IX.

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

X.

It is further ordered, That Harbor Banana Distributors, Inc., shall within sixty (60) days after service on it of this order, and every sixty (60) days thereafter until it has fully complied with the provisions of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this order. All compliance reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the stock and/or assets to be divested under this order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

Commissioner Dennison dissenting.

IN THE MATTER OF

COLONIAL CARPET MILLS, INC., ET AL.

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

Docket C-2342. Complaint, Jan. 16, 1973—Decision, Jan. 16, 1973.

Consent order requiring a Union City, California, manufacturer and seller of carpets and rugs, among other things, to cease manufacturing for sale, selling, importing or distributing any fabric, material, or related product which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of

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

PARAGRAPH 1. Respondent Colonial Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent Henry Franco is an officer of the said corporate respondent. He formulates, directs and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at 30540 Union City Boulevard, Union City, California.

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

Among such products mentioned hereinabove were carpets and rugs in styles "Villa Sonora," "Villa Padre" and "Rama," subject to Department of Commerce Standard For The Surface Flammability of Carpets and Rugs (DOC FF 1–70).

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

DECISION AND ORDER

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

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

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

1. Respondent Colonial Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent Henry Franco is an officer of the corporation. He formulates, directs, and controls the acts, practices and policies of the said corporation.

Respondent corporation is engaged in the manufacture and sale of carpets and rugs. Its office and principal place of business is located at 30540 Union City Boulevard, Union City, California.

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

ORDER

It is ordered, That respondent Colonial Carpet Mills, Inc., a corporation, its successors and assigns, and its officers, and

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

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

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

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and the results thereof, (5) any disposition of said products since January 21, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as

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

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

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

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

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

IN THE MATTER OF

MARNACRAFT CARPET CO., LTD., ET AL.

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

Docket C-2343. Complaint, Jan. 16, 1973—Decision, Jan. 16, 1973.

Consent order requiring a Dalton, Georgia, manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing or distributing any fabric, material, or related product which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

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

PARAGRAPH 1. Respondent Marnacraft Carpet Co., Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Reginald W. Crouch is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at 1100 Ludie Street, P.O. Box 1838, Dalton, Georgia.

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

Among such products mentioned hereinabove were carpets and rugs in style "Modapt HD" subject to Department of Commerce Standard For the Surface Flammability of Carpets and Rugs (DOC FF 1–70).

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

within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Marnacraft Carpet Co., Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

Respondent Reginald W. Crouch is an officer of the said corporation. He formulates, directs and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with the office and principal place of business of respondents located at 1100 Ludie Street, P.O. Box 1838, Dalton, Georgia.

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

ORDER

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

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

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

It is further ordered, That the provisions of this order with respect to customer notification, recall and processing or destruction shall be applicable to "Modapt HD" Style carpets as designated in subparagraph one of Paragraph two of the complaint giving rise to this order, and any other styles determined to be in violation of the Flammable Fabrics Act, as amended, prior to the date of acceptance, by the Commission of the final compliance report.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respond-

ents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and the results thereof, (5) any disposition of said products since March 17, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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

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

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

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

IN THE MATTER OF

PAN PACIFIC CARPETS, INC., ET AL.

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

Docket C-2344. Complaint, Jan. 16, 1973—Decision, Jan. 16, 1973.

Consent order requiring a Los Angeles, California, manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing or distributing any fabric, material, or related product which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

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

PARAGRAPH 1. Respondent Pan Pacific Carpets, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent Arnold Schoch is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at 941 East Sixty Second Street, Los Angeles, California.

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

amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove was carpet style Hurricane made of 100 percent wool shag with a jute backing and subject to Department of Commerce Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1–70).

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

DECISION AND ORDER

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

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

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

1. Respondent Pan Pacific Carpets, Inc., is a corporation organized, existing and doing business under and by virtue of the laws

of the State of California. Respondent Arnold Schoch is an officer of said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at 941 East Sixty Second Street, Los Angeles, California.

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

ORDER

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

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

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

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

Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since April 25, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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

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

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

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

Complaint

IN THE MATTER OF

GIMBEL BROTHERS, INC.

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

Docket C-2345. Complaint, Jan. 17, 1973—Decision, Jan. 17, 1973.

Consent order requiring a New York City manufacturer and seller of ladies' scarves and other wearing apparel, among other things to cease manufacturing, selling, importing or distributing any fabric, product or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gimbel Brothers, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gimbel Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent is engaged primarily in the sale and distribution of textile fiber products including, but not limited to, wearing apparel in the form of ladies' scarves, with its office and principal place of business located at 1275 Broadway, New York, New York.

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

Among such products mentioned hereinabove were ladies' scarves.

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

DECISION AND ORDER

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

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

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

1. Respondent Gimbel Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent is engaged in the business of the importation, sale and distribution of textile fiber products including, but not limited

to, wearing apparel, in the form of ladies' scarves, with its office and principal place of business located at 1275 Broadway, New York, New York.

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

ORDER

It is ordered, That respondent Gimbel Brothers, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, division or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any ladies' scarves; or any article of wearing apparel, or fabric intended for use or which may reasonably be expected to be used in an article of wearing apparel, imported by or manufactured under the control or direction of Gimbel Brothers, Inc., as the terms "commerce," and "article of wearing apparel" are defined in the Flammable Fabrics Act, as amended; or any other article of wearing apparel, or fabric which is intended for use or which may reasonably be expected to be used in an article of wearing apparel, the manufacturer, importer or wholesaler of which has not furnished a guaranty under Section 8(a) of the Flammable Fabrics Act, as amended; and which ladies' scarves, articles of wearing apparel and fabric fail to conform to an applicable standard or regulation, issued, amended, or continued in effect under the provisions of the aforesaid Act; *Provided, however,* Nothing herein shall accord to the respondent immunity from any subsequent proceedings under Section 3, 6(a) or 6(b) of the Flammable Fabrics Act, as amended. Further, nothing herein shall limit the authority of the Commission to extend the terms of the order to products, fabrics or related materials presently excluded from this order in any subsequent proceeding against the respondent.

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

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

It is further ordered, That the respondent herein shall, within thirty (30) days after service upon it of this order, file with the Commission a special report in writing setting forth the respondent's intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since February 7, 1968 and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Upon request of the Commission the respondent shall submit samples of ladies' scarves to the Commission.

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

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

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

Complaint

IN THE MATTER OF

CREDIT CARD SERVICE CORPORATION, ET AL.

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

Docket 8861. Complaint, Aug. 24, 1971—Decision, Jan. 19, 1973.

Order requiring an Alexandria, Virginia, seller of memberships in a credit card registration service, among other things to cease representing that a credit cardholder is responsible for payment of all goods and services obtained by unauthorized use of his credit cards; representing that potential liability incurred through unauthorized use of his card may amount to sums large enough to cause financial loss or ruin; representing that respondents' service can protect credit cardholders from substantial financial loss or ruin; failing to incorporate in written material or radio or television commercials a statement to the effect that a January 1971, Federal law limits liability to $50 for unauthorized use of credit cards; and failing to provide prospective customers with the above-required information.

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 Credit Card Service Corporation, a corporation, doing business as Credit Card Service Bureau, and John P. Ferry, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Credit Card Service Corporation is a corporation doing business as Credit Card Service Bureau. It is 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 4660 Kenmore Avenue in the city of Alexandria, State of Virginia.

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

PAR. 2. Respondents are now, and for some time last past

have been engaged in the advertising, offering for sale, sale and distribution to the public of memberships in a credit card registration service.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of memberships in their credit card registration service, the respondents have made after January 24, 1971, and are now making, numerous statements and representations in advertisements inserted in newspapers and in direct mail and other promotional material with respect to the potential liability of a credit card holder if his credit cards are used by a person or persons not authorized to engage in such use.

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

You've seen the newspaper reports. Smart cautious business men, after a brief moment of carelessness, find themselves liable for thousands. A few hundred if you're lucky. Or as much (in one case) as $175,000. But legally *they are stuck.* They have to pay credit card charges they knew nothing about. Car rentals. Round-the-world cruises. Luxury motel bills. Lavish entertaining. Dinner parties in expensive restaurants. Tailored clothing. Furs, jewels, rare perfumes for girl friends. Chartered planes.

A clever thief may be scheming to lift your wallet, containing your credit cards. Your charge plates. Your bank book. Some blank checks. And anything else that lets you charge goods or services, instead of paying cash.

Once he gets his hands on them *HE* will do the charging—and *YOU WILL HAVE TO PAY.*

This is legal. It is the law.

*No matter where you are, pick up a phone and make a TOLL-FREE phone call to Credit Card Service Bureau—800–336–0220. Our trained staff will instantly swing into action to legally protect you against any and all loss from unlawful use of your credit cards * * * your charge plates. No need to wait. CCSB's phones are ALWAYS monitored.*

You can eliminate all this risk for as little as 12 cents a week. BUT YOU MUST ACT AT ONCE. Simply fill in and mail the enclosed Application, together with your check for the $9.

P.S. *Save $8 more.* Make your order for $19, FULL 3-YEAR CCSB

Membership. It's worth our while because we save on administrative costs. Our way of saying "thank you" is to pass some of this savings on to you. And, remember, whether you elect the 1-year or 3-year membership, you can charge the low cost to your Bank Americard or Master Charge card.

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

1. A credit card holder who suffers a loss or theft of credit cards is legally responsible and will have to pay for all goods and services obtained by unauthorized use of his credit cards.

2. The potential liability which a card holder may incur through the unauthorized use of his credit cards may amount to sums large enough to cause the card holder financial ruin.

3. Respondents' services can protect a credit card holder from large financial loss or financial ruin resulting from unauthorized use of his credit cards.

PAR. 6. In truth and in fact:

1. A credit card holder who suffers a loss or theft of credit cards is not legally responsible and will not have to pay for all goods and services obtained by unauthorized use of his credit cards.

2. The potential liability which a credit card holder may incur through the unauthorized use of his credit cards may not amount to sums large enough to cause the card holder financial ruin.

3. Respondents' services cannot protect a credit card holder from large financial loss or ruin resulting from unauthorized use of his credit cards, because the credit card holder's financial loss is limited by Section 133 of Public Law 91–508 to fifty dollars ($50), and in some events to no liability, as set forth hereinafter.

Section 133 of Public Law 91–508 (effective January 24, 1971) provides that if a card issuer wishes to hold a card holder liable, he can do so only if:

a. the card has been accepted (is not unsolicited);

b. the liability does not exceed $50;

c. adequate notice of potential liability was furnished to the card holder;

d. the card issuer has provided an addressed notification statement which the card holder may return in the event of loss or theft of a credit card;

e. the unauthorized use occurs before the card holder has notified the card issuer of the loss, theft or other occurrence; and

f. for cards issued after January 24, 1971—and after January 24, 1972 for all cards no matter when issued—a card holder is liable for unauthorized use only if the card issuer has provided a method by which the user of a card can be identified as the person authorized to use it.

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

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

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial numbers of respondents' credit card registration service memberships by reason of said erroneous and mistaken belief. Under the foregoing circumstances, the retention by respondents of funds obtained as a result of the sale of credit card registration service memberships is unfair.

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

Mr. Michael J. Carson and *Mr. James L. Fletcher* supporting the complaint.

Steptoe & Johnson, Washington, D.C., by *Mr. Richard A. Whiting, Mr. Michael D. Campbell* for respondents.

INITIAL DECISION

BY ANDREW C. GOODHOPE, HEARING EXAMINER

APRIL 4, 1972

PRELIMINARY STATEMENT

On August 24, 1971, the Federal Trade Commission issued the complaint in this proceeding charging respondent Credit Card Service Corporation ("Credit Card") and respondent John P. Ferry ("Ferry") with the violation of Section 5 of the Federal Trade Commission Act by making, after January 24, 1971, false, misleading and deceptive statements and by engaging, after January 24, 1971, in unfair methods of competition and in unfair or deceptive acts or practices by misrepresenting in their advertising material, soliciting subscriptions to their credit card protection service, the potential liability of a cardholder in the event his credit cards are used by a person or persons not authorized to engage in such use.

Respondents filed their answer on October 4, 1971, specifically denying the making of any false, misleading or deceptive statements after January 24, 1971, and also denying that they had engaged in any unfair method of competition or unfair or deceptive act or practice.

After a prehearing conference and a number of meetings, counsel in support of the complaint and counsel for the respondents entered into stipulations (CX 14, 15) and on January 5, 1972, a hearing was held at which time the stipulations and supporting documents for both parties were received in the record. Thereafter, counsel in support of the complaint and counsel for respondents filed proposed findings of facts and briefs in support thereof. Any proposed findings of fact or conclusions not found herein either specifically or by implication are rejected and the hearing examiner, having considered the entire record, including proposed findings of fact and conclusions and memoranda filed by both parties, makes the following findings of fact:

FINDINGS OF FACT

1. Respondent Credit Card Service Corporation is a corporation doing business as Credit Card Service Bureau. It is 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 4660 Kenmore Avenue in the city of Alexandria, State of Virginia.

2. Respondent John P. Ferry is an individual and is the president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices of the corporate respondent set forth in the complaint. His address is the same as that of the corporate respondent.

3. Respondents are now, and for sometime last past, have been engaged in the advertising, offering for sale, sale and distribution to the public of memberships in a credit card registration service.

For a charge of $9 per year or $19 for three years, the respondents provide the following services, among others, to their subscribers: rapid notification on behalf of the subscriber to credit card companies of the fact that a subscriber's credit cards have been lost or stolen; assisting subscribers in resolving alleged billing errors of credit card companies; assisting subscribers in changing of addresses on credit cards and in obtaining new cards. (CX 1 C, 2 C, 3 C, 3 D through E, 4 B and D, 6 and 9; RX 4 and 5)

4. In the course and conduct of respondents' business, respondents now cause, and for sometime last past, have caused their credit card registration service memberships to be sold from their place of business in Virginia to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in their service in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. The charge of violation of Section 5 of the Federal Trade Commission Act involves that portion of respondents' advertising after January 24, 1971, which includes references to the possibility of credit card holder liability for the unauthorized use of such cards but which allegedly does not adequately disclose the existence or substance of the limitations on such liability provided for in Public Law 91–508.

6. Public Law 91–508 was enacted by Congress on October 26, 1970, as an amendment to the Truth in Lending Act (15 U.S.C. § 1601, *et seq.*). (CX 14) Section 502 (15 U.S.C. § 1643) of that law, which became effective on January 24, 1971, provides as follows:

Section 1643. Liability of holder of credit card—Limits on Liability

(a) A cardholder shall be liable for the unauthorized use of a credit card

only if the card is an accepted credit card, the liability is not in excess of $50, the card issuer gives adequate notice to the cardholder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped envelope to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. Notwithstanding the foregoing, no cardholder shall be liable for the unauthorized use of any credit card which was issued on or after the effective date of this section, and, after the expiration of twelve months following such effective date, no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless (1) the conditions of liability specified in the preceding sentence are met, and (2) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it. For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

(b) In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized, or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a), have been met.

(c) Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(d) Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

7. Respondents, before January 24, 1971, knew of the existence of Pub.L. 91–508 and of its effective date. (RX 14, ¶ 8)

8. On December 29, 1970, respondents directed Credit Card's two mailing houses to mail 700,000 copies of the Ferry letter (CX 1–A through D) by January 13, 1971. (CX 14, ¶ 4) This letter, which contains several references to the virtually unlimited potential liability of a credit card holder resulting from unauthorized use of his credit cards, makes no reference to Pub.L. 91–508. (CX 14, ¶ 8; see App. A attached hereto for a copy of this letter)*

9. Due to administrative delays within the mailing houses, copies of the Ferry letter were mailed after January 24, 1971, the last mailing having occurred on February 4, 1971. (RX 14,

*Appendices A and B not reported.

¶ 7) No mailings of this material have been made since that date. (RX 14, ¶ 9)

10. There is no evidence that respondents caused the delays at the mailing houses or even knew of their existence.

11. Respondents have, since January 24, 1971, made four direct mail solicitations, two additional mailings and have run four separate newspaper advertisements. (RX 14, ¶¶ 10, 11 and 14; see App. B attached hereto* for copies of such solicitations and mailings)

12. In the mailings, solicitations and newspaper advertisements described above [a representative number of such mailings and solicitations appear in Appendixes A and B attached hereto and made a part hereof], respondents represented that: a credit card holder who suffers the loss or theft of his credit cards is legally responsible and will have to pay for all goods and services obtained by such unauthorized use of his credit cards; the potential liability which a card holder may incur through the unauthorized use of his credit card may amount to sums large enough to cause the card holder financial ruin; respondents' services can protect a credit card holder from large financial loss or financial ruin resulting from unauthorized use of his credit card.

13. In fact, as a result of the passage of Public Law 91–508 as an amendment to the Truth in Lending Act, the pertinent portions of which are quoted above, a credit card holder who suffers the loss or theft of his credit cards is not legally responsible and will not have to pay for all goods and services obtained by unauthorized use of his credit cards; the potential liability which a credit card holder may incur through the unauthorized use of his credit cards may not amount to sums large enough to cause the card holder financial ruin; respondents' services cannot protect a credit card holder from large financial loss or ruin resulting from unauthorized use of his credit cards.

14. The amendment to the Truth in Lending Act provides that a card holder is not liable for any unauthorized use of his credit card unless the following conditions have been met: the card has been accepted (is not unsolicited); liability in any event cannot exceed $50; adequate notice of potential liability was furnished to the card holder; the card issuer has provided a pre-stamped, addressed notification statement which the card holder may return

*Appendices A and B not reported.

in the event of a loss or theft of a credit card; the unauthorized use occurs before the card holder has notified the card issuer of the loss, theft or other occurrence; and for cards issued after January 24, 1971—and after January 24, 1972 for all cards no matter when issued—a card holder is liable for unauthorized use only if the card issuer has provided a method by which the user of a card can be identified as the person authorized to use it. Consequently, any advertisements of the services which the respondents provide which do not fully and explicitly set forth the limitations of liability provided in the amendment to the Truth in Lending Act must be considered deceptive.

