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then the Commission shall, within 120 days of a General Motors respondent's request pursuant to Section 2.51 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this order or other relief as necessary and appropriate to conform this order to such less restrictive standards prescribed in the other order(s). The enumeration of subject matter contained in clauses (1), (2) and (3) of this Paragraph is exclusive.

IX. Standard Reporting and Recordkeeping

It is further ordered, That:

A. The General Motors respondents shall maintain complete business records relative to the manner and form of their continuing compliance with this order. These include, but are not limited to, copies of notices sent to financing customers pursuant to Part VI, and records prepared pursuant to Paragraphs V.A-F for each equity dealership. The General Motors respondents shall retain all such records for at least three years and shall, upon reasonable notice, make them available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

B. Each of the General Motors respondents shall, within 180 days after service of this order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order and has implemented the Initial Compliance Report submitted with the Agreement Containing Consent Order.

C. Promptly following service of this order, General Motors shall distribute a copy of this order to its car divisions, GMC Truck and

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Coach Division, Motors Holding Division, and Sales Section, unless previously furnished, and GMAC shall distribute a copy of this order to each of its regional managers, unless previously furnished.

D. Each of the General Motors respondents shall notify the Commission at least 30 days prior to any proposed corporate change which may negate any of the obligations of the General Motors respondents arising out of this order. Such changes include dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the discontinuance of General Motors' present program for investing in equity dealerships, and the creation or dissolution of subsidiaries or any other change which may have such effect. No notice need be provided in the event of General Motors' terminating, reducing or acquiring any interest in an equity dealership.

ATTACHMENT A

GENERAL MOTORS ACCEPTANCE
CORPORATION CLAIM NOTICE AND RELEASE

(Name, address, city, state)

GMAC Acct. No. _____

Vehicle _____

Our records show that this car or truck was retaken by GMAC. We will send you a check for at least \$_____. The exact amount may be higher. This depends on how many people answer these letters.

All you have to do to get the money is date and sign the release form below. You must send it back in 60 days. Use the enclosed envelope. We'll send the check in a few months. Here is why we're doing this. We were sued by the Federal Trade Commission (FTC). They said we used an improper method in reselling some vehicles. They also said we should have paid certain customers some money. We denied the charges, but we agreed to make payments to avoid a costly trial. These payments are based on a formula agreed to by the FTC and GMAC. Neither GMAC nor the FTC knows how much you might have gotten except for this settlement. It could have been more, less, or nothing at all. The release means you give up any claims you may have because of the repossession and resale of your vehicle.

GENERAL MOTORS
ACCEPTANCE CORPORATION
P.O. Box 5290
FDR Station
New York, NY 10022
[Address may be in letterhead]

.....
Release

GMAC Acct. No. _____

Vehicle _____

I've read the letter above. The car or truck was mine. I'll be paid at least \$_____ by GMAC if I sign and mail back this release by _____. This payment is based on an agreement by GMAC and the FTC.

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In return, I release all claims and counterclaims (but not any defenses) against GMAC, General Motors or any GM dealer, or their directors or employees, due to the repossession, handling, storage or disposition of my vehicle.

Date: _____ (Signed) X _____
(Please Print) _____
Name

Address

City State Zip