15. Respondents urge that in view of the allegations of Paragraph Four of the complaint that respondents made deceptive mailings after January 24, 1971, no finding of violation can be based upon the so-called "Ferry" letter (CX 1 A–D) since the respondents directed their mailings of this letter prior to January 24, 1971. Further, they urge that the fact that some of the mailings of this letter occurred after January 24, 1971, cannot be charged to them since they were not responsible for the delay in the mailings. The fact remains, however, that the amendments to the Truth in Lending Act actually were enacted by Congress on October 26, 1970, and that the respondents were aware of the existence of this Act before January 24, 1971, and of its effective date.

16. The best that the examiner can find in the respondents' favor was that they were cutting a very fine line by putting 700,000 copies of this Ferry letter in the mail after the Act was passed but before it became effective. The fact that some of the mailings occurred subsequent to the effective date of the Act, January 24, 1971, must also be attributed to respondents since their agents were doing the mailing and respondents set no cut-off date beyond which mailings should stop. The examiner finds that under the circumstances, the respondents must be held accountable for this letter and for the completely unqualified and misleading statements in the letter in the face of the amendment to the Truth in Lending Act, of which they were aware.

17. The respondents further urge that their mailings, solicitations and other advertising were improved subsequent to January 24, 1971, the effective date of the amendment, to give subscribers to its services notice of the amendment to the Truth in Lending Act. The contention must be rejected. The next mailing

was in March 1971 of the so-called "George Baine" letter. (CX 2 A through 2 E; App. B) This letter describes a mythical George Baine who had his wallet containing from 10 to 20 credit cards stolen. The letter in lurid detail describes poor Mr. Baine's predicament. There is no indication in this letter that the amendment to the Truth in Lending Act existed except for a vague reference to the fact that respondents' service "reduces your liability below the legal limit established by current state and federal laws." The next mailing in June 1971 (CX 3 B; App. B) is another letter similar to the George Baine letter, except this one involves "Mr. Hammette" who lost his wallet containing credit cards. This letter does contain a reference to the amendment to the Truth in Lending Act setting forth in an incomplete fashion the liability provisions for unauthorized use provided by that Act. The letter goes on to the effect that the mythical Mr. Hammette could be liable for $174,000 for unauthorized use of his credit cards under the Act. In additional mailings made in June 1971 (RX 4 and 5; App. B), respondents do refer to the amendment to the Truth in Lending Act, but again in an incomplete and confusing fashion, stating that anyone could be held liable up to $50 for unauthorized use of his credit card. As found above the amendment to the Truth in Lending Act has a number of conditions which must be fulfilled before any credit card issuer can hold anyone liable for unauthorized use of the credit card in any amount.

As a result, it is found that even in their solicitations, mailings and other advertisements subsequent to the effective date of the amendment to the Truth in Lending Act, the respondents have failed to adequately set forth the provisions of that Act.

18. In addition, respondents urge that the statements made in their mailings, solicitations and other advertisements are true since a substantial number of credit cards are issued to the users or the users' employers solely for business purposes. The argument is that Section 104 of the Truth in Lending Act provides that such Act shall not apply to "Credit transactions involving extensions of credit for business or commercial purposes, or to government or governmental agencies or instrumentalities, or to organizations." And that since Public Law 91–508 is inserted into the Truth in Lending Act as an amendment following Section 131 of that Act, the exemption provided in Section 104 of the Truth in Lending Act applies to the amendment pertaining to the lia-

bility of holders of credit cards. Consequently, respondents urge that the services which they supply and the claims that they make are accurate insofar as they pertain to holders of credit cards used for business or commercial purposes. To support this argument, the respondents cite three informal staff opinions. The first two of these are respondents' Exhibits 9 and 10 which are letters to unknown addressees signed by Griffith L. Garwood, an attorney in the Truth in Lending Section of the Federal Reserve Board. He states that the Truth in Lending Act's exclusion of extensions of credit for business and commercial purposes from coverage by that Act leads him to believe that the amendment to the Truth in Lending Act involving credit cards likewise does not apply to credit cards used for commercial purposes. The third such letter is respondents' Exhibit 11, in which counsel in support of the complaint repeats that it is his opinion that credit cards used for commercial purposes are not protected by the amendment to the Truth in Lending Act limiting a card holder's liability for unauthorized use of a credit card which has been issued or used for business or commercial uses. These are apparently the only opinions on this subject in existence at this time.

19. The examiner cannot concur in these opinions. It is quite obvious that the credit card provisions were inserted by Congress as an amendment to the Truth in Lending Act merely as a convenient place to insert such provisions for efficient administration by the Federal Reserve Board and the Federal Trade Commission. Anyone seeking to borrow money for a business or commercial reason can safely be assumed to be sufficiently knowledgeable or to have the advice of an accountant or attorney, in seeking such a loan and would therefore be fully apprised as to the entire matter including interest and any other charges involved and would not need the protection provided by the Truth in Lending Act. This, however, has nothing to do with the protection given to credit cards by the credit card amendment. The examiner is unable to subscribe to the theory that a truck driver, taxi driver, traveling salesman or even a business executive would not have their credit cards protected against unauthorized use by the credit card provisions to the same extent as any other citizen. It would require a strained interpretation of the credit card provisions of the Truth in Lending Act to construe them as providing that a person traveling on business and purchasing

gas with a credit card for an automobile used in such business would not be protected while the same person's wife or family could have and use a credit card, possibly from the same card issuer, to purchase gasoline for the family automobile and have that card protected. No person should lose his status as a consumer simply because he is engaging in business or working. It is concluded, therefore, that the credit card amendment to the Truth in Lending Act is intended to protect all credit cards.

20. As of September 30, 1971, respondents had approximately 48,000 subscribers to their credit card registration service. Approximately 26,855 of these subscribed to respondents' credit card registration service during the period January 1, 1971 to September 30, 1971.

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

CONCLUSIONS

1. Statements and representations made by the respondents in direct mail and other advertising material promoting the sale of respondents' credit card registration service regarding the potential liability of a credit card holder if his credit cards are used by a person not authorized to engage in such use are false, misleading and deceptive. The respondents have failed to set forth in their advertising material the existence of the credit card amendment to the Truth in Lending Act and the provisions of that Act as they pertain to the liability of a credit card holder for unauthorized use of his credit card.

2. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial numbers of respondents' credit card registration memberships by reason of said erroneous and mistaken belief. Under the foregoing circumstances, the retention by respondents of funds obtained as a result of the sale of credit card registration service memberships is unfair.

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

ORDER

It is ordered, That respondents Credit Card Service Corporation, a corporation, its successors and assigns, doing business as Credit Card Service Bureau or under any other name, and its officers, and John P. Ferry, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale or sale of their credit card registration service, through the sale of memberships or by any other device, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a credit card holder who suffers a loss or theft of credit cards is legally responsible and will have to pay for all goods and services obtained by unauthorized use of his credit cards.

2. Representing, directly or by implication, that the potential liability which a card holder may incur through the unauthorized use of his credit cards may amount to sums large enough to cause large financial loss or financial ruin.

3. Representing, directly or by implication, that respondents' services can protect a credit card holder from large financial loss or financial ruin resulting from unauthorized use of his credit cards.

4. Representing, directly or by implication, that a credit card holder can incur any liability resulting from the unauthorized use of his credit cards, except to the extent expressly provided for in Public Law 91–508.

5. Failing to incorporate the following notice clearly and conspicuously in any written material offering the sale of respondents' credit card registration service to the public:

IMPORTANT NOTICE

Effective January 24, 1971, a Federal law provides that a cardholder has no liability for unauthorized use of his credit card unless all of the fol-

lowing four conditions are met. If the card issuing company (1) has notified you of your new limited liability, (2) has provided you with a prestamped envelope by which to notify them of a loss, (3) the card contains an approved method of identification, and (4) the use occurred before the card issuer is notified, then your liability is limited to $50 per card.

6. Failing to incorporate the following notice clearly and conspicuously in any radio or television commercial offering the sale of respondents' credit card registration service to the public:

A Federal law limiting to a maximum of $50 per card protects you from charges on lost or stolen credit cards. Along with your membership application Credit Card Service Corporation will give you details concerning this law.

7. Failing to provide each prospective customer who responds to a radio or television commercial offering the sale of respondents' credit card registration service with the notice required by order Paragraph 5.

8. Failing to provide each of its customers who have subscribed to respondents' credit card registration service on or after January 24, 1971, the effective date of Public Law 91–508, and who did so as a consequence of receiving the advertising material cited in the complaint or advertising containing representations substantially similar to those alleged by the complaint to be deceptive irrespective of when such advertising was received with a copy of the following notice, and a self-addressed envelope or card by which the customer may notify respondents of his desire for a refund, such notice to be accompanied by a letter from Mr. John P. Ferry which shall be approved by the staff of the Commission.

IMPORTANT NOTICE

Effective January 24, 1971, an amendment to the Federal Truth in Lending Act limits a cardholder's liability for unauthorized use of his card. *IF, BECAUSE OF THIS LAW, YOU DO NOT WISH TO CONTINUE YOUR MEMBERSHIP, YOU ARE ENTITLED TO A REFUND. THIS OFFER OF REFUND SHALL REMAIN EFFECTIVE FOR A PERIOD OF 30 DAYS.* This law provides that a cardholder has no liability unless:

(a) the card has been accepted (was not unsolicited);

(b) the liability does not exceed $50; (c) adequate notice of potential liability was furnished to the cardholder; (d) the card issuer has provided an address notification statement which the cardholder may return in the

event of a loss or theft of a credit card; (e) the unauthorized use occurs before the cardholder has notified the card issuer of the loss or other occurrence; and (f) for cards issued after January 24, 1971—and after January 24, 1972, for all cards no matter when issued—a cardholder is liable for unauthorized use only if the card issuer has provided a method by which the user of a card can be identified as the person identified to use it.

9. Failing to refund all monies requested by customers in accordance with the notice required by order Paragraph 8 above.*

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents or other persons engaged in the offering for sale, or sale of respondents' services or in any aspect of preparation, creation, or planning of advertising, and that respondents obtain a signed statement acknowledging receipt of said order by each such person.

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

It is further ordered, That the 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.

Opinion of the Commission

By Dixon, *Commissioner:*

On August 24, 1971, the Commission issued a complaint charging respondents with making false, misleading and deceptive representations concerning their credit card registration service. The underlying facts are stipulated. Corporate respondent, Credit Card Service Corporation, for a fee of $9 a year or $19 for three years, provides, as its principal service, notification on behalf of the subscriber to credit card companies of the fact that a subscriber's credit cards have been lost or stolen. It also offers assistance to the subscriber in resolving billing errors

*Reported as amended by hearing examiner's order April 13, 1972.

of credit card companies and in obtaining new cards when the subscriber's cards have been lost or stolen, or the subscriber's address has changed. Respondents, in the advertisements challenged by the complaint, represented that their service was valuable for the reason that a credit card holder is liable for the full amount charged to a lost or stolen credit card, and, as a result, credit card holders might "find themselves liable for thousands * * * or as much (in one case) as $175,000." (CX 1B)

It is alleged that this representation as to the value of the service is deceptive because, with the enactment of Public Law 91–508, potential liability for a lost or stolen credit card cannot exceed $50 per credit card. Specifically, under Pub.L. 91–508 liability will only reach $50 if (a) the card has been accepted by the credit card holder, (b) the card issuer provides an addressed notification statement which the card holder can return in the event of the loss or theft of the credit card, (c) adequate notice of potential liability is provided to the card holder, and (d) the card issuer provides a method by which the user of the credit card can be identified as the person authorized to use it.

Also of importance, Pub.L. 91–508 provides that the card holder will not be liable for any charges made after the card issuer has been notified of the loss or theft of the card.

Pub.L. 91–508 went into effect on January 24, 1971, as to credit cards issued after that date. After January 24, 1972, it applied to all credit cards, no matter when they were issued.

In sum, since the effective date of Pub.L. 91–508, a credit card holder's liability, in no circumstance, can exceed $50 per credit card, and his liability will reach $50 only if the card issuer fulfills certain requirements, and the card holder fails to notify the card issuer of the loss or theft of the card.

The administrative law judge held that, because respondents represented that liability was unlimited after the effective date of Pub.L. 91–508, respondents had made the deceptive representations as alleged in the complaint. Respondents' appeal does not extend to this holding or any of the administrative law judge's Findings of Fact except "to the extent that * * * errors [in these findings] served or may have served as a predicate for certain paragraphs of the proposed order." (Respondents' Appeal Brief, pages 4, 5.) It is from the scope of the proposed order that respondents appeal.

By the proposed order, respondents are proscribed from repre-

senting that a credit card holder is "legally responsible and will have to pay for all goods and services obtained by unauthorized use," that liability for unauthorized use "may amount to sums large enough to cause large financial loss or financial ruin," that a credit card holder may incur any liability resulting from the unauthorized use of his credit cards except to the extent expressly provided for in Public Law 91–508. Further, respondents, by the order, are required to provide, in any written material, or in any radio or television commercial, offering the sale of respondents' credit card service, a clear and conspicuous disclosure describing the protection afforded by Pub.L. 91–508.

Of principal concern to respondents, the order in addition requires that respondents provide a refund to "each of its customers who have subscribed to respondents' credit card registration service on or after January 24, 1971 * * * and who did so as a consequence of receiving the advertising material cited in the complaint or advertising containing representations substantially similar to those alleged by the complaint to be deceptive, irrespective of when such advertising was received."

Together with their objection to this restitution provision, respondents contend that the order fosters inaccurate disclosures.

I. RESTITUTION

The Commission held in *Curtis Publishing Co.*, 3 Trade Reg. Rep. ¶ 19,719 (1971) [78 F.T.C. 1472], that restitution is an appropriate order when respondent's retention of funds is unfair in and of itself, for in such a case restitution is the only effective remedy. The touchstone of any order is, of course, the determination of what remedy is necessary to cure the unfair acts and practices supported by the record. In this matter, then, we must look beyond the challenged deceptive practices (they, after all, can be effectively remedied by proscribing specifically-described representations and by requiring affirmative disclosures) to whether, as alleged in the complaint, the retention by respondents "of funds obtained as the result of the sale of credit card registration service membership is unfair."

The determination of unfairness in this regard, we held in *Curtis, supra,* depends upon finding that respondent has unfairly retained funds secured as a consequence of his illegal activities under certain types of circumstances, as for example, "where the

consumer, as a result of deception or fraud on the part of the seller, pays for a product or service but receives nothing of value in return or receives something that is either worthless or of only token value."

It is noted, first of all, that respondents are not charged with failing to perform as promised, *i.e.*, notifying credit card issuers that a card has been lost or stolen, but with exaggerating the value of the service offered. But it should be pointed out, in this connection, that a respondent's performance will not necessarily preclude restitution when it knows or has reason to know that its performance is of no value and the customer does not have this knowledge. Performance, under such circumstances, will not have enhanced the value of the service or lessened the unfairness inherent in a respondent's retention of funds.

Therefore, the question of whether retention of subscription fees was unfair is not resolved by the fact that corporate respondent here may have contacted credit card issuers. Respondents' retention of funds will be unfair, as we stated above, if the service is "either worthless or of only token value." It is respondents' contention, in this regard, that their service is valuable. Because a credit card holder, even with the limited liability protection of Pub.L. 91–508, may be liable for $50 per credit card, potential liability remains significant, particularly for those credit card holders carrying numerous credit cards. Inasmuch as respondents' service can protect card holders from this liability, respondents argue that their service is of more than token value.

Complaint counsel contend that the consumer "actually received a service which is of no value," because the service does not protect respondents' card holders "from the crushing liability described by respondents." (Complaint Counsel's Brief, page 21.) But, of course, demonstrating that the value of respondents' service is grossly exaggerated is not the same as showing that it is of no value. Under Pub.L. 91–508, a person can be liable up to $50 on each credit card he possesses under certain circumstances. Respondents' service, if properly fulfilled, could relieve a person of this liability. Moreover, as previously noted, respondents' service included the resolving of billing errors of credit card issuers and the obtaining of new cards for persons whose cards had been lost or stolen. There is no evidence that respondents did not perform these services, although they misrepresented the value thereof with respect to the card holder's liability. This mis-

representation can be prevented by order provisions barring future use and requiring appropriate disclosures.

We find that respondents grossly overstated the value of their services but that the record does not support complaint counsel's contention that the services were worthless or of only token value. The restitution provision in the initial decision's proposed order will be set aside.

II. APPLICABILITY OF THE BUSINESS EXCEPTION

Respondents contend that the administrative law judge's proposed order will foster "incomplete and, therefore, inaccurate disclosures," as it would disallow representations, either in the required affirmative disclosure or elsewhere, that credit card liability is unlimited for a *business* card holder. It is respondents' position that the Truth in Lending Act exemption as to business transactions is applicable to Pub.L. 91–508. We agree that if this is the case, the order is deficient.[1]

It is not disputed that Pub.L. 91–508 was enacted as an amendment to the Truth in Lending Act, and that the unamended Act excepts, *inter alia,* "credit transactions involving extensions of credit for business or commercial purposes, or to government or governmental agencies or instrumentalities, or to organizations."

We must determine, of course, whether Congress intended to exclude the business card holder from the limited liability protection of Pub.L. 91–508. In this regard, the amendmemnts, to the extent that they are unambiguous, will be controlling. They are the latest, if not the only, direct expression of the Congressional will on the question of the substantive coverage of Pub.L. 91–508.

The unamended Truth in Lending Act is not likely to be very helpful. The express purpose of the Truth in Lending Act is "to insure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit" (Truth in Lending Act Section 102, 15 U.S.C. 1601), while Pub.L. 91–508 is designed to protect "cardholders" from the "unauthorized use" of credit cards. Thus it is clear that the Truth in

[1] Because of our disposition of this issue, we need not reach complaint counsel's contentions that even if the business exception is applicable to Pub.L. 91–508, respondents should be precluded from utilizing this exception as (a) their sales have been designed solely to reach nonbusiness subscribers who would not qualify under the exception, and (b) the respondents would use the exception to circumvent the order.

Lending Act and the subject amendments are at best loosely related (both deal with the broad field of credit). And that, only insofar as definitions are concerned, can it be confidently said that the Act and the subject amendments are interconnected. Significantly, in this connection, the first section of Pub.L. 91–508 contains definitions which were made part of the Definitions Section (Truth in Lending Act Section 103, 15 U.S.C. 1602). On the other hand, the substantive sections of Pub.L. 91–508 follow the last section of the Credit Transaction Chapter of the Truth in Lending Act.

We turn then to Section 103 of the Truth in Lending Act to determine the definition of "cardholder," both because it is the definition of this word that determines the scope of the coverage of the Act, and because it is in the Definitions Section of Pub.L. 91–508 that we are likely to find the Congressional intent.

"Cardholder" is defined, in the amendments, as "any person to whom a credit card is issued" (Section 103(m)). The Truth in Lending Act defines "person" to mean a "natural person or an organization" (Section 103(d)), and "organization" to mean "corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association" (Section 103(c)).

Thus Congress specifically included credit cards used for business purposes in setting forth the definitions which determine the scope of Pub.L. 91–508. We cannot agree with respondents that what Congress so deliberately included it intended to exclude through the subject exception, particularly since (a) the Exceptions Section of the unamended Truth in Lending Act is otherwise entirely unrelated to the purpose and substance of Pub.L. 91–508, and (b) Congress had the term "natural person" at hand (in Truth in Lending Act Section 103(d)), a term that would have directly and unequivocally brought about the limitation on the scope of Pub.L. 91–508 urged by respondents, but chose not to use it.

If the unamended Truth in Lending Act had even tangentially dealt with unauthorized use of credit cards (for then the Exceptions Section might have been conceived with the unauthorized use of credit cards in mind), respondents might have made a reasonable argument that the Congress intended that the exception should apply to the amendments. Such, of course, is not the case here.

We, therefore, reject respondents' contention that the business exception applies to Pub.L. 91–508, and affirm the administrative law judge's order in this respect. Respondents appeal will be granted in part and denied in part. An appropriate order will be issued.

FINAL ORDER

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

The Commission having determined for the reasons set forth in the accompanying opinion that respondents' appeal should be granted in part and that the initial decision should be modified to conform with the views set forth in the opinion:

It is ordered, That the initial decision be modified by striking therefrom the last sentence of Conclusion 2 on page 11 [p. 202 herein], and substituting therefor the findings and conclusions contained in the accompanying opinion.

It is further ordered, That the findings and conclusions contained in the initial decision, as so modified, be, and they hereby are, adopted as the decision of the Commission.

It is further ordered, That the following order, be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondents Credit Card Service Corporation, a corporation, its successors and assigns, doing business as Credit Card Service Bureau or under any other name, and its officers, and John P. Ferry, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale or sale of their credit card registration service, through the sale of memberships or by any other device, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a credit card holder who suffers a loss or theft of credit cards is legally responsible and will have to pay for all

goods and services obtained by unauthorized use of his credit cards.

2. Representing, directly or by implication, that the potential liability which a card holder may incur through the unauthorized use of his credit cards may amount to sums large enough to cause large financial loss or financial ruin.

3. Representing, directly or by implication, that respondents' services can protect a credit card holder from large financial loss or financial ruin resulting from unauthorized use of his credit cards.

4. Representing, directly or by implication, that a credit card holder can incur any liability resulting from the unauthorized use of his credit cards, except to the extent expressly provided for in Public Law 91–508.

5. Failing to incorporate the following notice clearly and conspicuously in any written material offering the sale of respondents' credit card registration service to the public:

IMPORTANT NOTICE

Effective January 24, 1971, a Federal law provides that a cardholder has no liability for unauthorized use of his credit card unless all of the following four conditions are met. If the card issuing company (1) has notified you of your new limited liability, (2) has provided you with a pre-stamped envelope by which to notify them of a loss, (3) the card contains an approved method of identification, and (4) the use occurred before the card issuer is notified, then your liability is limited to $50 per card.

6. Failing to incorporate the following notice clearly and conspicuously in any radio or television commercial offering the sale of respondents' credit card registration service to the public:

A Federal law limiting liability to a maximum of $50 per card protects you from charges on lost or stolen credit cards. Along with your membership application Credit Card Service Corporation will give you details concerning this law.

7. Failing to provide each prospective customer who responds to a radio or television commercial offering the sale of respondents' credit card registration service with the notice required by Paragraph 5.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents or other persons engaged in the offering for sale, or sale of respondents' services or in any aspect of preparation, creation, or planning of advertising, and that respondents obtain a signed statement acknowledging receipt of said order by each such person.

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

It is further ordered, That the 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.

Commissioners Kirkpatrick and MacIntyre not participating.

IN THE MATTER OF

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., ET AL

Docket 8866. Interlocutory Order, Jan. 19, 1973.

Order ruling on certification order of administrative law judge and on respondent's motion for leave to brief and argue issues raised by certification order and for related relief.

ORDER RULING ON CERTIFICATION ORDER OF ADMINISTRATIVE LAW JUDGE AND ON RESPONDENT'S MOTION FOR LEAVE TO BRIEF AND ARGUE ISSUES RAISED BY CERTIFICATION ORDER AND FOR RELATED RELIEF

This matter is before the Commission on the administrative law judge's certification order, dated October 24, 1972. The order certifies to the Commission A & P's motion filed September 1, 1972, for dismissal of Count I of the complaint for failure to state a claim under Section 5 of the Federal Trade Commission Act insofar as the motion claimed that the charges in Count I

should have been the subject of a rulemaking proceeding.[1] It also certifies a motion by A & P dated October 12, 1972, requesting dismissal of all three Counts of the complaint on the grounds that delay in issuance of the complaint has deprived A & P of the opportunity to obtain evidence needed in its defense and that the complaint is no longer in the public interest because the acts and practices alleged in the complaint have been discontinued and are not likely to recur.

Before addressing ourselves to the certified motions, we turn first to a motion filed with the Commission by A & P on October 25, 1972, subsequent to the administrative law judge's certification order. In its motion A & P requests permission to file an additional brief on the issues raised on certification and to argue the matter orally before the Commission. It also seeks a continuance of the hearings which had been scheduled to commence on November 30, 1972, pending the Commission's disposition of the certified questions.

We think that the issues before us already have been briefed extensively. Even A & P appears to agree on this point. It notes in its motion that the issues have been briefed "in several separate submissions" [2] and that its purpose in submitting a further brief would be to have "a single statement of position." [3] We see little value to adding still more to the now sizeable volume of paper work, or to allowing oral argument, in the matter. Accordingly, A & P's request is denied.

The request for continuance of the hearings is, as a practical matter, mooted by the withdrawal from participation in this proceeding by Administrative Law Judge Theodor P. von Brand on November 21, 1972, pursuant to Section 3.42(g) of the Commission's Rules of Practice. And the administrative law judge

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1 Other arguments contained in A & P's motion of September 1 were ruled upon by the Administrative law judge and were disposed of by an order of the judge, dated September 19, 1972, dismissing the motion. By Motion for Leave to Brief and Argue Issues Raised by Certification Order and For Related Relief, dated October 25, 1972, A & P invites us to review all the arguments dismissed by the judge's ruling of September 19th notwithstanding the refusal by the judge, as indicated in his certification order of October 24, 1972, to make the written determination with respect to his ruling which is required by Section 3.23(b) of the Commission's Rules of Practice. We decline the invitation. The purpose of Section 3.23(b) is to grant the administrative law judge the authority to limit the opportunity for requesting interlocutory review to matters (other than those matters specified by Section 3.23(a) of the Commission's Rules) which, in his opinion, fall within the guidelines established by Section 3.23(b). To accept A & P's invitation would be to undermine this purpose.

2 Motion for Leave to Brief and Argue Issues Raised by Certification Order and For Related Relief, dated October 25, 1972, page 2.

3 *Id.*

now appointed to this proceeding is instructed to proceed with the hearings at the earliest reasonable date.

I

The sole question before us with respect to A & P's motion to dismiss Count I of the complaint is whether we abused our discretion by issuing complaint as to this Count, rather than proceeding through rulemaking. A & P's contention rests on the assumption that the charge of Count I involves a wholly-novel challenge to activity never before found to be a violation of Section 5 of the Federal Trade Commission Act. Proceeding from that assumption, A & P argues that it would be unfair for the Commission to issue an order prohibiting the challenged conduct without having first, via a trade regulation rule, forewarned A & P that such conduct is unlawful.

The challenged activity is not as novel as A & P claims. We think that the alleged practice is similar enough to the facts of the Kroger case [4] to warrant a full hearing on the record and we would be remiss in our obligation to the public interest were we to dismiss the count so prematurely, as A & P requests. Moreover, in issuing this complaint, we made the determination that the practices alleged therein, including those of Count I of the complaint, if found to exist on the basis of substantial evidence of record, could best be dealt with by means of an adjudicative order to cease and desist. This determination was clearly our responsibility to make. *Federal Trade Commission* v. *Universal-Rundle Corporation,* 387 U.S. 244 (1967); *Moog Industries* v. *Federal Trade Commission,* 355 U.S. 411 (1958). And we are not persuaded that we should reverse our decision without the benefit of a full record. A & P's motion to dismiss Count I of the complaint is, therefore, denied.

II

A & P also moves to dismiss the complaint in its entirety on two grounds: (1) the delay between the inception of the investigation and issuance of complaint constitutes an abuse of discretion on the part of the Commission; and (2) the proceeding is no longer in the public interest since the alleged illegal practices have been discontinued and are unlikely to recur and the evidence which would be introduced at hearings is stale.

[4] *The Kroger Company* v. *Federal Trade Commission,* 438 F.2d 1372 (6th Cir. 1971).

We find that the time taken to conduct the investigation leading to the issuance of the complaint herein is neither atypical nor inordinate, particularly in view of the complexity of the investigation and the limited manpower available to the Commission for conducting investigations in connection with its varied and broad statutory responsibilities. Moreover, it seems clear from the pleadings and affidavits before us that respondents were timely alerted to the fact that the Commission was interested in the private label arrangement between them in the Chicago trading area from the standpoint of possible violations of the amended Clayton Act and Section 5 of the Federal Trade Commission Act. And there is no indication that either A & P or Borden was ever advised that the Commission had abandoned its investigation. On the contrary, the papers before us clearly indicate that attempts to pursue and complete the investigation were made by Commission staff on a continuing and regular basis during the period March 1967–December 1969.[5] Accordingly, we find no abuse of discretion in our issuance of complaint herein.

We agree with the administrative law judge, however, that the question of alleged unfair prejudice to A & P by possible denial of adequate opportunity to defend is one which cannot be answered now, but only at the conclusion of hearings. Therefore, the motion in this respect will be denied without prejudice to A & P to renew its argument in conjunction with the submission of proposed findings of fact and conclusions of law at the close of the reception of evidence.

We also agree that questions of staleness of evidence and good faith discontinuance can only be decided after all the evidence is in, particularly in a situation of this sort where the contractual arrangement with which the complaint is concerned was discontinued by the respondents subsequent to formal issuance of the complaint.[6] Accordingly,

It is ordered, That respondent's motion for leave to brief and argue issues raised by certification order and for related relief be, and it hereby is, denied.

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[5] Affidavit of FTC Attorney Examiner Richard A. Palewicz, dated October 18, 1972, which appears as Attachment I to complaint counsel's Answer dated October 20, 1972. Mr. Palewicz's statements as to the dates on which contacts were made with respondents in the course of the investigation are not challenged by A & P's Reply, dated October 21, 1972. On the contrary, A & P's Reply, at page 4, notes that Mr. Palewicz's affidavit omitted one interview with an A & P official.

[6] A & P's Motion to Dismiss the Complaint and For Related Relief, p. 22.

It is further ordered, That respondent's motion to dismiss Count I of the complaint, certified to the Commission on October 24, 1972, be, and it hereby is, denied.

It is further ordered, That respondent's motion to dismiss the complaint, certified to the Commission on October 24, 1972, be, and it hereby is, denied.

Commissioner MacIntyre abstained.

IN THE MATTER OF

CERTIFIED BUILDING PRODUCTS, INC., ET AL.

Docket 8875. Interlocutory Order, Jan. 19, 1973.

Order denying respondents' motion requesting an order to discontinue alleged harrassment.

ORDER DENYING MOTION REQUESTING ORDER TO DISCONTINUE ALLEGED HARRASSMENT

This matter is before the Commission upon the administrative law judge's certification on January 2, 1973 of the motion of the respondent Michael P. Thiret and the corporate respondents, who have requested an order directing the Federal Trade Commission, its agents, employees and representatives, to cease an alleged campaign of harrassment against respondents, their employees past and future, and their customers and sales representatives. The administrative law judge certified the motion without recommendation on the ground that the matter, in this view, appears to be inconclusive.

The moving respondents refer only to one incident. Specifically, they charge that on December 8, 1972, at or about 8:30 in the morning, two Commission investigators or employees called on Mr. Orville Horn, an ex-employee of the respondents, and proceeded to interrogate him about his past employment. It does not appear, and no assertion is made, that Mr. Horn was called as a witness or was otherwise involved in the adjudicative proceeding.

Also, no assertion is made that the questioning was related to the instant proceeding. The movants state that the tactics used amounted to strong-arm or intimidation methods but they have failed to cite facts to justify any such conclusions. Further, the movants have failed to support their claims with an affidavit or otherwise.

Complaint counsel filed an answer to the motion, denying the allegations and attached thereto the affidavit of Newman T. Guthrie, who is one of the counsel in support of the complaint and also regional director of the Kansas City Regional Office of the Federal Trade Commission. In this affidavit Mr. Guthrie states, among other things, that he made diligent inquiry and cannot find any evidence whatsoever, outside of the motion before the Commission, that any employee of the Federal Trade Commission or anyone else under the authority of the Federal Trade Commission had any contact with Mr. Orville Horn on December 8, 1972, or at any other time.

The Commission has determined that the request here under consideration should not be granted. The charges made by movants appear to have no connection with this proceeding. The record was closed November 30, 1972, indicating that in the regular course no further evidence will be presented against respondents. Movants do not argue, nor is there reason to believe, that the claimed questioning of an ex-employee, assuming, *arguendo,* that this occurred, would prejudice them in any way in the adjudicative matter. The charges made, we believe, are addressed to the Commission in its administrative capacity. Accordingly,

It is ordered, That the motion of respondent Michael P. Thiret and the corporate respondents to cease and desist alleged continuing practices of harrassment be, and it hereby is, denied.

IN THE MATTER OF

THE HEARST CORPORATION, ET AL.

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

Docket 8832. Complaint, Jan. 15, 1971—Decision, Jan. 22, 1973.

Consent order requiring a Baltimore, Maryland, magazine subscription firm, one of the respondents in this case,* among other things to cease mis-

*International Magazine Service of the Mid-Atlantic, Inc.

representing the purpose of the call or solicitation; misrepresenting the persons or class of persons afforded the opportunity of purchasing respondent's products or services; representing that any merchandise or service is free or that any merchandise is available for a price less than customary or regular; misrepresenting the savings accorded purchasers; failing to cancel subscriptions when representations have been made that said subscription is cancellable; misrepresenting the terms or conditions of payments; misrepresenting the nature, kind or legal characteristics of any document; attempting to harass or intimidate customers in order to effect payment of any account; and failing to give customers a 3-day cooling-off period in which to cancel subscriptions. Respondent is further ordered to cease making sales solicitations through third parties who do not agree to be bound by the order; dealing with any who continue on their own the prohibited practices; and must institute a program of continuing surveillance to determine dealer compliance.

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 Commision, having reason to believe that the Hearst Corporation, a corporation, and Periodical Publishers' Service Bureau, Inc., a corporation, and International Magazine Service of the Mid-Atlantic, Inc., a corporation, hereinafter 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. The Hearst Corporation (hereinafter sometimes referred to as Hearst), is a corporation organized, existing and doing busines under and by virtue of the laws of the State of Delaware, with its principal office and place of busines located at 959 Eighth Avenue, in the city of New York, State of New York. Respondent Hearst publishes, and directly and through its wholly-owned subsidiary, Periodical Publishers' Service Bureau, Inc., sells and distributes magazines throughout the world, including "Good Housekeeping," a woman's interest magazine. A substantial portion of Hearst's income of over $100,000,000 annually is derived from the sale of advertising space at rates based upon the circulation of said magazines, and from the sale of such magazines through newsstand and subscription sales. Subscription sales are those in which the subscriber remits the full amount of the subscription price at the outset of the sale or in which the subscriber remits the price of the subscription contract at monthly intervals

during the first half of the term of the subscription contract. The latter form of subscription sales, hereinafter referred to as "paid-during-service" or "PDS" subscription sales, are solicited by respondent Periodical Publishers' Service Bureau, Inc.

Respondent Periodical Publishers' Service Bureau, Inc., (hereinafter referred to as "Periodical" or "PPSB") is a corporation organized, existing and doing busines under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at One North Superior Street, in the city of Sandusky, State of Ohio. It is a wholly-owned subsidiary or respondent Hearst.

Periodical operates through several organizational divisions, including the Branch Office division, the International Magazine Service division, the International Readers League division, the Budget Reading Service division, and the National Collection Agency division. The Branch Office division operates 56 branch offices throughout the United States and solicits paid-during-service subscription contracts from members of the general public. The International Magazine Service division franchises dealers, such as respondent International Magazine Service of the Mid-Atlantic, Inc., to solicit paid-during-service subscription contracts from the general public. The International Readers League division franchises dealers for the same purpose. The Budget Reading Service division solicits paid-during-service subscription contracts by placing advertisements in magazines and periodicals. The National Collection Agency division operates as a "dunning" service for respondent Periodical's alleged delinquent subscription accounts solicited by the respondent's Branch Office division. Periodical's annual volume of busines is in exces of $13,000,000.

Through respondent Periodical's divisions, and through the divisions' agents, salesmen or other solicitors and franchisees, Periodical solicits paid-during-service subscription sales on behalf of and for the benefit of respondent Hearst from the general public by contacting them through telephone calls, door-to-door solicitations, sales booths set up in stores, and by means of statements, representations, acts and practices as hereinafter set forth, and induces members of the general public to sign paid-during-service subscription contracts purporting to list periodicals of the purchasers' choice, a stated subscription period of the purchasers' choice, and the terms and conditions for payment by installments

of the purchase price. All such executed subscription contracts are thereafter forwarded to Periodical's headquarters for processing.

Respondent International Magazine Service of the Mid-Atlantic, Inc., (hereinafter sometimes referred to as "Mid-Atlantic" or "IMS of the Mid-Atlantic") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 2518–2524 North Charles Street, in the city of Baltimore, State of Maryland. It is a franchisee of respondent Periodical Publishers' Service Bureau, Inc., and through its agents, solicits subscription contracts by contacting members of the general public through telephone calls and door-to-door solicitations, and by means of statements, representations, acts and practices as hereinafter set forth, inducing members of the general public to sign subscription contracts purporting to list magazines of the purchasers' choice, a stated subscription period for each and the terms and conditions for payment by installments of the purchase price. The volume of business of Mid-Atlantic in the sale and distribution of periodicals to the general public is in excess of $4,000,000 annually.

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

PAR. 2. In the course and conduct of their business of selling and distributing magazines and publications published by Hearst and other publishers, respondents, through their agents, salesmen or other solicitors, and through individuals and firms who have entered into franchise agreements with respondent Periodical, and through sub-franchisees, agents, salesmen and other solicitors engaged by or through said franchisees, have induced members of the general public to subscribe to "Good Housekeeping" and to other magazines and publications.

Respondents, through said agents, salesmen or other solicitors, franchisees and sub-franchisees, and others engaged by or through said franchisees, place into operation and through various direct and indirect means and devices, control, direct, and implement sales methods whereby members of the general public are contacted by and through telephone calls, door-to-door solicitations and store booths, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign subscription contracts purporting to list magazines and publications of the purchasers' choice, a stated subscription period for

each, and the terms and conditions for payment by installments of the purchase price.

The executed subscription contracts are thereafter forwarded by the branch offices to respondent Periodical's headquarters or are forwarded through the sub-franchisees, agents, salesmen and solicitors engaged by or for the franchisees to the above-mentioned respondent for processing, in the usual course of respondent's business. Respondent Hearst accepts the revenues flowing from said circulation, sale and distribution of its magazines and publications, as well as those of other publishers and firms.

Respondent Hearst dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones, approves, and accepts the pecuniary and other benefits flowing from the acts, practices, and policies hereinafter set forth.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for at least six years last past have caused, said magazines and publications, when sold, to be shipped from their places of business or sources of supply to purchasers thereof located in various States of the United States other than the state of origination, and have transmitted and received and caused to be transmitted and received in the course of selling, delivering, and collecting payment for said magazines and other publications among and between the several States of the United States, contracts, invoices, checks, collection notices, and various other kinds of commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such products in commerce, as "commerce" is defined in the Federal Trade Commision Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing members of the general public to sign subscription contracts, as aforesaid, respondents use, furnish, approve or ratify promotional material or other instrumentalities or means for use by their salesmen and solicitors. In conjunction therewith, they have made certain oral statements and representations concerning the terms and conditions of said subscription contracts, their renewal or cancellation, special offers, and the nature and purpose of the solicitation. In the foregoing manner, respondents and their salesmen and solicitors have represented, directly or indirectly:

(a) That they are primarily conducting or participating in bona fide surveys, quizzes, or contests.

(b) That their offers are being made only to specially selected persons.

(c) That magazines or other products will be given free, or for the cost of mailing, handling, editing, or printing said products, or at special or reduced rates.

(d) That free magazine gift subscriptions will be sent to a subscriber's friend or relative.

(e) That subscribers will be allowed to cancel the subscriptions if they should decide to do so.

(f) That subscription contracts cannot be cancelled by subscribers as said contracts have been forwarded to the publishers, and respondents are committed to the publishers for the entire term of the subscription.

PAR. 5. In truth and in fact:

(a) Said salesmen and solicitors were not primarily conducting or participating in bona fide surveys, quizzes, or contests, but to the contrary, were and are engaged in inducing the general public to sign subscription contracts in the manner aforesaid.

(b) Respondents' said offers were not being made only to specially selected persons; but to the contrary, were made to numerous members of the general public through frequent solicitations of broad segments thereof.

(c) Magazines or other products were not given free, nor for the cost of mailing, handling, editing or printing of said products, nor at special or reduced rates. To the contrary, the subscription contracts provided for payment to cover respondents' regular or prevailing subscription prices.

(d) Gift subscriptions to a person designated by the subscriber were not given free, but to the contrary, the cost of said gift subscriptions was included within the price of the subscription contract.

(e) On a substantial number of occasions, subscribers were not allowed to cancel their subscription contracts or were only allowed to do so after extended delay.

(f) Many subscribers have given only their oral assent to such a contract or have within a very recent period of time signed such a contract, and respondents have neither forwarded such contract to the publishers at such time nor are respondents committed to the publishers for the entire term of the subscription.

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

PAR. 6. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of and payment for said magazines and publications by the general public, respondents and their salesmen and solicitors, directly or indirectly have engaged in the following additional acts and practices:

(a) In a substantial number of instances, they have stated approximate costs of a subscription contract on a weekly basis in conjunction with statements of typical subscription periods as, for example, a cost of "50 cents per week" and a period of 60 months.

Respondents and their salesmen and solicitors falsely and deceptively fail to disclose, in connection with such statements, the material fact that their contracts seldom, if ever, provide for weekly installment payments, or for payments spread over 60 months. In truth and in fact, the contracts require monthly installment payments of substantially higher amounts over a substantially shorter period of time than stated during such oral presentations.

(b) In a substantial number of instances they have induced members of the general public to sign a document by falsely and deceptively representing it to be a preference list, a guarantee, a route slip, or a document of an import or nature other than a subscription contract, when in fact it is the subscription contract.

(c) In their efforts to collect what respondents elect to treat as delinquent accounts of customers who have been induced to sign subscription contracts, they have resorted to telephone calls at night, and other forms of harassment by means of which they have unfairly, falsely and deceptively represented:

(1) That delinquent subscription accounts of customers will be turned over for collection to collection agencies. The purported collection agencies then write letters to delinquent customers stating that such delinquent subscription accounts have been turned over to them by respondents for collection.

In truth and in fact, such collection agencies to which respondents turned over delinquent subscription accounts for collection, are not bona fide, independent collection agencies engaged in collecting delinquent accounts, but are simply operating divisions

of the respondents used by respondents in their efforts to collect alleged delinquent subscription accounts.

(2) That the general or public credit rating or standing of any such customer will be adversely affected unless payment is made.

In truth and in fact, respondents seldom if ever take any action which adversely affects the general or public credit rating of such subscribers.

(3) That the failure of a customer to remit money to respondents will result in the institution of legal action to effect payment.

In truth and in fact, respondents seldom if ever take any legal action to effect payment.

(d) In a substantial number of instances, respondents have inserted extra coupons in subscribers' coupon payment books, whereby the payment of such extra coupons by the subscriber results in payments exceeding the total dollar cost of the subscription contract.

(e) In a substantial number of instances, respondents and their salesmen and solicitors have induced persons to sign subscription contracts without clearly, conspicuously, and adequately designating and disclosing:

(1) the total cash price,

(2) the downpayment,

(3) the unpaid balance of the cash price,

(4) the number, amount and due dates or period of payments scheduled to satisfy the payment of the contract.

Therefore, respondents' statements, representations, acts and practices, and their failure to reveal material facts, as set forth herein were, and are, unfair, false, misleading, and deceptive acts and practices.

PAR. 7. In addition to the foregoing statements, representations, acts and practices, respondents have engaged in door-to-door solicitations of the aforesaid subscriptions, either without prior invitations to solicit such sales from prospective purchasers or by using one or more of the deceptive means and methods aforesaid to gain access to prospective purchasers at times and under circumstances when such prospective purchasers were not otherwise considering the purchase of magazine subscriptions, and without either:

(a) affirmatively stating and affording such purchasers the

right to cancel any resulting subscription contract for a period of not less than 72 hours, or

(b) by refusing to honor any such right purportedly given either orally or in writing or thwarting the exercise of any right so given.

The solicitation of subscription sales without permitting cancellation within a reasonable time constitutes an unfair, false, misleading and deceptive practice where such sale involves long term obligations on the part of the subscriber and where it is made under the conditions and circumstances herein alleged.

Therefore, respondents' acts and practices as set forth herein were, and are, unfair, false, misleading and deceptive acts and practices.

PAR. 8. By and through the use of the aforesaid acts and practices, respondents control and place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public, in the manner and as to the things hereinabove alleged.

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

PAR. 10. The use by respondents of the aforesaid unfair and false, misleading and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief and unfairly into the assumption of debts and obligations and the payment of monies which they might otherwise not have done.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on January 15, 1971, charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver of the provisions of Section 2.34(d) of its rules which provides that the consent order procedure shall not be available after issuance of complaint; and

The respondent and counsel for the Commission having executed an agreement containing a consent order, an admission by consenting parties 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 respondent that the law has been violated as set forth in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having accepted same, and the agreement containing consent order having been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. International Magazine Service of the Mid-Atlantic, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 2518–2524 North Charles Street, in the city of Baltimore, State of Maryland.

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

ORDER

I

It is ordered, That respondent International Magazine Service of the Mid-Atlantic, Inc., a corporation, and its successors or

assigns, and its officers, representatives, employees, franchisees, licensees, salesmen, agents or solicitors, and the representatives, employees, franchisees, licensees, salesmen, agents or solicitors engaged by or through respondent's franchisees or licensees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution to consumers (the term consumer is defined as the party to whom said merchandise or service is offered or extended who is a natural person, and the merchandise or services which are the subject of the transaction are primarily for personal, family, or household purposes) of magazines or any other publications or merchandise or subscriptions to purchase any such magazines or services or in the collection or attempted collection of any delinquent or other subscription contract or other accounts, in commerce, as "Commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that respondent is primarily conducting or participating in a survey, quiz or is engaged in any activity other than soliciting business; or misrepresenting, in any manner the purpose of the call or solicitation.

2. Representing, directly or indirectly, that any offer to sell said products or services is being made only to specially selected persons; or misrepresenting, in any manner, the persons or class of persons afforded the opportunity of purchasing respondent's products or services.

3. Representing, directly or indirectly, that any merchandise or service is free or without cost, or is provided as a gift to either the subscriber or a person designated by him, or without cost or charge in connection with the purchase of, or agreement to purchase, any merchandise or service unless the stated price of the merchandise or service required to be purchased in order to obtain such free merchandise or gift is the same or less than the customary and usual price at which such merchandise or service required to be purchased has been sold separately from such free gift item, and in the same combination if more than one item is required to be purchased, for a substantial period of time in the recent and regular course of business in the area in which the representation is made: *Provided,* That nothing herein shall prevent respondent from continuing to sell or

offer to sell "split orders" under which the subscriber designates one or more of the magazines to which he or she is subscribing and directs that such magazine or magazines be sent to a third person or persons rather than the subscriber without such third person or persons paying any part of the price of the subscription contract.

4. Representing, directly or indirectly, that any price for any merchandise or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost; or that any price is a special or reduced price unless it constitutes a significant reduction from an established selling price at which such merchandise or service has been sold in substantial quantities by respondent in the same combination of items in the recent and regular course of their business; or misrepresenting, in any manner, the savings which will be accorded or made available to purchasers.

5. Refusing or failing upon request to cancel a contract when the representation has been made, either directly or indirectly, that the contract will be cancellable.

6. Representing, directly or indirectly, that subscriptions may never be cancelled or refusing to cancel such subscriptions on the grounds that respondent has forwarded such subscriptions to the publishers and respondent is committed to the publishers for the term of the contract or for any other deceptive reason.

7. Failing, clearly and conspicuously to reveal at the outset of the initial contact and of all subsequent contacts of prospective purchasers, whether by telephone, written or printed communications, or person-to-person, that the purpose of such contact or solicitation is to sell magazines or periodical subscriptions, products or services, as the case may be.

8. Making any reference or statement concerning "50 cents per week," "60 months," or any other statement as to a sum of money or duration or period of time in connection with a subscription contract or other purchase agreement which does not in fact provide, at the option of the purchaser, for the payment of the stated sum, at the stated duration or period of time; or misrepresenting in any manner, the terms, conditions, method, rate or time of pay-

ment actually made available to purchaser or prospective purchasers.

9. Representing, directly or indirectly, that a subscription contract or purchase agreement is a "preference list," "guarantee," "route slip" or any kind of document other than a contract or agreement; or misrepresenting, in any manner, the nature, kind or legal characteristic of any document: *Provided,* However, that when a contract includes a guarantee, respondent may represent it to be a contract and guarantee.

10. Failing to reveal orally and in writing clearly and conspicuously to each purchaser or prospective purchaser before execution, the identity, nature and legal import of any document he is requested or required to execute in connection with the purchase of any product or service.

11. Attempting, by the use of telephone calls or any other means, to harass or intimidate customers in order to effect payment of any account.

12. Representing, directly or indirectly, that in the event of non-payment or delinquency of any account or debt arising from any subscription contract or purchase agreement, the general or public credit rating or standing of any person may be adversely affected, unless respondent refers the information concerning such delinquency to a bona fide credit agency.

13. Failing clearly and conspicuously to disclose in each contract with a debtor or alleged debtor that the collection agency to which the delinquent account will be referred, or that said collection agency which is contracting the delinquent debtor or alleged debtor, is an operating division of the respondent, and is not an independent, bona fide collection agency, unless in fact such collection agency is an independent bona fide collection agency.

14. Representing, either directly or indirectly, that legal action may be instituted unless respondent in good faith intends to institute legal actions against each delinquent debtor or alleged debtor to whom such representation is made or misrepresenting, in any manner, the action or results of any action which may be taken to effect payment of any such account or debt.

15. Contracting for any sale in the form of a subscription

contract or purchase agreement which shall become binding on the purchaser prior to a period of time not less than three business days after the date of signing by the purchaser.

16. Failing to disclose orally prior to the time of sale and in writing on any subscription contract or other agreement, with conspicuousness and clarity, that the purchaser may rescind or cancel the subscription by directing or mailing a notice of cancellation to respondent's address within three business days after the date of sale.

17. Failing to provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

18. Failing to include on the cover of each coupon book furnished to a subscriber:

(a) a statement showing the total number of coupons in the book, the dollar amount of each such coupon; and

(b) a legend stating: "Check the number of coupons in this book and their amounts against your original subscription contract."

19. Failing to furnish to each subscriber at the time of his signing of the subscription contract a duplicate original of the contract showing the exact number and name of the magazines or other publications to which the purchaser is subscribing, the number of issues for each and the total price for each magazine and for all such magazines: *Provided, however,* as an alternative, the price for each magazine may be furnished on a separate schedule attached to each of said contracts.

20. Failing to furnish with each coupon book initially provided to each subscriber, a copy of the final sales contract; *Provided,* That as an alternative, as long as the authenticity of the subscriber's signature is not in dispute, respondent may furnish a separate written statement identifying the magazines being subscribed to, the number of issues for each, and a complete statement of the payment terms.

21. Failing or refusing to cancel, at the subscriber's or purchaser's sole option, all or any portion of such a subscription contract or purchase contract whenever respondent in good faith has determined that a misrepresentation prohibited by this order has been made to such subscriber: *Provided,* That if a cancellation is effected, the sole fact that respondent

has cancelled a contract shall not be admissible in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order.

22. In the event any magazine covered by such a subscription contract ceases publication during the term of the contract, failing to apprise subscribers to such magazine pursuant to such contract of its discontinuance and to offer such subscribers equivalent value through the opportunity to substitute therefor one or more magazines not covered by the contract or extend the subscription term(s) of a magazine or magazines covered by the contract.

23. Failing to clearly, conspicuously, and adequately designate and disclose both orally, and in writing on the subscription contract on the same side of the page and above or adjacent to the place for the customer's signature:

(a) the total cash price,

(b) the downpayment,

(c) the unpaid balance of the cash price,

(d) the amount financed, if any

(e) the rate of finance charge, if any, expressed as the annual percentage rate, and

(f) the number, amount and due dates or period of payments scheduled to satisfy the payment of the contract.

24. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner or by the acts and practices prohibited by this order.

II

It is further ordered:

(a) That respondent herein deliver, in person or by registered mail, a copy of this decision and order to each of its present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, promote or distribute the products or services included in this order; *Provided, however,* That respondent may require its present and future dealers, franchisees, licensees or other agents to deliver a copy of this decision and order to each of their employees, salesmen, agents, solicitors, independent contractors or other representatives.

(b) That respondent provide each person so described in Paragraph (a) above with a form, returnable to the respondent and to the Commission, clearly stating his intention to be bound by and to conform his business practices to the requirements of this order.

(c) That respondent inform all such present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, promote or distribute the products or services included in this order that the respondent shall not use any third party, or the services of any third party for the solicitation of magazine subscriptions or other products or services unless such third party agrees to and does file notice with the respondent and the Commission that it will be bound by the provisions contained in this order.

(d) If such party will not agree to so file said notice with respondent and the Commission and be bound by the provisions of the order, the respondent shall not use such third party to sell or solicit subscriptions or other products or services.

(e) That respondent so inform the persons so engaged that the respondent is obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order.

(f) That respondent institute a program of continuing surveillance adequate to reveal whether the business operation of each of said persons engaged conform to the requirements of this order; and

(g) That respondent discontinue dealing with the persons so engaged, revealing by the aforesaid program of surveillance, who continue on their own deceptive acts or practices prohibited by this order: *Provided,* That if remedial action is taken, the sole fact of such dismissal or termination shall not be admissible in any proceeding brought to recover penalties for alleged violation of any other paragraph of the order.

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

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

Chairman Kirkpatrick not participating.

IN THE MATTER OF

D. L. BLAIR CORPORATION, ET AL.*

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

Docket 8837. Complaint, Feb. 22, 1971—Order and Opinion, Jan. 22, 1973.

Order adopting administrative law judge's initial decision and order dismissing complaint as to respondents.

Mr. Thomas J. Grady and *Mr. Garland S. Ferguson,* supporting the complaint.

Mr. Felix H. Kent of *Lawler, Sterling & Kent,* New York, New York, for respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

MAY 1, 1972

PRELIMINARY STATEMENT

On February 22, 1971, the Commission issued its complaint against the D. L. Blair Corporation, eight of D. L. Blair Corporation's wholly-owned subsidiary corporations and Cy Draddy, as an officer of D. L. Blair Corporation (Blair) and each of its wholly-owned subsidiary corporations charging them with violations of the provisions of Section 5 of the Federal Trade Commission Act in connection with a promotion of the McDonald's Corporation, called the McDonald's $500,000 Sweepstakes.

The complaint also included two McDonald's corporations and the McDonald's advertising company, D'Arcy Advertising Company, as respondents. On April 12, 1971, the Commission issued its order against the McDonald's Corporations [78 F.T.C. 606]

*For complaint in this case see companion cases *In the Matters of McDonald's Corporation, et al.* and *D'Arcy Advertising Company,* Docket Nos. C-1897 and C-1898, 78 F.T.C. 606, 616.

and the D'Arcy Advertising Company [78 F.T.C. 616] based upon a consent agreement entered into by those companies with the Commission (FTC Docket Nos. C–1897 and C–1898). The respondent Blair, its subsidiaries and Cy Draddy filed an answer to the complaint in which they admitted certain of the allegations of the complaint but denied that they had been engaged in unfair and deceptive practices in violation of Section 5 of the Federal Trade Commission Act.

Thereafter, hearings were held in Buffalo and New York, New York, at which time testimony and documents were incorporated into the record in support of and in opposition to the complaint. Counsel in support of the complaint and counsel for respondents filed proposed findings of fact and briefs in support thereof. Any proposed findings of fact or conclusions not found or concluded herein either specifically or by implication are rejected and the hearing examiner, having considered the entire record, including proposed findings of fact and conclusions and briefs filed by both parties, makes the following findings of fact:

FINDINGS OF FACT

1. Respondent D. L. Blair Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 575 Lexington Avenue, New York, New York.

2. Respondents D. L. Blair Sales Company, Inc., D. L. Blair Service Corporation, D. L. Blair Visuals, Ltd., and D. L. Blair Contest Corporation, the Stock Game, Inc., corporations, have been dissolved pursuant to the laws of the state in which they were organized and doing business, and said corporations are no longer in business. (RX 71–75.)

3. Respondents Audit Bureau of Mailing, Inc., Incentive Consultants, Inc., and Promotion Audit Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal offices and places of business located at 575 Lexington Avenue, New York, New York. They are wholly-owned subsidiaries of respondent D. L. Blair Corporation.

4. Respondent Cy Draddy is an individual and an officer of respondents D. L. Blair Corporation, Audit Bureau of Mailing,

Inc., Incentive Consultants, Inc., and Promotion Audit Corporation. He formulates, directs and controls the acts and practices of the corporate respondents of which he is an officer, including the acts and practices herein set forth. His address is the same as that of respondent D. L. Blair Corporation. (Tr. 443–454, 624.)

There is no evidence in the record connecting any of these corporations other than the D. L. Blair Corporation with the McDonald's $500,000 Sweepstakes, or showing that they were active in any way with this promotion.

5. In the course and conduct of their businesses, and at all times mentioned herein, respondents, Blair and Cy Draddy, cause their respective products and services to be sold, placed and distributed throughout the United States. Respondents at all times mentioned herein have maintained a substantial course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act. (Complaint Para. Four, Answer Para. 5.)

6. In the course and conduct of their businesses, and at all times mentioned herein, respondents have been and are now in substantial competition in commerce with corporations, firms and individuals in the sale and distribution of their products and services. (Complaint Para. Three; Answer Para. 4) During the year 1968 Blair conducted about 75 sweepstakes promotions of various kinds for its clients. (Tr. 640.)

7. Blair is a consultant and administrator for marketing promotions, contests and sweepstakes. It is not an advertising agency and does not prepare or place advertising. Chiefly, it provides the following services to its clients: designs the prize structure to be offered in a promotion; devises the rules for participation in the promotion; receives mailed entries from participants; procures the prizes; distributes facsimile sheets; authenticates entries; awards prizes; and generally advises clients as to the operations of sweepstakes promotions. (Tr. 496–497.)

8. McDonald's Corporation (McDonald's) and its advertising agency, D'Arcy Advertising Company (D'Arcy) prepared and purchased a 24-page advertising insert for the June 1968 issue of Reader's Digest. As part of the insert, D'Arcy and McDonald's decided to use a sweepstakes promotion. They engaged Blair to administer the sweepstakes for a fee of $25,000. (Tr. 501–504; 555–556.)

9. A sweepstakes is a prize promotion based upon chance and

not containing the element of consideration. One type of sweepstakes is a "preselected" winner sweepstakes in which winning and losing numbers or symbols are distributed to the public. No drawing is conducted but the individual must either go to a central location to check his number or symbol against a list to determine whether he has a winning number or symbol or he must send his number to the administrator of the sweepstakes to determine this. (Tr. 638–643.) The McDonald's Sweepstakes was a preselected winner sweepstakes in which the individual was required to go to a McDonald's restaurant to determine whether he had a winning number or he could secure the list of winning numbers from Blair to determine this. (Tr. 455.)

10. "McDonald's $500,000 Sweepstakes" was prepared and operated in the following manner:

Approximately 18,900,000 copies of an advertising insert entitled "Mini-Trips for Maxi-Fun" were printed and inserted into the June 1968 issue of Reader's Digest magazine. (CX 1, insert following p. 146.) On the last two pages of each insert was a coupon bearing one of 11 different numbers. (See App. A, attached hereto and made a part hereof [p. 246 *infra*].) Five of these numbers were selected and designated as winning numbers and were printed on 15,610 of the coupons. The other six numbers were selected and designated as losing numbers and were printed repeatedly on the remaining millions of coupons. (CX 91.) Purchasers of Reader's Digest who wished to enter the Sweepstakes were instructed to compare the number on the coupon with a list of winning numbers on display in restaurants operated by McDonald's Corporation and its lessees and franchisees or by writing D. L. Blair for a facsimile of the display. If the numbers matched a winning number, the holder of the coupon was entitled to one of the 15,610 prizes. As provided by the Sweepstakes rules, the contestant was then to sign the coupon if it were a winning entry and send it along with his name and address via registered mail to Blair in order to receive his prize.

11. Blair, prior to the publication of the sweepstakes in Reader's Digest, reviewed the sweepstakes coupon, devised the rules for the promotion and suggested that the word "reserved" be used in connection with the list of prizes and that the body copy specifically state that the prizes not claimed would never be given away. (Tr. 556–561; 625–629; CX 29, 49.) These sug-

gestions by Blair were adopted by D'Arcy and McDonald's. The reason for using the word "reserved" in connection with the prizes was because the Post Office Department through its General Counsel's Office had approved the use of the word "reserved" for mailing purposes in connection with preselected winner sweepstakes. (Tr. 625–629; CX 49.)

12. The June 1968 issue of Reader's Digest consisted of about 18,900,000 copies distributed in the United States. The five winning numbers were to be printed on 15,610 of the Sweepstakes coupons and mailed out in that number of copies of Reader's Digest. The remaining copies of Reader's Digest all contained coupons with the six losing numbers. The winning numbers were seeded into the June 1968 issue under careful supervision on the premises of the J. W. Clement Co. (subsequently known as Arcata Graphic Corporation, Tr. 243) in Buffalo, New York, who was the printer of the June 1968 issue of Reader's Digest. (CX 144 A–D.)

13. After the publication of the Sweepstakes in the June 1968 edition of the Reader's Digest, the respondents Blair and Cy Draddy awarded 227 prizes (CX 181; RX 33) at a cost to Blair of about $12,000. As was provided by the rules, Blair handled all the entries submitted by entrants and all correspondence and other work in connection with the entries, including checking the eligibility of the winning entrants into the Sweepstakes. The Sweepstakes ended on September 2, 1968, and all entries had to be postmarked on or before that date.

14. As a result of the publication of this Sweepstakes and problems which arose during the course of the Sweepstakes in the Buffalo, New York area (discussed hereafter), counsel in support of the complaint insist that the respondents have engaged in acts and practices, all of which are false, deceptive and misleading by representing, directly or by implication, that:

(a) 15,610 prizes worth $500,000 at retail, consisting of 10 Ford Country Squire Station Wagons, 100 Magnavox 23″ color television sets, 1,500 Kodak Mini-Super 8 Hawkeye Instamatic movie cameras with Super 8 Instamatic projector, 4,000 Aurora Mini-Electric trains and 10,000 Tensor Mini-High Intensity lamps were to be awarded to individuals who held winning coupons in "McDonald's $500,000 Sweepstakes."

(b) Individuals who submitted coupons bearing winning numbers in accordance with the rules stated on the back of the coupon would be awarded a prize and had only to sign such winning

coupon and mail it to respondent D. L. Blair Corporation by registered mail in order to claim and obtain a prize.

(c) Individuals participating in "McDonald's $500,000 Sweepstakes" were afforded a reasonable opportunity to win the represented prizes.

(d) Respondents distributed 15,610 winning coupons to individuals eligible to participate in and win prizes in "McDonald's $500,000 Sweepstakes."

(e) 15,610 prizes had been purchased or "reserved" for individuals who held winning coupons in respondents' "McDonald's $500,000 Sweepstakes." (See complaint counsel's Seventh Prop. Find.; also Para. Six of Comp.) These allegations will be considered *seriatim.*

15. First, counsel in support of the complaint assert that respondents misrepresented that 15,610 prizes would be given in the Sweepstakes rather than the 227 which were actually given. They state that this misrepresentation must be gleaned directly from the statements made in the Sweepstakes coupon and its accompanying advertisements. This is true since there is no other evidence in the record either documentary or testimonial to support such a claim. This contention must be rejected. The ad pertaining to the Sweepstakes is quite short and easy to understand. There is nothing in the ad which states that all of the prizes will be awarded; in fact, it is specifically stated "remember these prizes are reserved for 15,610 Lucky Winners. You may be one but you will never know if you do not claim your prize. All prizes not claimed will never be given away, so hurry! Sweepstakes closes September 2, 1968." The clear implication of this is that the prizes not claimed will not be given away. There is no way that the language used can be construed by a consumer or anyone else, directly or indirectly, that all the prizes will be given away when the direct opposite is indicated. All a consumer or subscriber to Reader's Digest had to do was compare the number at a McDonald's display or obtain a facsimile of the display to determine if he were a winner or a loser. Respondents cannot be required to force holders of winning numbers to claim their prizes which in effect is what is being urged by complaint counsel. Respondents, as a result of their experience and the fact that their fee was only $25,000, undoubtedly knew that a small percentage of the prizes would be claimed. Possibly they should have stated that only a few of the prizes would be given away, but this defi-

ciency is not the charge in the complaint nor is it urged by complaint counsel.

16. The second claim of misrepresentation is that respondents did not carry out their offer that all an individual with a winning coupon had to do to obtain his prize was to sign the coupon and submit it to Blair in accordance with Part 3 of the rules printed on the coupon. In the case of the great majority of the prizes awarded, this was apparently true. Counsel in support of the complaint claim that at least seven persons who submitted winning coupons were unjustly denied their prizes by Blair. These were all from the Buffalo, New York, area. Counsel also contend that certain holders of winning coupons were required to sign affidavits in order to receive their prizes, which affidavits gave McDonald's the right to use the entrant's name, photo and any statements made about McDonald's. (CX 89, 102–112.) In addition, counsel state the winners were subjected to interviews by private detectives prior to being awarded their prizes. (Eighth Prop. Find., pp. 32–56.)

17. After the Sweepstakes started, the respondents became suspicious because they were receiving what appeared to them to be an inordinate number of winners from the Buffalo, New York, area as compared with other areas of the country. For example, respondents received 11 winning entries from Buffalo, New York, proper and a total of six from New York City proper, whereas the Reader's Digest circulation in Buffalo was only about one-tenth of the New York City circulation. (CX 124, 143.)

18. Four entries bearing Cornell Aeronautical Laboratories located in Buffalo, New York, as the return address were obtained by Miss Diane Dudek (now known by her married name, Majchrzak) from an employee of J. W. Clement Co. and given by her to Maureen O'Brien, Dolores Falter Ryan and Evelyn Wickens, all employees of Cornell Aeronautical Laboratories. (Tr. 236–238.) Three of these four coupons bore winning numbers. The employee of J. W. Clement Co., a Daniel Redlein, told Diane Majchrzak that he had obtained the coupons at work. (Tr. 238.)

19. The entries submitted by Diane Majchrzak, Maureen O'Brien, Dolores Falter Ryan and Evelyn Wickens were not obtained legitimately from Reader's Digest magazine, as required by Rule 3 of the McDonald's Sweepstakes Rules, but in fact, had apparently been stolen by an employee of J. W. Clement

Co. (Tr. 253.) Further, such entrants did not comply with Rule 1 or 2 of the Sweepstakes Rules requiring them to first ascertain whether they were winners. (Tr. 84–90.) They sent their coupons in without even bothering to check if they were winners.

In the examiner's opinion, respondents were justified in refusing to award these three prizes under the circumstances.

20. Two other holders of winning coupons from the Buffalo area appeared and testified, Mrs. Phillip Buscemi (Tr. 69, *et seq.*) and Mr. Richard Schnier (Tr. 37, *et seq.*). Counsel in support of the complaint urge that these two were entitled to prizes and should have received them. This contention must be rejected since both entrants failed to comply with the contest rules; Mrs. Buscemi failed to sign her entry (Tr. 76–77) as required and Mr. Schnier's entry was postmarked after September 2, 1968, when the contest closed. Counsel in support of the complaint argue that respondents somehow waived the rules in these two cases and should have awarded them prizes. This contention is rejected.

21. Mr. Frank Carberry of Buffalo, New York, also submitted a winning coupon but was not awarded a prize. He was subpoenaed to appear at the hearing in Buffalo, New York, but failed to appear. Several attempts were made by counsel in support of the complaint to contact Mr. Carberry but he never appeared. No consideration is given to this person's entry since his subsequent refusal to appear and explain his entry at least casts doubt upon his entry. Nor does the testimony of his friend, Mr. Schnier, correct this deficiency. (Tr. 58–59.)

22. Mr. John K. Courter testified at the hearing in Buffalo, New York, that he submitted a winning entry (Tr. 133, *et seq.*), but only received his prize after complaining to McDonald's, Reader's Digest, the Better Business Bureau and the local newspaper. Thereafter, he was contacted by a representative of Reader's Digest and after some delay received an affidavit from Blair to be signed, which he did, and received his prize. Obviously this man should have received his prize much sooner than he did and without having to go to the trouble he did to get it. However, he finally received it. The suspicions and investigation of the Buffalo entrants undoubtedly led to this problem and a finding of deception cannot be based upon respondents' delay in this instance.

23. Mr. Frank H. MacFarland submitted a coupon in the

McDonald's Sweepstakes postmarked August 21, 1968. Mr. MacFarland's entry was received late in the promotion like most of the other suspected entries from the Buffalo area (CX 138) and was turned over to Reader's Digest for investigation. Mrs. Spelts, a Blair employee, testified that she sent affidavits to all entrants from Buffalo to whom prizes had not been awarded although coupons bearing winning numbers were submitted by such people. (Tr. 585.) Mr. MacFarland may not have received the affidavit or may not have returned it. Since the affidavit form was not returned to Blair by MacFarland and since neither Reader's Digest nor D'Arcy instructed Blair to award a prize to MacFarland subsequent to Reader's Digest's investigation, Blair did not award the prize. Mr. MacFarland at no time wrote to Blair or to any other party of not having received his prize. (Tr. 34.) It is apparent that Mr. MacFarland should have been awarded his prize. However, this is the only instance in the record where respondents failed in this regard. The examiner does not feel that this single instance is sufficient to establish that the respondents engaged in a practice of unjustifiably refusing to award prizes to eligible winners. This is particularly true in view of the situation which developed in Buffalo, New York, where apparently some winning numbers were removed from the J. W. Clement Co., the printer of the June issue of Reader's Digest.

24. Counsel in support of the complaint also rely on the fact that respondents obtained affidavits from at least some of the winners and had private investigators conduct interviews with some of the entrants before awarding the prizes. During the course of the Sweepstakes and prior to the investigation in this matter, the respondents revised the affidavit forms used to remove therefrom the provisions giving McDonald's the right to use the participant's name, photograph or any statement he might make about McDonald's. (CX 89.) The examiner can find nothing false or misleading in requiring the winning entrant to swear that he was not guilty of fraud and that he was not an employee of anyone affiliated with the Sweepstakes. The rules of the Sweepstakes eliminated such persons and there can be nothing wrong in the respondents assuring themselves that the winners were legitimate winners.

25. In subparagraph (b) of Commission's Proposed Eighth Finding, several pages are devoted to argument on detective interviews. The record shows that the first prize winner, Mr.

Howard M. Cohagan, was visited by an investigator before he received his first prize, a new automobile. The Commission did not choose to produce Mr. Cohagan as a witness and in fact Mr. Cohagan wrote to the Commission in a most complimentary manner about Blair's handling of the awarding of the first prize. (CX 114.) Counsel in support of the complaint argue that an interview was a condition to the awarding of a prize. No evidence was produced by counsel in support of the complaint to that effect. Consequently, this contention is rejected.

26. Thirdly, counsel in support of the complaint assert that there is "an implied representation inherent in the offer itself" that participants "were afforded a reasonable opportunity to win the represented prizes." Counsel argue that the claims by respondents that there were 15,610 available prizes would lead the consumer to believe that he had a reasonable chance to win a prize. In fact, they assert that he would be led to the conclusion that his chance was not only "reasonable" but "good." The holder of one of the 15,610 winning numbers had a 100 percent chance of winning his prize if he complied with the rules. The cover of Reader's Digest states that there are over 28 million copies of the magazine printed monthly in 13 languages. (CX 1.) Here again the examiner is unable to see how any misrepresentation of any substance is made. There is no evidence that any consumers' expectations were aroused only to be let down when he determined that he did not have a winning number. This contention by counsel in support of the complaint must likewise be rejected.

27. Fourth, counsel in support of the complaint contend that statements in the coupons represented that respondents had distributed the winning coupons to persons who were eligible to win a prize and *only* to such persons. In support of this contention counsel point out that Reader's Digest was distributed in Nebraska and Wisconsin and that in all probability some prize winning coupons went into these states. The rules of the Sweepstakes specifically exclude persons living in Nebraska and Wisconsin from the possibility of winning a prize, even if they held winning numbers. Furthermore, counsel contend that the Sweepstakes rules excluded employees of McDonald's, its operators, advertising agencies, firms publishing the advertisement, their respective production agents and Blair and such employees' families. Counsel then speculate that some of such employees or their

families may have received a winning coupon but would be ineligible under the Sweepstakes rules. There is no proof in the record that anyone in Nebraska or Wisconsin or any of the employees or their families tried to collect a prize or even received a coupon with a winning number. To conclude from this that respondents stated in their coupons that they would be distributed *only* to persons who were eligible to collect the prizes would be based upon pure speculation. This the examiner refused to do. Consequently, this contention is rejected.

28. Lastly, counsel in support of the complaint urge that respondents have represented that they had *purchased* the prize at the time of the Sweepstakes, and apparently had all 15,610 of them stored somewhere awaiting the winners to claim them. Counsel in support of the complaint rely on the use of the word "reserved" at several places in the coupon. Counsel in support of the complaint assert "Consumers reading these statements could take them to mean that the represented prizes had been purchased at the time the statements were made." (Seventh Prop. Find., p. 27.) Respondents readily admit that they never purchased all of the prizes prior to the Sweepstakes. They concede that Blair was only paid $25,000 to supply the prizes and other services involved. However, there is no evidence that Blair or McDonald's would not have supplied all the prizes to all legitimate prize winners even had the cost exceeded $25,000. Nor is there any evidence that prizes as listed were not easily available on the market to be purchased by Blair for prize winners. Respondents apparently had no trouble securing the 227 prizes, including a 1969 Ford Country Squire station wagon which was not even available on the market in June of 1968. (CX 114.) To the hearing examiner, the word "reserved" means something less than purchased and stored away for distribution as counsel in support of the complaint contend. This was also the thinking of the Post Office Department who approved the use of the word "reserved" in connection with matching Sweepstakes when all prizes are not given away for mailing purposes. Under the circumstances, the examiner feels that respondents were justified in using the word "reserved" in its copy and that its use was not misleading or deceptive. How a consumer could be deceived by receiving a prize which was newly purchased and not previously purchased and stored away ("reserved") is hard to conceive.

CONCLUSIONS

1. There is no evidence connecting any of the corporate respondents other than D. L. Blair Corporation in any way to the acts and practices alleged in the complaint. Five of the corporate respondents have been dissolved pursuant to their incorporating state laws as found in the second finding above. Consequently, none of these corporate respondents can be held liable for the charges in the complaint.

2. The evidence in the record fails to establish that the remaining respondents, D. L. Blair Corporation and Cy Draddy, engaged in the false, misleading and deceptive acts and practices charged in the complaint.

3. The record fails to establish that the respondents misled anyone, directly or indirectly, into believing in connection with McDonald's $500,000 Sweepstakes that:

a) 15,610 prizes worth $500,000 at retail would be given away.

b) anyone submitting a winning coupon would receive his prize without complying with the rules of the Sweepstakes.

c) anyone participating in the Sweepstakes was afforded a reasonable opportunity to win a prize.

d) 15,610 winning coupons were distributed to eligible individuals during the course of the Sweepstakes.

e) 15,610 prizes had been purchased and were in storage for distribution during the course of the Sweepstakes.

ORDER

It is ordered, That the complaint herein be dismissed.

DISSENTING STATEMENT

BY DIXON, *Commissioner:*

This matter, on appeal by complaint counsel from the administrative law judge's initial decision, centers around a so-called "$500,000 sweepstakes contest" instituted by respondents through one advertisement placed in the June 1968 edition of the Reader's Digest. In bold-faced headlines, the advertisement began, "MAYBE YOU'RE ALREADY A WINNER IN MCDONALD'S $500,000 SWEEPSTAKES." Then, in the same size bold-face: "15,610 PRIZES RESERVED!"

The Commission complaint alleges that the "promotion was

Maybe you're already a winner in McDonald's. $500,000 Sweepstakes.

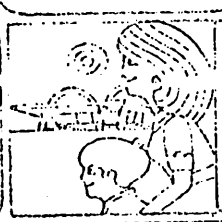
15,610 prizes reserved!

10	Ford Country Squire Station Wagons
100	Magnavox 23" Color TV's (with stand)
1,500	Kodak Mini-Super 8 Hawkeye Instamatic Movie Cameras with Super 8 Instamatic Projector
4,000	Aurora Mini-Electric Trains (1/160 Scale)
10,000	Tensor Mini-High Intensity Lamps

No purchase necessary. Here's all you do: Take the coupon below to your nearest McDonald's Family Restaurant (Or see Rule 2). Check it with the display you will find there. You're a winner if the number shown on coupon below matches one of the numbers shown on the official display card.
Remember these prizes are reserved for 15,610 Lucky Winners. You may be one but you will never know if you don't claim your prize. All prizes not claimed will never be given away, so hurry! Sweepstakes closes September 2, 1968.

(Front)

McDonald's is your kind of place.



This may be your winning number:

1996

(see other side for Official Rules)

McDonald's

McDonald's

McDonald's is your kind of place.

(Back)

$500,000 SWEEPSTAKES (SEE OTHER SIDE.)

Official Rules:

No Purchase Required! Here's All You Do!

1. Take this official "Winning Meal" Sweepstakes coupon to your nearest McDonald's (or see Rule 2). You are a prize winner if the number shown on your coupon matches one of the numbers appearing on the official display.

2. You may obtain a facsimile of the official display, by sending a stamped, self-addressed envelope to: Ronald McDonald, Box 397, New York, N.Y. 10046.

3. Sign your winning entry, and send it along with your name and address, via registered mail, to: D. L. Blair Corporation, 25 East 26th St., New York, N.Y. 10010.

Winning claims must be postmarked by September 2, 1968, and received by September 9, 1968. Upon verification by the judges that yours is one of the 15,610 valid winning coupons appearing in *Reader's Digest* all across the country, you will receive your prize. Decisions of the judges are final. Winners will be notified by mail. One prize to a family. No substitutions for prizes.

4. Sweepstakes open to residents of the U.S. except employees and their families of McDonald's Corporation, its operators, advertising agencies, firms publishing this advertisement, their respective production agents, and the D. L. Blair Corporation. Sweepstakes void in Wisconsin, Nebraska, and wherever prohibited by law, and is subject to all Federal, State and local regulations.

false, misleading and deceptive" because, *inter alia,* it represented, falsely, that $500,000 worth of prizes would be awarded, and that participating individuals were afforded a reasonable opportunity to win the prizes which are listed in the advertisement. It is uncontested that 227 prizes, worth only $12,000, were ultimately awarded, and that respondents, when they initiated the contest, knew that nowhere near $500,000 worth of prizes would be given. Respondent D. L. Blair accepted $25,000 as a fee for running the contest, out of which it was obliged to pay for *all* prizes.

The threshold question is whether or not the subject promotion had the capacity to lead the consumer into believing that 15,610 prizes, worth $500,000, were to be awarded. The administrative law judge's principal finding in this regard, that "There is nothing in the ad which states that all the prizes will be awarded," very clearly begs the question. For consumers to be led to believe that $500,000 worth of prizes would be awarded, it was not necessary that the advertisement come flat out and state that all of the prizes would be given away. I am persuaded that the subject advertisement, taken in its entirety, conveyed the impression that all of the prizes listed would be awarded. To look at it somewhat differently, consumers exposed to the subject advertisement would have been startled if informed, after having entered into the contest, that, of the 15,610 prizes listed, only 227 would ever be awarded, for the clear implication of the advertisement was that $500,000 worth of prizes would be given away.

Significantly, the administrative law judge relies more upon a so-called "disclaimer" ("Remember these prizes are reserved for 15,610 Lucky Winners. You may be one but you will never know if you don't claim your prize. All prizes not claimed will never be given away, so hurry!") than his finding that nothing in the advertisement stated that all prizes would be awarded. The "disclaimer," however, was clearly ineffective, as it was obscured both by its ambiguous language and its submergence in the small print of the advertising copy. Adding to its obscuration is the fact that any consumer, interested in participating in the promotion, could determine all the necessary aspects of the contest without reading the paragraph containing the "disclaimer." The broad scope of the promotion is described in the headlines. The prizes and the rules of the contest are in para-

graphs separate from the "disclaimer" paragraph, which was itself unmarked.

As to the ambiguity of the "disclaimer," it could be interpreted to mean that although all prizes not claimed would never be given away, there are a sufficient number of outstanding coupons to result in redemption of $500,000 worth of prizes. A careful analysis by an intelligent reader of the advertisement, I recognize, should lead to the interpretation urged by the administrative law judge. The form such analysis would take is significant. It would require that the consumer understand that 15,610 winning coupons represented the 15,610 prizes, and that the 15,610 prizes have a value of $500,000. Then, because each time one of the 15,610 winning tickets is not redeemed, the total number of winners is lessened by one, and, if the consumer understands that very few of these winning numbers are redeemed, he should conclude that the advertised $500,000 is nothing more than a starting figure from which a rough estimate of the real value of prizes to be awarded can be estimated. Unquestionably, the consumer should not be required to employ this kind of analysis in order to refute the direct implications of the advertisement.

I, therefore, dissent from the majority's rejection of the allegation in the complaint that respondents misrepresented the dollar worth of the prizes to be awarded by the $500,000 sweepstakes contest.

It is established in this record that, on the basis of previous experience with this type of contest, Blair was well aware that a very small percentage of the contestants with winning numbers, as low as 1.5 percent, would attempt to redeem their winning coupons. This contest was designed by Blair as a traffic-builder for McDonald's stores. Since McDonald's paid only $25,000 for this promotion, the $500,000 prize offered was obviously an attempt to attract customers for McDonald's, with the full knowledge that there was no possibility that the represented amount in prizes would be awarded.

The majority opinion brushes aside these facts of record with the assertion that there "is no question, however, that respondent was prepared to award * * * every prize claimed." This is an obstinate refusal to recognize the deception alleged in the complaint. The allegation is that respondents falsely represented that $500,000 in prizes would be awarded. As above stated, the obvious purpose was to induce customers to buy at McDonald's

on the assumption that the contest was established with the intention of awarding such customers with prizes amounting to $500,000. There was no such intention, and for that reason the representation is deceptive. The mere fact that this contest promoter "was prepared" to award prizes in a certain amount, when it knew from experience that prizes in such amount would never be claimed, is no defense to the alleged misrepresentation.

I note the majority's assertion that after summoning up all the "expertise" at its disposal, it concludes that it is not likely that many participants could be led to think that the advertisement represented that all prizes would in fact be given away. From the best that I can determine from the majority opinion, the " 'expertise' at its disposal" is embodied in its assumption that there were two groups of consumers: those who merely glanced at the advertisement and did not participate in the sweepstakes contest and those who did participate and necessarily read the entire advertisement.

I do not believe these assumptions are sound. In the first place, there is no reason to assume that those who did not thoroughly read the advertisement would not participate in the contest. Surely all participants in a contest are not assiduous readers of an entire ad which contains the rules of the contest. In the second place, it seems unreasonable to assume that those who did participate thoroughly read and *understood* the advertisement and the so-called disclaimer. The ad itself, which is appended to the majority opinion, contains all the information necessary for a person to participate in this contest in paragraphs separate and apart from the disclaimer relied upon by the majority.

Whatever the majority means by its reference to "persons who merely glanced at the ad," it is obvious that a person could determine all the necessary facts for participation without ever getting to the statement relied upon by the majority. Even assuming that this statement relieves the deception, which I do not, I am convinced that a substantial number of persons would concentrate on only that part of the ad which gave details as to participation, that they did participate, and thereby increased the number of McDonald's customers. I believe that the ad was purposely so designed. Moreover, the majority's assertion in footnote 4 [p. 257 herein] that it was not to McDonald's interest to have a high rate of consumer indifference, is irrelevant.

McDonald's interest was to have enough people believe that all prizes would be awarded so as to increase business in its stores sufficiently to more than recoup the $25,000 it paid for the contest. In addition, respondents' motivation has absolutely no bearing on what consumers were led to believe.

The obviously inadequate disclosures relied upon by the administrative law judge does not relieve the deception. In addition to the fact that the "disclosure" was buried in the text of the advertisement, after the contestants were assured of "$500,000 Sweepstakes" prizes in bold headlines, the disclosure only said that all prizes not claimed would never be given away. This is respondents' attempt to circumvent the fact that only a small percentage of the offered prizes would be awarded. Respondents should be required to cease representing a total value for prizes, in an effort to induce customers for their client, when they know that prizes of such total value will not be awarded.

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The administrative law judge almost summarily disposes of the further allegation in the complaint that consumers were led to believe that contest participants would be "afforded a reasonable opportunity to win the represented prizes," whereas, in fact, the odds of winning (one chance in 1.9 million of winning a first prize, and one in 1800 of winning a fifth prize) were not reasonable. The administrative law judge's rejection of the allegation seems to be based principally [1] on his finding that a holder of a winning ticket has a 100 percent chance of winning. The complaint, of course, does not allege that the holder of a *winning* ticket had no reasonable chance of winning, and so this finding is not only completely irrelevant, it borders on the frivolous.

The administrative law judge failed to confront the relevant questions: did the advertisement imply that the odds of winning the contest were reasonable, and, if so, were the odds reasonable?

The subject advertisement declares in its headlines that "the consumer may already be a winner," and that there are 15,610

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[1] In addition, the administrative law judge noted that each edition of the Reader's Digest disclosed the number of copies circulated. The only possible relevance of this fact is that a terribly curious contestant could determine the odds of winning if he knew (and there is no reason to expect that he would) that most of the copies of the magazine contained the promotion. But this hardly constitutes a meaningful disclosure.

prizes, a figure which in absolute (although not in relative) terms seems considerable. Thus, the promotion, by emphasizing the opportunity of winning significant prizes, implied that the odds of winning were reasonable.

Moreover, it is implicit in every contest, even absent the kind of language referred to above, that it would not be essentially a meaningless gesture for the consumer to enter the contest. The consumer, in short, expects that there is a reasonable chance of winning unless informed otherwise. This was recognized by the Commission in its Trade Regulation Rule for Games of Chance where the Commission found that the odds of winning most contests are slim (in four games considered, the odds of winning a major prize were 1.2 in one million) *and assumed that the consumer expects the contrary to be the case.* Having recognized this, the Commission determined that it was necessary to issue a rule requiring the disclosure of odds. It should be noted, in this connection, that while the subject trade regulation rule is directed in large part to contests where the odds of winning change periodically (a point made much of by the majority of the Commission), the rule also applies to contests of a shorter duration (less than 30 days), where any change in the odds is of no significance. Specifically, the rule provides that the odds be disclosed at the inception of the contest and at no other time when the contest lasts no longer than 30 days. Thus the rule recognizes the need for disclosures as to the odds of winning in *any* contest.

Finally, I do not think that it can be seriously contended that by any standard there was a reasonable chance of the contestant winning a major prize in the subject contest. Consider the fact that $12,000 worth of prizes was spread among 18 million potential contestants, that only one first prize was awarded among these 18 million potential contestants, and that if every first prize had been awarded (only one was) the odds of winning were one in 1.8 million.

Hence, I find that consumers were led to believe, by respondents' promotion, that the chances of winning a prize were reasonable, whereas, in fact, they were not. I, therefore, dissent from the Commission order for the further reason that the initial decision it has adopted erred in dismissing the subject allegation of the complaint. In summary, I would reverse the administrative law judge and sustain the complaint as to the two allegations discussed above, and issue an appropriate order.

SEPARATE DISSENTING STATEMENT

BY JONES, *Commissioner*:

I associate myself fully with Commissioner Dixon's dissent. Additionally, I believe the majority opinion is in error because in my view the challenged promotion of this contest was deliberately calculated to mislead consumers as respects their chances of winning one of the advertised prizes. Unless the $500,000 figure was designed to exaggerate the consumer's perceptions of his chances of winning, I cannot understand why the advertiser would elect to use that total figure when he was fully aware that no such amount would ever be given away as is apparent from the fact that the cost of administering this $500,000 contest was a mere $25,000! Moreover, I believe the Commission's decision is contrary to the spirit and underlying premises of our Trade Regulation Rule For Games Of Chance which requires any promoter of a game of chance to disclose the odds of each such game so as to ensure that consumers' will not be misled as to their chances of winning. Contrary to the statements contained in the majority opinion the basis for the required disclosure of the odds in games of chance promotions in no sense rested solely on the fact that these odds change during the course of the game. Unless the disclosure of odds was important in and of itself, any changes in these odds would be of little interest. Moreover, if the Commission was concerned with the fact that some advertised prizes would no longer be available to win, then it would have been more appropriate to handle that issue directly rather than as the majority would have us believe—and I believe contrary to the fact—to handle it through required disclosure of the odds.

I believe the Commission's action in dismissing this complaint is inconsistent with its games of chance trade regulation rule and that it is contrary to the evidence and the law developed and applicable in this case.

OPINION OF THE COMMISSION

BY DENNISON, *Commissioner*:

The complaint in this matter alleged that the promotion of McDonald's $500,000 sweepstakes was false, misleading and deceptive. A principal charge in the complaint was that the promotion advertised the availability of 15,610 prizes worth $500,000

but the ultimate redemption rate resulted in the awarding of only 227 prizes worth about $12,000. There is no question, however, that respondent was prepared to award, based on a winning number, every prize claimed. Furthermore, we are in agreement with the administrative law judge that respondents' advertisement made it adequately clear that the total number and worth of prizes that would ultimately be given out would depend on the extent to which the individual holders of the 15,610 winning numbers claimed their prizes prior to a certain date. Although it is without dispute that only 227 prizes, worth only $12,000, were ultimately awarded, that fact is essentially irrelevant to the situation of each individual contestant; as to him the possibility of being able to claim a prize was exactly as advertised. Accordingly, and for the reasons set forth more fully below, the Commission affirms the dismissal of this part of the complaint as well as other charges dismissed by the administrative law judge.

To begin with, it should be kept clear just what issues are presented to us in this case and what issues are not. The complaint and the subsequent hearings raised only the question of whether the advertisement for the McDonald's sweepstakes promotion was deceptive, the principal charges being that the advertisement for the sweepstakes represented that persons had a "reasonable opportunity" of winning prizes and that all prizes described in the ad would in fact be awarded. As complaint counsel state: "This is a case of false advertising. The representations of the advertisement are crucial." (Appeal brief p. 14.)

The Commission does not have before it any issues of whether, for instance, the sweepstakes might be condemned as an unlawful lottery, *Federal Trade Commission* v. *R. F. Keppel & Bro., Inc.*, 291 U.S. 304 (1934),[1] or whether respondents' utilization of a sweepstakes promotion in which few of the advertised prizes are in fact awarded might be attacked under a theory of "unfair"

[1] Many "pre-selected winner" sweepstakes involve the distribution of number-bearing coupons to numerous people with the direction that to learn if they have won they need only return the number through the mail (with the suggestion that they also include an order for merchandise). The aim of the McDonald's sweepstakes, however, was to help build traffic in its restaurants. The recipient was told he could learn if his number was a winner by going to a McDonald's outlet where a list of preselected winning numbers was on display. Some state courts have held that the requirement of going to a store constitutes "consideration" and that such traffic-builders are illegal under state anti-lottery laws. Recently the Supreme Court of the State of Washington held that a preselected sweepstakes offer sent through the mail constitutes a lottery device and an unfair method of competition under the state's "little FTC Act." *State of Washington* v. *Reader's Digest Assn.*, (Wash. 1972, No. 42252).

business practice, as distinguished from whether it was deceptively advertised. Cf. *Federal Trade Commission* v. *Sperry & Hutchinson,* 405 U.S. 233 (1972).

Also, of course, dismissal of this case does not in any way imply that other sweepstakes promotions may not have been promoted by various and specific deceptive advertisements. Compare descriptions of the advertisement and practices alleged in the complaints in the consent settlements *Longines-Wittnauer, Inc., et al.,* Docket C–2120 [79 F.T.C. 964]; *The Procter & Gamble Company,* Docket C–2059 [79 F.T.C. 589]; *The Reader's Digest Association, Inc.,* Docket C–2075 [79 F.T.C. 696]; and *Reuben H. Donnelly Corporation,* Docket C–2060 [79 F.T.C. 599]. See also the Report of the Subcommittee No. 4 to the Select Committee on Small Business, House of Representatives, entitled "Investigation of Preselected Winners' Sweepstake Promotions" (H.R. Rep. No. 91–1162, 91st Cong., 2d Sess.).

Finally, dismissal of this case does not foreclose the possibility that the Commission might at some future time find it necessary by rulemaking to impose certain uniform requirements for sweepstakes just as it has regulated certain "games of chance" in its Trade Regulation Rule for Games of Chance in the Food Retailing and Gasoline Industries.[2] Disposition by adjudication of charges in a single case would not prevent regulation by way of rule-making where unfair or deceptive practices are found to be prevalent in the same industry. See the Trade Regulation Rule on Door-to-Door Sales and the Commission's Interlocutory Opinion in *Hearst Corp.,* Docket 8832, May 26, 1971 [78 F.T.C. 1588].

Turning then to the issues of deceptive advertising in this case, the record shows that McDonald's Corporation and its advertising agency (D'Arcy Advertising Company) prepared and purchased a 24-page advertising insert for the June 1968 issue of Reader's Digest magazine. As part of the insert they decided to use a sweepstakes promotion as a traffic-builder and engaged respondent D. L. Blair Corporation to administer the sweep-

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[2] It has been the position of the Commission that sweepstakes, whether or not operated by food and gasoline retailers, are not covered by that Trade Regulation Rule. See statement of Commissioner Dixon, then Chairman, before the House Subcommittee on Activities of Regulatory Agencies Relating to Small Business, Hearings on "Preselected Winners' Sweepstakes Promotions," Vol. 1, p. 808 (November 1969):

"[I]n general, the sweepstake drawing is a 'one-shot' affair. This one-shot characteristic of sweepstakes might assist us in distinguishing them from games of chance which approach the typical drawing situation but where participants, during the course of the game, can visit the retail outlet many times in their effort to obtain the winning game piece."

stakes. The Blair Corporation is a promoter and administrator of contests and sweepstakes and it devises rules for such promotions, receives mailed entries, authenticates entries and distributes prizes.

In this case McDonald's decided to promote a "preselected winner" type sweepstakes called "McDonald's $500,000 Sweepstakes." A copy of the page of the ad is attached as an appendix to this opinion [p. 246, herein].

The significance of a preselected winner sweepstakes is that instead of having a raffle-type drawing after all chances or winning numbers have been distributed, the sponsor first prints a number of coupons bearing predetermined "winning" numbers, the total of which correspond to the number of prizes offered. The coupons are then mixed or seeded at random with a much larger quantity of non-winning numbers. All are then distributed. In this case a total of 15,610 winning numbers, each matching one of the 15,610 prizes advertised, were seeded among non-winners in some 18,900,000 copies of the June 1968 issue of Reader's Digest.

Members of the public to whom that issue of Reader's Digest was sold or delivered then had the opportunity to match his or her number with a list of the winning numbers. Although one could send for a list through the mail, the aim of the promotion was to get readers to go to a McDonald's restaurant where such a list was displayed. Obviously, whether a participant ultimately was entitled to a prize depended on two things: (1) whether he in fact received a winning coupon, and (2) whether he acted to find out whether his number was a "winner" and then took the right steps (described in the advertisement) to claim his prize before a certain date. If a participant, after checking his number, learned it was not a winner, he was not instructed to do anything. In other words, he was not to send in his "losing" coupon and there was no apparent opportunity for further drawing to win prizes that might have gone by default.

Complaint counsel's first contention is that the McDonald advertisement was deceptive because it represented that all prizes would in fact be given away to participants. Complaint counsel ask us on the basis of our "expertise" as Trade Commissioners to make this determination from the ad.

Speaking for a majority of the Commission, and summoning up all the "expertise" at our disposal, we simply cannot conclude

that it is likely that many participants could be led to think this. Perhaps some persons who merely glanced at the ad but did not participate, *i.e.*, did not bother to match their numbers with a master list, may have had such an impression. But surely, if this agency is to concern itself with meaningful deceptive advertising cases, we should not be concerned with this type of contingency. Unless a person chose to participate in the sweepstakes he could not have been deceived to his detriment.

Putting ourselves in the position of a person who decided to participate in the contest, we fail to see how he could avoid reading the remaining part of the front side of the ad. He would necessarily have to read that passage to learn what to do with his numbered coupon—and by what date. This passage includes the statement that all prizes not claimed will never be given away:

> Remember these prizes are reserved for 15,610 Lucky Winners. You may be one but you will never know if you don't claim your prize. All prizes not claimed will never be given away, so hurry! Sweepstakes closes September 2, 1968.

Implicit in much of complaint counsel's argument is the notion that regardless of the rules of a particular sweepstake or contest the law should require that a sponsor award in some manner all the prizes mentioned. It is argued it is unconscionable for a company to suggest that it is running a "$500,000 sweepstake" when it knows in advance from past experience that, because of the size of the population covered and the advertising medium, the redemption rate of winning numbers will undoubtedly be below 10 percent. In this case D. L. Blair agreed to run the sweepstakes for a fee of $25,000 from which it obligated to pay for all the prizes awarded. The 227 prizes finally awarded were worth about $12,000 (at retail value).

Perhaps on general equitable grounds of fairness there is a public policy argument in favor of requiring that all prizes mentioned in ads should be awarded.[3] But we find no basis to say that the "$500,000–15,610 prizes" was a "fictitious" figure.

Admittedly, the disparity between the amount advertised and the amount given away in this case is surprising to most people

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[3] It might be noted in passing, however, that in its Trade Regulation Rule for Games of Chance in the Food Retailing and Gasoline Industries, the Commission did not require that all advertised prizes had to be awarded even though the Bureau of Economics investigation disclosed that the redemption rate of winning game pieces was as low as 35 percent. *Economic Report on the Use of Games of Chance in Food and Gasoline Retailing*, p. 467 (1968).

not familiar with this aspect of the advertising trade. But the disparity is due mainly to consumer indifference to the sweepstakes, not to anything false and deceptive in the ad. There was nothing here that lured persons to purchase something that turned out to be of less value than it was touted to be. No holder of a coupon in the sweepstakes had his chances for winning *reduced* by the fact that over 90 percent of the populace did not even bother to enter the contest.

The "$500,000–15,610 prizes" figure did not exaggerate whatever chances he had to win. It accurately stated the total number of prizes available. In calculating the odds that a person might hold a winning coupon, complaint counsel themselves use the 15,610 prize figure. (Had the total amount advertised been reduced as they suggest, this would have reduced any individual's chances of winning.)

In other words, a participant's "chance" of winning one of the 15,610 advertised prizes remained the same whether another participant holding a winning number claimed his prize or not. The fact that respondents were aware of the high rate of consumer indifference to the sweepstakes (and hence the low anticipated rate of prize redemption) did not make the offer deceptive in any material sense.[4]

The second principal charge made is that the McDonald's sweepstakes offer expressly or impliedly represented that participants were afforded a "reasonable opportunity" to win a prize. Complaint counsel do not define what they conceive to be "reasonable" odds of winning in such a contest, although they do characterize the odds against winning prizes in this sweepstakes as "staggering." (They emphasize that the odds of winning one of the 10 automobiles were 1 out of 1,900,000. However, the odds of winning any of the 15,610 prizes were about 1 out of 1,200).[5]

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[4] It should be noted also that it was not to McDonald's interest to have a high rate of consumer indifference to the ad since it was attempting to increase traffic in its restaurants. It is somewhat ironic for complaint counsel to emphasize the great disparity between prizes offered and those actually awarded. The greater the disparity, the less successful the ad would have been in luring customers into participating in the sweepstakes. On the other hand, had the "deceptive" ad been 100 percent effective in drawing consumer response (an impossible figure where large numbers of people are concerned, of course) all the prizes would have been redeemed. But had this happened, complaint counsel's argument of deception insofar as it is based on disparity would have vanished, there being no disparity.

[5] It has been calculated that the odds in favor of winning even one of the lesser cash prizes in the New York State Lottery are 1 in 4,167. *U.S. News & World Report*, August 28, 1967, pp. 80–81. Also, it is widely appreciated that the odds against a large cash prize in such legalized lotteries, including the Irish Sweepstakes, are astronomical. Yet, obviously, people are willing to participate simply out of a gambling spirit, despite the fact that they cannot expect to have a good chance of winning.

Complaint counsel argue that people would read such a representation into the advertising or would assume that their chances of winning were good. Again, complaint counsel ask us to make these findings based on our expertise. However, we think it is just as logical to believe the people participated in this sweepstake with the attitude that regardless of the odds there was nothing to lose by so doing but considerable reward if they happened to win.[6] Indeed, complaint counsel suggest that many people "wishfully hope for miracles" to come their way and this may be what draws people to participate in sweepstakes. It is argued that to counterbalance this gambling instinct respondents had a *duty* when making their offer to inform prospective participants of the odds of winning. In support of this counsel cite the odds-disclosure requirement in the Commission's Trade Regulation Rule for Games of Chance in the Food Retailing and Gasoline Industries, 16 C.F.R. 419.1 (1969).

But the sweepstakes promotion before us pre-dated that Trade Regulation Rule, and that rule was specifically limited to cover particular promotions of "games of chance," not sweepstakes of the type here. See footnote 2 [p. 254], *supra*. To rely on that rule as the sole justification for holding that respondents violated the law in 1968 for having failed to disclose the mathematical odds for winning the various prizes would be equivalent to broadening the scope of the rule and then applying it retroactively—all without going through required rulemaking procedures. *NLRB* v. *Wyman-Gordon*, 394 U.S. 759 (1969). Any determination of the legality or illegality of respondents' actions must be based on the record in this proceeding.

Furthermore, that rule was predicated on advertising practices that are distinguishable from those involved here. Games of chance in the retail grocery and gasoline industries that were prevalent in the 1960's in many cities involved games that were continually advertised over periods of several weeks and the ads often suggested (contrary to fact) that the odds of winning had

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[6] In holding that we believe it is unlikely that many consumers would read the McDonald's advertising in the manner argued by complaint counsel, we realize that we may not be infallible in judging how consumers perceived such advertising. Our decision here would not, of course, prevent the staff in another proceeding involving similar issues from presenting evidence if it exists, such as a consumer survey, to support their views. The majority simply believes that, on the record of this case, and unaided with such evidence, it is unreasonable to believe that consumers read into this advertising the representations asserted by complaint counsel or that consumers would expect that their chances of winning were necessarily good.

not changed. Consumers were encouraged to continue to shop at certain establishments by participating in the games even though many or all of the available prizes may have been redeemed. Also, the Commission's Statement of Basis and Purpose in that proceeding indicated that the record before the Commission showed a practice by many sponsors of the games to use local newspaper ads to imply that the chances of winning large prizes were very good. Large-prize awards were headlined with the same names of winners listed week after week as though awards of large prizes were constantly being made available. The geographic area involved in some games was not made clear and consumers were led to believe that games were localized when often they were not.[7] The Commission concluded that "advertising *which repeatedly emphasizes the opportunity to win large prizes, when the chances of winning those prizes is often very remote* is, we conclude, inherently deceptive. Such deception can be cured only by a disclosure of the actual prize structure and odds for games." Statement of Basis and Purpose, p. 26.

Here, in contrast, the McDonald's promotion was a "one-shot" advertisement in an issue of a nationwide magazine. There was no subsequent intensive advertising that falsely implied that new prizes were being added. There is no reason to think that participants erroneously thought the McDonald's sweepstakes was local to their area and that therefore the odds of winning were great. Indeed, the rest of the 24-page McDonald's advertising insert was entitled "Mini-trips for maxi-fun" and described scenic tours in all parts of the United States with a 5-page listing of all the cities and towns in which there was a McDonald's restaurant. Although the ad did not disclose the number of coupons distributed, *i.e.*, the number of Reader's Digests distributed that month, surely the average reader was acquainted with the fact that the Reader's Digest is a widely-selling magazine with probably millions of readers. This should have dispelled any notion, we would think, that the participant had been "selected out" to receive an

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[7] In the *Economic Report on Games of Chance* the staff set forth the following additional examples of deceptive advertising of odds: (1) actually overstating the odds of winning, (2) advertising a large number of prizes being available (*e.g.*, 428,790) without giving any information on the breakdown of prizes (98 percent worth between 10 and 20 cents), (3) running a game program which encompassed several separate and distinct markets but advertising in each market the total number of dollar value of prizes available in all markets, and (4) running the names of $1,000 winners without giving their addresses so that consumers in a given market may believe these individuals are from their market area. *Ibid.* 460–467.

entry coupon or that the sweepstakes was confined to a small geographical area.

In short, we fail to find any persuasive basis in the record of this particular case to conclude that participants were deceived by McDonald's Sweepstakes advertisement to believe that they had a "reasonable opportunity" to win any one of the prizes, whatever that term may mean.

As to the other charges in the complaint, we agree that the administrative law judge's dismissal of them was correct for the reasons set forth in his initial decision. An appropriate order accompanies this opinion.

FINAL ORDER

This matter is before the Commission on the appeal of complaint counsel from the initial decision of the administrative law judge issued May 1, 1972, dismissing the complaint. Upon examination of the record, complaint counsel's appeal brief, respondents' answering brief and the initial decision, and after full consideration of the issues of fact and law presented the Commission has concluded, for the reasons set forth in the accompanying opinion, that the initial decision of the administrative law judge should be adopted and issued as the decision of the Commission. Accordingly,

It is ordered, That complaint counsel's appeal from the initial decision of the administrative law judge be, and it hereby is, denied.

It is further ordered, That the initial decision of the administrative law judge be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the complaint in the captioned matter be, and it hereby is, dismissed.

Commissioners Dixon and Jones dissented and submitted dissenting statements.

IN THE MATTER OF

KOSCOT INTERPLANETARY, INC., ET AL.

Docket 8888. Interlocutory Order, Jan. 22, 1973.

Order denying motions of certain respondents for a stay of the proceeding or dismissal of the complaint.

ORDER DENYING MOTIONS TO STAY THE PROCEEDING OR DISMISS THE COMPLAINT

This matter is before us upon the administrative law judge's certification, dated October 16, 1972, of two motions by several of the respondents herein.[1] The first motion, dated September 11, 1972, seeks a stay in this proceeding pending resolution of certain criminal matters instituted by the States of Michigan and Florida against some of the movants. The second motion, dated September 26, 1972, with an addendum dated September 27, 1972, again requests a stay, or in the alternative, dismissal of the complaint on account of the aforementioned criminal proceedings as well as certain civil actions which are pending against some of the movants.

I

Respondents first contend that we must stay the Commission proceeding until all state criminal proceedings pending against certain respondents have been completed. Any attempt on their part to respond to or defend against the Commission complaint or to testify in the Commission's proceeding, may, they argue, constitute a waiver of their claim of privilege against self incrimination with respect to the pending criminal matters. Further, they claim that issuance by the Commission of an order to cease and desist in the face of respondents' assertion of their Fifth Amendment privilege would amount to a denial of due process of law. We disagree.

Respondents, to support their contentions, have submitted copies of criminal indictments and informations which have been initiated against some of them by the States of Michigan and Florida.[2] These papers indicate that some respondents are under criminal indictments with respect to programs known as "Dare To Be Great" and "Consumer Research Bureau of America, Inc." Our complaint, on the other hand, concerns respondents' activities with respect to their Koscot Interplanetary marketing program. The Commission's proceeding does not concern

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[1] The movants are respondents Koscot Interplanetary, Inc., Glenn W. Turner Enterprises, Inc., Glenn W. Turner, Malcom Julian, Hobart Welder and Michael Delaney.

[2] Exhibits 3–15, attached to respondents' Motion Requesting Certification of Questions to the Commission, filed September 26, 1972, and Exhibit 17, attached to Addendum to respondents' Motion Requesting Certification of Questions to the Commission, filed September 27, 1972.

the same transactions as are involved in the criminal matters. We are not aware of any authority, and respondents point to none, which would require us to postpone the Commission proceeding simply because respondents also happen to be defendants in criminal proceedings arising out of activities different from those with which the administrative complaint is concerned. Indeed, the decision on which respondents principally rely, *Silver* v. *McCamey,* 221 F.2d 873 (D.C. Cir. 1955) indicates that due process is not violated where an administrative action against a defendant is based on charges different from the criminal charges (221 F.2d at 875) :

> It does not follow, as the Board contends, that the public must be left without protection against an accused hacker pending his criminal trial. (1) The Board may hold a hearing on other charges and, if it finds them sufficient, revoke his license. * * *

Moreover, the individual respondents may, as they point out, assert their Fifth Amendment privilege against self-incrimination in connection with the Commission's adjudicative proceeding.[3] However, the privilege does not impair the obligation of a witness to testify if criminal prosecution against him is barred by statutory enactment. *Reina* v. *United States,* 364 U.S. 507 (1960). Hence, if, upon assertion of the privilege, by an individual respondent, an appropriate order is issued by the administrative law judge pursuant to the provisions of 18 U.S.C. Section 6002 *et seq.* and Section 3.39 of the Commission's Rules of Practice, the grant of immunity from future criminal prosecution would be coextensive with the witness' constitutional privilege against self-incrimination. *Kastigar* v. *United States,* 406 U.S. 441 (1972) ; *Murphy* v. *Waterfront Commission of New York Harbor,* 378 U.S. 52 (1964) ; *Mallory* v. *Hogan,* 378 U.S. 1 (1964) ; *Adams* v. *Maryland,* 347 U.S. 179 (1954).

II

Respondents further contend that public interest in the Com-

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[3] The privilege against self-incrimination guaranteed by the Fifth Amendment is, of course, a personal privilege. It may not be asserted by a corporation, *Wilson* v. *United States,* 221 U.S. 361 (1911); by an individual as agent of a corporation, *Hale* v. *Henkel,* 201 U.S. 43 (1906); or on behalf of a corporation by an individual in his capacity as *alter ego* of the corporation, *United States* v. *Guterma,* 272 F.2d 344 (2d Cir. 1959); *United States* v. *Fago,* 319 F.2d 791 (2d Cir. 1963); *United States* v. *Bell,* 448 F.2d 40 (9th Cir. 1971). It is equally well settled that "[b]ooks and records kept in a representative rather than in a personal capacity cannot be the subject of the personal privilege against self-incrimination, even though production of the papers might tend to incriminate [their keeper] personally." *United States* v. *White,* 322 U.S. 694, 699 (1944).

mission's proceeding is lacking because of the outstanding criminal actions previously mentioned as well as civil actions which have been instituted by some 34 states and the District of Columbia, the Securities and Exchange Commission and private parties.

It is clear, as we have indicated, that the pending criminal matters are not related to the activities of the respondents with which the Commission's complaint is concerned. Successful prosecution of those actions would not relieve the Commission of its responsibility to proceed against the acts and practices alleged in the complaint.

As for the numerous civil actions which respondents assert have been initiated, there is no indication that these actions have succeeded thus far in halting the acts and practices alleged in the complaint. Indeed, there is no indication from any of the papers filed by respondents that they are presently subject to an injunctive order of any sort with respect to the alleged acts and practices. And we would be remiss in our duties were we to dismiss this complaint on the basis of speculation as to the outcome of outstanding SEC, state or private actions. Accordingly,

It is ordered, That respondents' motions to stay the proceeding or dismiss the complaint certified to the Commission October 16, 1972, be, and they hereby are, denied.

IN THE MATTER OF

LOVE TELEVISION & STEREO RENTAL, INC., ET AL.

Docket C-2245. Interlocutory Order, Jan. 23, 1973.

Order granting in part respondents' petition for modification of consent order conditional upon respondents' submitting a signed agreement containing a consent order setting forth the language set out in the Commission's order ruling on the petition.

ORDER IN RESPONSE TO PETITION FOR MODIFICATION

Pursuant to Section 3.72(b)(2) of the Rules of Practice, on August 7, 1972, respondents filed a petition for modification of the consent order in this matter requesting that the words "or

for any specified amount, payment or period of time" be deleted from Paragraph One of the order. Respondents contend that it was contemplated by the parties that the requirements of Paragraph One of the order would be applicable only when respondents advertised or represented that their products could be rented or purchased at "a discount price, or an inexpensive price, or an advantageous price."

The Commission does not agree, however, that its decision to accept the proferred consent order contemplated that the order disclosures should be limited to situations where respondents represented their merchandise could be purchased or rented at discount, inexpensive or advantageous prices. It was also the intent of the Commission to require the disclosures provided in Paragraph One whenever, in connection with respondents' "rent-to-buy" plan or similar installment purchase plan, or any rental plan, a specified amount, payment or period of time is represented. The Commission notes, however, that the order as presently worded could be construed to apply to business transactions not falling within such plans. Accordingly,

It is ordered, That respondents' petition herein should be granted in part, providing respondents submit within 20 days a signed agreement containing a consent order which contains a new "paragraph one" revised as follows:

1. Representing in any advertisement, directly or by implication, or in any oral statements made to a customer, that an individual can rent or purchase any of respondents' merchandise (i) at a discount price, or an inexpensive price, or an advantageous price, or a special price, or (ii) for any specified amount, payment or period of time in regard to any "rent-to-buy" plan or similar installment purchase plan, or in regard to any rental plan,—unless there is disclosed in every instance in a clear and meaningful way, the average prevailing retail price of the merchandise or comparable merchandise using the term "average retail price" together with either:

(a) the total dollar cost to the individual of purchasing the same merchandise under respondents' "rent-to-buy" plan, using the term "our total purchase price;" or

(b) the total charge for renting the same merchandise for twelve months using the term "rent for one year."

IN THE MATTER OF

VILLA CARPET MILLS, INC., ET AL.

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

Docket C–2346. Complaint, Jan. 29, 1973—Decision, Jan. 29, 1973.

Consent order requiring a Calhoun, Georgia, manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing or distributing any fabric, product or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

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

PARAGRAPH 1. Respondent Villa Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Willard L. Lewis, is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at South Industrial Boulevard, Calhoun, Georgia.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the

Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were carpets and rugs styles "Vista" (all colors) and "Valiant" (all colors) subject to Department of Commerce Standard For the Surface Flammability of Carpets and Rugs (DOC FF 1–70).

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

DECISION AND ORDER

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

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

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

1. Respondent Villa Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

Respondent Willard L. Lewis, is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs. Their office and principal place of business is located at South Industrial Boulevard, Calhoun, Georgia.

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

ORDER

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

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

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

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. The special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and the results thereof, (5) any disposition of said products since January 13, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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

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

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

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

IN THE MATTER OF

DAVIS TILE CO., INC., ET AL.

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

Docket C-2347. Complaint, Jan. 30, 1973—Decision, Jan. 30, 1973.

Consent order requiring an Ellijay, Georgia, seller and manufacturer of carpets and rugs, among other things to cease manufacturing for sale, selling, importing or distributing any product, fabric or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

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

PARAGRAPH 1. Respondent Davis Tile Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. The office and principal place of business of said corporate respondent is located at Progress Road, Ellijay, Georgia.

Respondent Davis Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

The office and principal place of business of said corporate respondent is located at Industrial Boulevard, Ellijay, Georgia.

Respondent Ralph T. Davis is an officer of the above named corporations with his office and principal place of business located at Progress Road, Ellijay, Georgia. He formulates, directs and controls the acts, practices and policies of said corporations.

Respondents are engaged in the manufacture and sale of carpets and carpet tiles.

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

Among such products mentioned hereinabove were style "Princess" carpet tiles in colors "Lilac Pink" and "Orange Flame," subject to Department of Commerce Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1–70).

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

DECISION AND ORDER

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

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

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

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

1. Respondent Davis Tile Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. The office and principal place of business of said corporate respondent is located at Progress Road, Ellijay, Georgia.

Respondent Davis Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. The office and principal place of business of said corporate respondent is located at Industrial Boulevard, Ellijay, Georgia.

Respondent Ralph T. Davis is an officer of the above named corporations with his office and principal place of business located at Progress Road, Ellijay, Georgia. He formulates, directs and controls the acts, practices and policies of said corporations.

Respondents are engaged in the manufacture and sale of carpets and carpet tiles.

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

ORDER

It is ordered, That respondents Davis Tile Co., Inc., a corporation, its successors and assigns, and its officers, Davis Carpet Mills, Inc., a corporation, its successors and assigns, and its officers, and respondent Ralph T. Davis, individually and as an officer of said corporations and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for

introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric," and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

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

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

It is further ordered, That the provisions of this order with respect to customer notification, recall and processing or destruction shall be applicable to your products made in style "Princess" carpet tiles in colors "Lilac Pink" and "Orange Flame" as designated in subparagraph one of Paragraph Two of the complaint giving rise to this order and any subsequent products made in any style or any color and determined to be in violation of the Flammable Fabrics Act, as amended, prior to the date of acceptance by the Commission, of the final compliance report.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products

since March 7, 1972 and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing, a sample of any such carpet or rug.

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

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

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

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

IN THE MATTER OF

K & J CARPETS, ET AL.

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

Docket C–2348. Complaint, Jan. 30, 1973—Decision, Jan. 30, 1973.

Consent order requiring a Dalton, Georgia, manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or

regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that K & J Carpets a partnership, and James A. Kittle and Dennis L. Jackson, individually and as co-partners trading as K & J Carpets, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent K & J Carpets is a partnership with its office and principal place of business located at Route 5, Box 74, Dalton, Georgia.

Individual respondents James A. Kittle and Dennis L. Jackson are co-partners trading as K & J Carpets and their address is the same as that of said partnership.

Respondents are engaged in the manufacture and sale of carpets and rugs.

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

Among such products mentioned hereinabove were carpets and rugs in style "Marbora HD," subject to Department of Commerce Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1–70).

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of compe-

tition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent K & J Carpets is a partnership with its office and principal place of business located at Route 5, Box 74, Dalton, Georgia.

Individual respondents James A. Kittle and Dennis L. Jackson are co-partners trading as K & J Carpets and their address is the same as that of said partnership.

Respondents are engaged in the manufacture and sale of carpets and rugs.

2. The Federal Trade Commission has jurisdiction of the

subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents K & J Carpets, a partnership, and James A. Kittle and Dennis L. Jackson, individually and as co-partners trading and doing business as K & J Carpets, or under any other name or names, their successors and assigns, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce or selling or delivering after sale or shipment in commerce, any product, fabrics, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabrics, or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

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

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

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the

channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and the results thereof, (5) any disposition of said products since August 31, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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

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

IN THE MATTER OF

MICHAEL YACCARINO TRADING AS RENO'S AUTO SALES

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

Docket C-2349. Complaint, Feb. 1, 1973—Decision, Feb. 1, 1973.

Consent order requiring a Neptune, New Jersey, seller and distributor of used automobiles, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act. Respondent is further required to provide his customers who speak and read only Spanish with contracts and credit cost disclosures printed in Spanish.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Michael Yaccarino, an individual doing business as Reno's Auto Sales, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Michael Yaccarino, is an individual doing business under the trade name and style of, Reno's Auto Sales, under and by virtue of the laws of the State of New Jersey. Michael Yaccarino, the sole owner of Reno's Auto Sales, is the individual responsible for formulating, directing and controlling the acts and practices of the firm.

PAR. 2. Respondent is now and for some time last past has been engaged in the offering for sale, sale and distribution of used automobiles to the consuming public.

COUNT I

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

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly extends consumer credit, as "consumer credit" is defined in Regulation Z, the implementing Regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of his business, as aforesaid, and in connection with credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System, has caused and is causing customers to execute binding retail installment contracts for the sale of used automobiles. On these contracts, hereinafter referred to as "the contract," respondent provides certain consumer credit cost information. Respondent does not provide these customers with any other consumer credit cost disclosures.

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

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

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

3. Fails in some instances to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8(c)(7) of Regulation Z.

4. Fails in some instances to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(3)(i) of Regulation Z.

5. Fails to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the total amount of the finance charge, and fails in some instances to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

6. Fails in some instances to use the term "annual percentage

rate" to express the rate of finance charge as required by Section 226.8(b) (2) of Regulation Z.

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

8. Fails in some instances to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness as required by Section 226.8(b) (3) of Regulation Z.

9. Fails in some instances to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b) (7) of Regulation Z.

10. Fails to make full disclosure before the transaction is consummated and to furnish the customers with a duplicate of the instrument or a statement by which the required disclosures are made, as required by Section 226.8(a) of Regulation Z.

11. Fails to print the term "finance charge" more conspicuously than other terminology where such term is required to be used, as required by Section 226.6(a) of Regulation Z.

12. Fails to (a) obtain a specific dated and separately signed affirmative written indication of the customer's desire for credit life insurance to be written in connection with its credit sale and (b) disclose the cost of such insurance to the customer in the insurance authorization signed by the customer, as required by Section 226.4 of Regulation Z.

13. Fails to furnish a clear, conspicuous and specific statement in writing setting forth (a) the cost of insurance against loss or damage to the property purchased which is written in connection with the credit transaction and (b) the privilege of the customer to choose the person through whom the insurance is to be obtained, as required by Section 226.4(a) (6) of Regulation Z.

14. Fails to properly identify the creditor as required by Section 226.8(a) of Regulation Z.

15. Failed to obtain new contract forms or to alter the existing stock of contract forms prior to, during and subsequent to the period beginning July 1, 1969 and ending December 31, 1969, as required by Section 226.6(k) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provi-

sions of Regulation Z constitute violations of that Act, and pursuant to Section 108, thereof, respondent has thereby violated the Federal Trade Commission Act.

COUNT II

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

PAR. 7. Respondent has, in the course and conduct of his business, offered for sale, sold or caused to be sold and delivered, automobiles to customers who reside in the States of New Jersey and New York.

PAR. 8. By virtue of the allegations in Paragraph Seven, respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. In the course and conduct of his business, respondent engages in the sale of used automobiles to customers who only speak, read and write Spanish. They understand little English and do not read or write it.

Some of these customers, who only read, write and speak Spanish, are given an oral sales presentation in Spanish by the respondent or one of his agents or employees during negotiations for the purchase of used cars. Such oral sales presentations often do not include a full and complete disclosure of all credit cost information and other terms and conditions of the written retail installment contract.

After the oral sales presentation has been made in Spanish, customers are presented with a contract form written in English without being afforded an opportunity of having anyone read or explain all the terms and conditions of said contract to them. These customers who only read and understand Spanish, therefore, do not receive full and adequate disclosure of all credit cost information and other terms and conditions of the contract.

Therefore, respondent's practice of providing to its customers, who only speak and read Spanish, a partial oral disclosure in Spanish of the terms and conditions of the contract, without reading all the terms and conditions of the retail installment

contract which are written in English, is deceptive, misleading and confusing to the Spanish speaking customers and constitute an unfair and deceptive act and practice in commerce in violation of Section 5 of the Federal Trade Commission Act.

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

DECISION AND ORDER

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

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

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

1. Respondent Michael Yaccarino is an individual doing business as Reno's Auto Sales. Respondent's office and principal place

of business is located at 312, Highway #35, Neptune, New Jersey.

Respondent Michael Yaccarino formulates, directs and controls the policies, acts and practices of said proprietorship and his address is the same as that of the sole proprietorship.

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

ORDER

I

It is ordered, That respondent Michael Yaccarino, an individual doing business as Reno's Auto Sales, and respondent's agents, representatives, employees, successors and assigns, directly or through any corporate or other device or under any other name in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (Pub. L. 90–321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

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

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

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

4. Failing in some instances to use the term "finance charge" to describe the sum of all charges required by Sections 226.4 of Regulation Z to be included therein, as required by Section 226.8(c)(8)(i) of Regulation Z.

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

6. Failing in some instances to use the term "annual percentage rate" to express the rate of finance charge as required by Section 226.8(b) (2) of Regulation Z.

7. Failing to disclose the annual percentage rate computed in accordance with Section 226.8(b) (2) of Regulation Z.

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

9. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by Section 226.8(b) (7) of Regulation Z.

10. Failing to make full disclosure before the transaction is consummated and to furnish the customers with a duplicate of the instrument or a statement by which the required disclosures are made, as required by Section 226.8(a) of Regulation Z.

11. Failing to print the term "finance charge" more conspicuously than other terminology where such term is required to be used, as required by Section 226.6(a) of Regulation Z.

12. Failing to (a) obtain a specific dated and separately signed affirmative written indication of the customer's desire for credit life insurance to be written in connection with its credit sale and (b) disclose the cost of such insurance to the customer in the insurance authorization signed by the customer, as required by Section 226.4(a) (5) of Regulation Z.

13. Failing to furnish a clear, conspicuous and specific statement in writing setting forth (a) the cost of insurance against loss or damage to the property purchased which is written in connection with the credit transaction and (b) the privilege of the customer to choose the person through whom the insurance is to be obtained, as required by Section 226.4(a) (6) of Regulation Z.

14. Failing to properly identify the creditor as required by Section 226.8(a) of Regulation Z.

15. Failing to comply with Section 226.6(k) of Regulation Z by continuing to use printed retail installment contract forms subsequent to December 31, 1969 which did not con-

form to the specific disclosure requirements of Regulation Z.

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

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

II

It is further ordered, That respondent, Michael Yaccarino, an individual doing business as Reno's Auto Sales, and respondent's agents, representatives and employees, and their successors and assigns, directly or through any corporate or other device or under any other name or names, in connection with the advertising, offering for sale, sale and distribution of used automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to provide customers who speak and read only Spanish with contracts and credit cost disclosures printed in Spanish.

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

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

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

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

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

IN THE MATTER OF

J. C. PENNEY COMPANY, INC.

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

Docket C-2350. Complaint, Feb. 2, 1973—Decision, Feb. 2, 1973.

Consent order requiring the nation's second largest retailing organization located in New York City, among other things to cease representing that certain of their merchandise, including mattress pads and covers, sheets, pillow cases and protectors, are flame retardant or have been treated with a flame retardant finish.

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 J. C. Penney Company, Inc., a corporation, sometimes hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent J. C. Penney Company, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business at 1301 Avenue of the Americas, New York, New York.

Respondent is the second largest retailing organization in the nation and operates approximately 1,700 retail stores throughout 49 states and Puerto Rico. It also offers merchandise for sale through mail order catalogs and catalog desks. The circulation